

These are the minutes of the regular meeting of the Texas Transportation Commission held on November 21, 2013 in Tyler, Texas. The meeting was called to order at 9:00 a.m. by Chairman Houghton with the following commissioners present:

**Texas Transportation Commission:**

Ted Houghton	Chairman
Fred Underwood	Commissioner
Jeff Austin III	Commissioner
Jeff Moseley	Commissioner
Victor Vandergriff	Commissioner

Commissioner Vandergriff left the meeting at 12:00 p.m.

Commissioner Underwood left the meeting at 12:25 p.m.

**Administrative Staff:**

Phil Wilson, Executive Director  
 Jeff Graham, General Counsel  
 Rose Guajardo Walker, Chief Clerk  
 Robin Carter, Assistant Chief Clerk

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

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 4:53 p.m. on November 13, 2013, as required by Government Code, Chapter 551, referred to as "The Open Meetings Act."

At the invitation of Chairman Houghton and commissioner Austin, remarks were made by Senator Kevin Eltife, Senator Robert Nichols, Representative Bryan Hughes, Representative Travis Clardy, and Representative Matt Schaefer.

**ITEM 1. Safety Briefing**

This item was presented by Tyler District Engineer Randy Hopmann.

**ITEM 2. Approval of Minutes of the October 31, 2013, meeting of the Texas Transportation Commission**

Commissioner Vandergriff made a motion, which was seconded, and the commission approved the minutes of the October 31, 2013 regular meeting by a vote of 5 - 0.

The commission then received a report from the Tyler District, comments from area public officials, and community and civic leaders. Speakers included Rusk County Judge Joel Baker, Tyler Mayor Pro-Tem Martin Hines, Gregg County Judge and

Longview Metropolitan Planning Organization Policy Board Chair Bill Stoudt, Tyler Metropolitan Planning Organization Executive Director Heather Nick and North East Texas Regional Mobility Authority Chairwoman Linda Thomas. Commissioner Austin also asked questions of North East Texas Regional Mobility Authority Executive Director Everett Owen.

**ITEM 7. Proposition 14 Bonds (MO)**

**Eastland County - Approval of an additional project to be funded with the proceeds of State Highway Fund revenue bonds issued under Transportation Code, Section 222.003**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 - 0. This item was presented by Deputy Executive Director John Barton. The commission also received comments from Eastland County Judge Rex Fields, and private citizens Joni Keller, Mason Harris, and Danny Hutto. The commission also received Resolutions from the Ranger College Board of Regents and the Eastland County Commissioners' Court, both in support of changes to the speed limit and design of I-20 in the Ranger Hill area of Eastland County.

113759  
TRF

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

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

On October 30, 2008, January 29, 2009, February 26, 2009, March 26, 2009, July 30, 2009, September 24, 2009, November 19, 2009, December 17, 2009, February 25, 2010, March 25, 2010, May 27, 2010, August 26, 2010, October 28, 2010, February 24, 2011, May 26, 2011, and April 25, 2013, the commission adopted Minute Orders 111550, 111680, 111709, 111751, 111890, 111976, 112037, 112075, 112155, 112199, 112275, 112375, 112474, 112610, 112692, and 113562 respectively, which approved the use of proceeds of Proposition 14 bonds for state highway improvement projects and work associated with state highway improvement activities, as contained in exhibits to the Minute Orders.

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

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

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

Note: Exhibit A is on file with the assistant chief clerk.

**ITEM 3. Advisory Committee Appointments**

**Appoint members to the Bicycle Advisory Committee (MO)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 - 0. This item was presented by Chief Planning and Project Officer Russell Zapalac. The commission also received comments from committee nominee Billy Hibbs and from Texas Bicycle Club Advocate and local business owner Tyler Simpson.

113760  
PTN

The Bicycle Advisory Committee (committee) makes recommendations to the Texas Transportation Commission (commission) on the development of bicycle tourism trails in this state, provides recommendations on the selection of projects relating to the Safe Routes to School Program, and reviews and makes recommendations on items of mutual concern between the department and the bicycling community. The committee functions under Title 43, Texas Administrative Code, §1.85, concerning advisory committees.

The commission desires to expand the number of people serving on the committee and makes the following four appointments:

<u>Name</u>	<u>Location</u>	<u>Term Expiration</u>
Billy Hibbs	Tyler	August 31, 2016
Julia Murphy	San Antonio	August 31, 2016
Robert Gonzales	El Paso	August 31, 2016
Russ Frank	Houston	August 31, 2016

IT IS THEREFORE ORDERED by the commission that the individuals identified above are appointed for the terms specified as members of the Bicycle Advisory Committee.

**ITEM 4. Discussion Items**

**a. Update on I-20 East Texas Corridor Advisory Committee**

This item was presented by Chief Planning and Project Officer Russell Zapalac. The commission also viewed a presentation and heard remarks from Gregg County Judge and Chair of the Advisory Committee Bill Stout.

**b. Rural Transportation Planning**

This item was presented by Director of Planning Marc Williams. The commission also viewed a presentation.

**ITEM 5. Transportation Planning**

**a. Various Counties - Approve revisions to the Tyler Metropolitan Planning Organization metropolitan planning area boundary (MO)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 - 0. This item was presented by Director of Planning Marc Williams. The commission also received comments from the Tyler Metropolitan Planning Organization's Executive Director Heather Nick.

113761  
TPP

Pursuant to Title 43, Texas Administrative Code, §16.51(c), the governor or the Texas Transportation Commission (commission), if the approval authority has been delegated to the commission, must approve the boundaries of a designated metropolitan planning area and any revision of those boundaries. The metropolitan planning organization must provide the governor and the Texas Department of Transportation with appropriate documentation and the rationale supporting any recommended boundary change.

In accordance with 23 U.S.C. §134 and 23 C.F.R. §450.312, a metropolitan planning area boundary shall, at a minimum, encompass the entire existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan. The metropolitan planning area boundary may be further expanded to encompass the entire metropolitan statistical area or combined statistical area.

On October 4, 2005, Governor Rick Perry delegated authority to the commission to approve metropolitan planning area boundary changes.

On November 20, 2013, the Tyler Metropolitan Planning Organization (Tyler MPO) Policy Board approved a resolution recommending the expansion of the metropolitan planning area boundary to include the City of Bullard.

The commission has reviewed and accepted the documentation and rationale supporting the metropolitan planning area boundary changes provided by the Tyler MPO.

IT IS THEREFORE ORDERED by the commission that the proposed Tyler MPO metropolitan planning area boundary changes, as shown in Exhibit A, are hereby approved.

Note: Exhibit A is on file with the assistant chief clerk.

**b. Various Counties - Approve revisions to the Longview Metropolitan Planning Organization metropolitan planning area boundary (MO)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 - 0. This item was presented by Director of Planning Marc Williams. The commission also received comments from the Longview Metropolitan Planning Organization's Executive Director Karen Owen.

113762  
TPP

Pursuant to Title 43, Texas Administrative Code, §16.51(c), the governor or the Texas Transportation Commission (commission), if the approval authority has been delegated to the commission, must approve the boundaries of a designated metropolitan planning area and any revision of those boundaries. The metropolitan planning organization must provide the governor and the Texas Department of Transportation with appropriate documentation and the rationale supporting any recommended boundary change.

In accordance with 23 U.S.C. §134 and 23 C.F.R. §450.312, a metropolitan planning area boundary shall, at a minimum, encompass the entire existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan. The metropolitan planning area boundary may be further expanded to encompass the entire metropolitan statistical area or combined statistical area.

On October 4, 2005, Governor Rick Perry delegated authority to the commission to approve metropolitan planning area boundary changes.

On November 14, 2013, the Longview Metropolitan Planning Organization (Longview MPO) Policy Board approved a resolution recommending the expansion of the metropolitan planning area boundary to include the city of Gladewater and a portion of Upshur County.

The commission has reviewed and accepted the documentation and rationale supporting the metropolitan planning area boundary changes provided by the Longview MPO.

IT IS THEREFORE ORDERED by the commission that the proposed Longview MPO metropolitan planning area boundary changes, as shown in Exhibit A, are hereby approved.

Note: Exhibit A is on file with the assistant chief clerk.

**ITEM 6. Regional Mobility Authority****a. Cass County - Authorize the withdrawal of Cass County from the North East Texas Regional Mobility Authority (MO)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 - 0. This item was presented by Director of Planning Marc Williams. The commission also received comments from the Northeast Texas Regional Mobility Authority Chairwoman Linda Thomas.

113763  
TPP

Pursuant to Chapter 370 of the Transportation Code, and Title 43, Texas Administrative Code, Chapter 26 (RMA rules), Gregg and Smith counties petitioned the Texas Transportation Commission (commission) for authorization to form a regional mobility authority (RMA). The petition was filed on June 23, 2004.

By Minute Order 109829, dated October 28, 2004, the commission authorized the creation of the North East Texas Regional Mobility Authority (NET RMA). The minute order established an initial board of directors composed of seven members, with six members appointed by the Gregg and Smith counties commissioner's courts, and the presiding officer appointed by the governor.

By Minute Order 110569, dated June 29, 2006, the commission authorized the expansion of the NET RMA by the addition of Cherokee, Harrison, Rusk, and Upshur counties. By Minute Order 110996, dated July 26, 2007, the commission authorized further expansion of the NET RMA by the addition of Bowie, Cass, Panola, Titus, Van Zandt, and Wood counties, and provided that the board of directors would be composed of 17 members, with six members appointed by the Gregg and Smith counties commissioners courts, the presiding officer appointed by the Governor, and with each other county appointing one additional board member.

Section 26.22 of the RMA rules provides that one or more counties may request commission approval to withdraw from an existing RMA. The commission may approve the request if the RMA has no bonded indebtedness.

The commission has received a petition from Cass County requesting approval to withdraw from the NET RMA. The petition states that Cass County has not actively participated in the NET RMA since the resignation of the NET RMA director appointed by the county, and Cass County has determined that further participation in the NET RMA is not in the county's interest at this time.

The commission has received a resolution from the Cass County commissioner's court authorizing the Cass County Judge to execute the petition. The Board of Directors of the NET RMA has adopted a resolution approving the withdrawal of Cass County from the NET RMA. The commission finds that the NET RMA has no bonded indebtedness.

IT IS THEREFORE ORDERED that the commission approves the withdrawal of Cass County from the NET RMA.

**b. Various Counties - Consider authorizing Kaufman County to become part of the North East Texas Regional Mobility Authority (MO)**

Commissioner Moseley made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 - 0. This item was presented by Director of Planning Marc Williams. The commission also received comments from the Northeast Texas Regional Mobility Authority Chairwoman Linda Thomas.

113764  
TPP

Pursuant to Chapter 370 of the Transportation Code, and Title 43, Texas Administrative Code, Chapter 26 (RMA rules), Gregg and Smith counties (counties) petitioned the Texas Transportation Commission (commission) for authorization to form a regional mobility authority (RMA). The petition was filed on June 23, 2004.

By Minute Order 109829, dated October 28, 2004, the commission authorized the creation of the North East Texas Regional Mobility Authority (NET RMA). The minute order established an initial board of directors composed of seven members, with six members appointed by the Gregg and Smith counties commissioners courts, and the presiding officer appointed by the governor.

Section 26.21 of the RMA rules provides that one or more counties may request commission approval to become part of an existing RMA.

By Minute Order 110569, dated June 29, 2006, the commission authorized the expansion of the NET RMA by the addition of Cherokee, Harrison, Rusk, and Upshur counties. By Minute Order 110996, dated July 26, 2007, the commission authorized further expansion of the NET RMA by the addition of Bowie, Cass, Panola, Titus, Van Zandt, and Wood counties, and provided that the board of directors would be composed of 17 members, with six members appointed by the Gregg and Smith counties commissioners courts, the presiding officer appointed by the Governor, and with each other county appointing one additional board member. The commission has approved a petition from Cass County requesting approval to withdraw from the NET RMA.

The commission has received a petition from Kaufman County requesting approval to join the NET RMA, and has received a resolution from the Kaufman County commissioners court indicating support for the request to join the NET RMA, and authorizing the Kaufman County Judge to execute the petition. The Board of Directors of the NET RMA (Board) has adopted a resolution agreeing to the addition of Kaufman County to the NET RMA.

The commissioners courts of Gregg and Smith counties, the original petitioning counties, as well as the commissioners courts of Cherokee, Harrison, Rusk, Upshur, Bowie, Panola, Titus, Van Zandt, and Wood counties have all submitted resolutions indicating support for Kaufman County's request.

As provided in the petition, the board of directors of the NET RMA will be composed of 19 members, three board members each appointed by Gregg and Smith counties, two board members each appointed by Bowie County and Harrison County, and one board member each from the Cherokee, Panola, Rusk, Titus, Upshur, Van Zandt and Wood counties, including Kaufman County, with its commissioners court appointing one board member. The presiding officer is appointed by the Governor.

The commission finds that expansion of the NET RMA will result in direct benefits to the state, local governments, and the traveling public, and will improve the efficiency of the state's transportation systems. Expansion of the NET RMA will benefit the state by constructing needed roadway projects, such as the network identified in the original NET RMA petition. The expanded NET RMA will benefit local governments by increasing local control over transportation planning and through additional transportation projects that may be funded through the NET RMA. The traveling public will also benefit through improved mobility and traffic safety, enhanced economic vitality, and a better quality of life throughout the region encompassed by the expanded NET RMA.

The commission also finds that the affected political subdivisions in Kaufman County will be adequately represented on the Board.

IT IS THEREFORE ORDERED that the commission approves the expansion of the NET RMA by the addition of Kaufman County.

**ITEM 8. Promulgation of Administrative Rules Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:**

**a. Final Adoption**

**(1) Chapter 1 - Management (MO)**

**Amendments to §1.82, §§1.85 - 1.87 (Advisory Committees)**

Commissioner Moseley made a motion, which was seconded, and the commission approved the following minute order by a vote of 4 - 0. This item was presented by General Counsel Jeff Graham.

113765  
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §1.82, and §§1.85 - 1.87, relating to advisory committees, 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 §1.82, and §§1.85-1.87 are adopted and are authorized for filing with the Office of the Secretary of State.

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

Note: Exhibits A and B are on file with the assistant chief clerk.

**(2) Chapter 15 - Financing and Construction of Transportation Projects (MO)**  
**New §§15.180 - 15.197, New Subchapter O, County Transportation Infrastructure Fund Grant Program**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 4 - 0. This item was presented by Deputy Executive Director John Barton. The commission also received comments from LaSalle County Judge Joel Rodriguez.

113766  
TPP

The Texas Transportation Commission (commission) finds it necessary to adopt new §§15.180 - 15.197, new Subchapter O, County Transportation Infrastructure Fund Grant Program, relating to the financing and construction of transportation projects to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that new §§15.180 - 15.197 are adopted and are authorized for filing with the Office of the Secretary of State. The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B are on file with the assistant chief clerk.

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

**New §25.27, Variable Speed Limits (Procedures for Establishing Speed Zones)**

Commissioner Moseley made a motion, which was seconded, and the commission approved the following minute order by a vote of 4 - 0. This item was presented by Deputy Executive Director John Barton.

113767  
TRF

The Texas Transportation Commission (commission) finds it necessary to adopt new §25.27, Variable Speed Limits, relating to procedures for establishing speed zones to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that new §25.27 is adopted and is authorized for filing with the Office of the Secretary of State.

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

Note: Exhibits A and B are on file with the assistant chief clerk.

**(4) Chapter 25 - Traffic Operations (MO)****Amendments to §25.975, Crash Record Statistical Analysis, and §25.977, Reporting by Investigating Officers (Crash Records Information System)**

Commissioner Moseley made a motion, which was seconded, and the commission approved the following minute order by a vote of 4 - 0. This item was presented by Deputy Executive Director John Barton.

113768  
TRF

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §25.975, Crash Record Statistical Analysis, and §25.977, Reporting by Investigating Officers, relating to the crash records information system, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §25.975 and §25.977 are adopted and are authorized for filing with the Office of the Secretary of State.

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

Note: Exhibits A and B are on file with the assistant chief clerk.

**b. Proposed Adoption****(1) Chapter 2 - Environmental Review of Transportation Projects (MO)****Amendments to §§2.1, 2.2, 2.5-2.8, 2.11, 2.12 and 2.14 (General Provisions), §§2.41-2.44, and 2.46 -2.52 (Environmental Review Process for Highway Projects); §§2.81, 2.83-2.86 (Requirements for Classes of Projects); and §§2.131 and 2.134 (Requirements for Specific Projects and Programs); Repeal of §2.82 (Requirements for Classes of Projects); Repeal of §§2.101-2.110 and New §§2.101-2.110 (Public Participation).**

Commissioner Moseley made a motion, which was seconded, and the commission approved the following minute order by a vote of 4 - 0. This item was presented by Chief Planning and Project Officer Russell Zapalac.

113769  
ENV

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§2.1, 2.2, 2.5 -2.8, 2.11, 2.12, 2.14, 2.41 - 2.44, 2.46 - 2.52, 2.81, 2.83 - 2.86, 2.131 and 2.134, the repeal of §2.82 and §§2.101-2.110, and new §§2.101-2.110, all relating to the environmental review of transportation projects, and codified under Title 43, Texas Administrative Code, Part 1

The preamble and the proposed amendments, repeals and new sections, attached to this minute order as Exhibits A - G, are incorporated by reference as though set forth

verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the Texas Register.

IT IS THEREFORE ORDERED by the commission that the amendments to §§2.1, 2.2, 2.5 - 2.8, 2.11, 2.12, 2.14, 2.41 - 2.44, 2.46 - 2.52, 2.81, 2.83 - 2.86, 2.131 and 2.134; the repeal of §2.82 and §§2.101-2.110, and new §§2.101-2.110 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

Note: Exhibits A - G are on file with the assistant chief clerk.

**ITEM 10. Professional Services Contracts**

**Various Counties - Approval to exceed contract term restrictions in 43 TAC §9.32(b)(1) for the procurement of indefinite deliverable contracts for engineering services associated with the planning, development, and implementation of transportation projects throughout the state (MO)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 3 - 0. This item was presented by Chief Strategy and Administration Officer Scott Leonard.

113770  
CSO

Title 43, Texas Administrative Code, §9.32(b)(1)(B) provides that for an indefinite deliverable architectural, engineering or surveying services contract, the contract period in which initial work authorizations may be issued may not be longer than two years after the date of contract execution, unless approved by the Texas Transportation Commission (commission) before the solicitation posting date.

The Texas Department of Transportation (department) intends to enter into indefinite deliverable contracts for engineering services associated with the planning, development, and implementation of transportation projects throughout the state. Being able to enter into indefinite deliverable contracts for those services with a three year contract term, rather than the currently prescribed two years, will allow the department to more fully utilize contract dollar capacity without additional procurements for those contracts. The contract dollar value currently prescribed is established by the Executive Director of the department or the Executive Director's designee, in accordance with 43 TAC, §9.32(b)(1) (A) and will remain unchanged.

IT IS THEREFORE ORDERED by the commission that the department is authorized to issue solicitations for indefinite deliverable contracts for engineering services with contract periods in which initial work authorizations may be issued of no longer than three years after the date of contract execution.

**ITEM 8 (Continued). Promulgation of Administrative Rules Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:**

**b. Proposed Adoption**

**(2) Chapter 9 - Construction and Grant Management (MO)**

**Amendments to §9.3, Protest of Department Purchases under the State Purchasing and General Services Act (General)**

Commissioner Moseley made a motion, which was seconded, and the commission approved the following minute order by a vote of 3 - 0. This item was presented by Chief Strategy and Administration Officer Scott Leonard.

113771  
CSO

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.17, relating to the award of highway improvement contracts, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §9.17 are proposed for adoption and are authorized for publication in the Texas Register for the purpose of receiving public comments.

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

Note: Exhibits A and B are on file with the assistant chief clerk.

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

**Amendments to §9.17, Award of Contract (Highway Improvement Contracts)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 3 - 0. This item was presented by Deputy Executive Director John Barton.

113772  
CST

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.17, relating to the award of highway improvement contracts, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §9.17 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

Note: Exhibits A and B are on file with the assistant chief clerk.

**ITEM 9. County Transportation Infrastructure Fund Grant Program**

Authorize the designation of a period of time for counties to submit applications requesting grants under the County Transportation Infrastructure Fund Grant Program for funding transportation infrastructure projects located in areas of the state affected by increased oil and gas production, and prescribe the conditions that will be applicable to the grant award process (MO)

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 3 - 0. This item was presented by Deputy Executive Director John Barton.

113773  
ADM

Section 256.103, Transportation Code, authorizes and directs the Texas Department of Transportation (department) to administer a grant program using the transportation infrastructure fund dedicated by the Texas Legislature in the 83rd Legislature, Regular Session, 2013 (fund) to provide funding to counties for transportation infrastructure projects located in areas of the state affected by increased oil and gas production.

By minute order on November 21, 2013, the Texas Transportation Commission (commission) adopted rules, codified as Title 43 Texas Administrative Code §§15.180 – 15.197 (rules), that prescribe the policies and procedures governing the department's implementation of the county transportation infrastructure fund grant program (program) under Transportation Code, Chapter 256, Subchapter C.

Section 15.187 of the rules provides that the commission may designate a period during which the department will accept applications for grants from the fund and, for each designated period, prescribe conditions for submission. Pursuant to §15.187 of the rules, the department will publish notice of the designated period for acceptance of applications for grants from the fund. The notice will specify the period of time and the deadline for submitting applications, the estimated total amount of money available for grants from the fund for the designated period, the estimated allocation for each county in the state based on the allocation formula described in §15.185 of the rules, and any other condition deemed appropriate by the commission.

After review of properly submitted applications, the department will determine the amount of a grant award for each eligible county in accordance with the allocation formula and criteria set forth in §§15.185 and 15.186 of the rules and provide a written notice to each applicant that states the amount of the grant awarded to the county. The department and each county receiving an award will then enter into an agreement in accordance with §15.191 of the rules.

The commission finds that monies currently available under the program for allocation to the counties for transportation infrastructure projects located in areas of the state affected by increased oil and gas production total \$225 million in funds from the legislative appropriation described in Section 40, House Bill 1025, 83rd Legislature, Regular Session, 2013. In order to expedite repair to damaged infrastructure and maximize the number of projects that can be advanced in a timely manner, the commission determines that the first designated application period during fiscal year 2014 should occur soon after adoption of the rules, and all of the available funds should be allocated to the eligible counties that apply.

IT IS THEREFORE ORDERED that:

- (1) applications for grants from the fund must be submitted by counties to the department on or before February 14, 2014, but no sooner than February 7, 2014; and
- (2) the total amount of funds available for the period designated above to be awarded among the eligible counties that submit a valid application will be \$225 million, less amounts authorized by the act for the department to use in administering the program.

IT IS FURTHER ORDERED that the executive director or his designee is directed to take the necessary steps to implement the actions as ordered in this minute order.

**ITEM 11. Office of Compliance and Ethics**  
**Office of Compliance and Ethics Report**

This item was presented by General Counsel Jeff Graham.

**ITEM 12. Finance**

**a. Mobility Fund Revenue Financing Program - Approve an amendment to extend the liquidity agreement entered into for the "Texas Transportation Commission State of Texas General Obligation Mobility Fund Bonds, Series 2006-B (Multi-Modal Bonds)" (MO)**

Commissioner Moseley made a motion, which was seconded, and the commission approved the following minute order by a vote of 3 - 0. This item was presented by Innovative Finance/Debt Management Officer Ben Asher.

113774  
 DMO

Pursuant to Minute Order 110081, dated May 4, 2005 (authorizing minute order), the Texas Transportation Commission (commission) has approved a Master Resolution Establishing the Texas Transportation Commission Mobility Fund Revenue Financing Program, as subsequently amended by the First Amendment and Second Amendment (Master Resolution), to establish a revenue financing program (Mobility Fund Revenue Financing Program) pursuant to which the commission may issue obligations including bonds, notes, and other public securities and execute credit

agreements secured by and payable from a pledge of and lien on all or part of the moneys in the Mobility Fund.

The commission has previously issued its \$150 million "Texas Transportation Commission State of Texas General Obligation Mobility Fund Bonds, Series 2006-B (Multi-Modal Bonds)" (Series 2006-B Bonds) pursuant to the Fifth Supplemental Resolution of the Master Resolution (Fifth Supplement). There is currently \$150,000,000 in aggregate principal amount of the Series 2006-B Bonds outstanding.

Under the Fifth Supplement, Series 2006-B Bonds are authorized to be tendered for purchase from time to time by the purchasers pursuant to the provisions of the First Supplement and the commission must maintain a liquidity agreement with a liquidity provider to pay the purchase price of tendered bonds in the event the Series 2006-B Bonds are not remarketed by the remarketing agent.

As part of the ongoing management of the Mobility Fund Revenue Financing Program, the commission has been requested to consider several actions with respect to the Series 2006-B Bonds.

The Series 2006-B Bonds current liquidity agreement with State Street Bank and Trust Company, as Bank and as Agent, and California Public Employees' Retirement System as a Bank, (the Banks) expires December 13, 2013 and the commission must take action to extend or replace the agreement prior to the expiration date.

The Banks have agreed to extend the term of the existing liquidity agreement for three (3) years.

**IT IS THEREFORE ORDERED** by the commission that the Chief Financial Officer, on behalf of the commission, is authorized and directed to take such action necessary to extend the liquidity agreement with respect to the Series 2006-B Bonds, including giving any notices and other actions as may be required, and the Chief Financial Officer is an Authorized Representative for the purposes of the Master Resolution and the Fifth Supplemental Resolution.

**IT IS FURTHER ORDERED** by the commission that the Chief Financial Officer, on behalf of the commission, is authorized and directed to execute and deliver the amendment to the liquidity agreement with such changes as the Chief Financial Officer executing the same may approve, such approval to be conclusively evidenced by execution of the agreement.

**IT IS FURTHER ORDERED** by the commission that any necessary auxiliary documents in connection with the extension of the liquidity agreement for the Series 2006-B Bonds are hereby approved including any amendments or additional amendments, as applicable, to the Fifth Supplement, the Tender Agent Agreement, and the Remarketing Agreement, and the Chief Financial Officer is authorized and directed to execute and deliver such documents.

**IT IS FURTHER ORDERED** by the commission that the Chief Financial Officer, on behalf of the commission, is authorized and directed to perform all such acts and execute such documents, including execution of certifications to the remarketing agent and liquidity and other providers, the Attorney General, the Comptroller of Public Accounts and other parties, as may be necessary to carry out the intent of this order and

other orders of the commission relating to the Mobility Fund Revenue Financing Program and the related documents.

b. **Cameron County** - Consider the final approval of a request for additional financial assistance in the form of a second loan to the Cameron County Regional Mobility Authority (CCRMA) to pay certain costs for environmental studies, design, legal services and preliminary development of the second causeway project which consists of a controlled access facility over Laguna Madre connecting SH 100 on the mainland to Park Road 100 on South Padre Island (MO)

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 3 - 0. This item was presented by Innovative Finance/Debt Management Officer Ben Asher.

113775  
DMO

In Minute Order 109788, dated September 30, 2004, the Texas Transportation Commission (commission) authorized the creation of the Cameron County Regional Mobility Authority (CCRMA), with the boundaries of the CCRMA to be the entire geographic area of Cameron County.

The Texas Department of Transportation (department) and the CCRMA have worked together to identify an approach to pursue the development of certain transportation system improvements within the jurisdictional limits of the CCRMA.

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 commission.

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

In accordance with Section 27.53 and 27.54(a) of the toll equity rules, the commission, in Minute Order 113742, dated October 31, 2013, granted preliminary approval of financial assistance in an amount of up to \$5.1 million to continue the study and development of the Second Causeway project (project). The project consists of three major components: the mainland roadway, the Laguna Madre crossing bridge and the island roadway. The points of origination and terminus have been identified as Park Road 100 on the island and SH 100 on the mainland. Alternative configurations and routes between these points are under review as part of the CCRMA's predevelopment studies. Currently, the route under consideration includes a mainland roadway component consisting of a four-lane road within a 150-foot right-of-way from Park Road 100 north, crossing southwest across Laguna Madre, a Gulf Intracoastal Waterway, with approximately 8 miles of tolled lanes, and extending west to intersect

with Buena Vista Drive with a terminus at SH 100 approximately 9.1 miles west of Port Isabel. The total length of the project is approximately 17.6 miles.

This additional financial assistance is intended to contribute toward the continued development of the project's environmental studies, traffic and revenue studies, design and engineering services, legal and financial advisory services, marketing, and public education and outreach related activities. The assistance would also include any direct or indirect costs directly associated with these activities.

Because the project includes a bridge crossing a Gulf Intracoastal Waterway - the Laguna Madre - significant feedback has been received on the draft environmental impact study, published in May, 2012, cooperatively produced by the CCRMA and the department. This assistance will allow the department and the CCRMA to address the concerns regarding the environmental impact study and continue the preliminary development toward final environmental clearance. In addition to enhancing the local and regional mobility, decreasing congestion, increasing economic development opportunities, and improving access for emergency response, the project would also provide a much needed alternate evacuation route from the island in the event of a hurricane. If the CCRMA cannot secure financing to continue this work, the project may be delayed or canceled, which would adversely affect safety.

In accordance with Section 27.54 of the toll equity rules, negotiations have been completed and a financial assistance agreement that complies with Section 27.55 of those rules will be developed. The agreement shall provide that the financial assistance is in the form of a loan, and shall also provide that if the project is not constructed by the CCRMA, all work product prepared by the CCRMA in connection with the project shall be transferred to the department, and the transfer of this work product shall constitute repayment of the loan.

The project will benefit the state and the traveling public and will improve the efficiency of the state's transportation system by enhancing mobility and safety within this segment of the state transportation system. The proposed project and work by the CCRMA is consistent with the approved Texas Transportation Plan and is included, as applicable, in the approved plan of the Metropolitan Planning Organization.

Because the CCRMA has indicated that it may fund a portion of the costs of developing the proposed project with bond proceeds and other funding provided by the CCRMA, along with the requested financial assistance, the project will expand the availability of funding for transportation projects or will reduce direct state costs.

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

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the CCRMA meets the applicable requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants final approval of the request for financing in the amount of up to \$5.1 million, in the form of a loan, to be used for the continued development of the project's environmental studies, traffic and revenue studies, design and engineering services, legal and financial

advisory services, marketing, and public education and outreach related activities, and authorizes the executive director to enter into a financial assistance agreement with the CCRMA.

c. **Cameron County** - Consider the final approval of a request for financial assistance in the form of a loan to the Cameron County Regional Mobility Authority (CCRMA) to pay certain costs for environmental studies, design, legal services and preliminary development of the first phase of the Outer Parkway project consisting of a controlled access facility from I-69 East to FM 106 (General Brant Road) in the vicinity of FM 1847 (MO)

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 3 - 0. This item was presented by Innovative Finance/Debt Management Officer Ben Asher.

113776  
DMO

In Minute Order 109788, dated September 30, 2004, the Texas Transportation Commission (commission) authorized the creation of the Cameron County Regional Mobility Authority (CCRMA), with the boundaries of the CCRMA to be the entire geographic area of Cameron County.

The Texas Department of Transportation (department) and the CCRMA have worked together to identify an approach to pursue the development of certain transportation system improvements within the jurisdictional limits of the CCRMA.

Transportation Code, §370.301 authorizes 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 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 commission.

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

In accordance with Section 27.53 and 27.54(a) of the toll equity rules, the commission, in Minute Order 113743, dated October 31, 2013, granted preliminary approval of financial assistance in an amount of up to \$5.0 million to be used for predevelopment environmental studies, design, legal services, and other qualified development costs for the Outer Parkway project (project).

Because the project is in the early stages of pre-development, the route has not been fully defined. However, currently, the CCRMA has identified a preferred alternative which includes a new facility north of existing FM 106 (General Brant Road) that would extend approximately 21.5 miles from I-69 East and US 77/83, north of Harlingen, and east to General Brant Road. This route provides significant options for effective connection with I-69 East, is generally undeveloped, and would provide potential for greater economic development. Further, environmentally, this alternative

crosses fewer floodplains and wetlands and the CCRMA expects little to no impact to National Wildlife Refuge lands. As a toll facility, the project would ultimately consist of two tolled lanes in each direction, separated by a wide center median reserved for future transportation use.

The completion of the project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by enhancing local and regional mobility, decreasing congestion, increasing safety, increasing economic development opportunities, decreasing travel time, and enhancing operational efficiency and quality of life in the project corridor and the regional transportation system. The project would also improve access for emergency response by providing a much needed alternate evacuation route from South Padre Island in the event of a hurricane. If the CCRMA cannot secure financing to provide for continued pre-development costs including environmental studies, finalizing the route, and achieving environmental clearance, the project may be delayed or canceled, which would adversely affect safety. The proposed project and work by the CCRMA is consistent with the approved Texas Transportation Plan and is included, as applicable, in the approved plan of the Metropolitan Planning Organization.

In accordance with Section 27.54 of the toll equity rules, negotiations have been completed and a financial assistance agreement that complies with Section 27.55 of those rules will be developed. The agreement shall provide that the financial assistance is in the form of a loan, and shall also provide that if the project is not constructed by the CCRMA, all work product prepared by the CCRMA in connection with the project shall be transferred to the department, and the transfer of this work product shall constitute repayment of the loan.

Because the CCRMA has indicated that it may fund a portion of the costs of developing the proposed project with bond proceeds and other funding provided by the CCRMA, along with the requested financial assistance, the project will expand the availability of funding for transportation projects or will reduce direct state costs.

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

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the CCRMA meets the requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants final approval of the request for financing in the amount of up to \$5.0 million, in the form of a loan, to be used for predevelopment environmental studies, design, legal services, and other qualified development costs of the project and authorizes the executive director to enter into a financial assistance agreement with the CCRMA.

**ITEM 13. Toll Roads**

**Travis and Williamson Counties - Continue in effect temporary toll rate tables on SH 130, Segments 1-4, and SH 45 Southeast to charge the two-axle rate for all vehicles, regardless of classification (MO)**

Commissioner Moseley made a motion, which was seconded, and the commission approved the following minute order by a vote of 3 - 0. This item was presented by Innovative Finance/Debt Management Officer Ben Asher.

113777  
TOD

Pursuant to Transportation Code section 373.052, the Central Texas Regional 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, if applicable; and (3) vehicle classifications, type and location of the facility, and similar criteria that apply to a specific project.

State Highway 130, Segments 1-4, is a four-lane, controlled access toll facility extending approximately 49 miles from I-35 north of Georgetown to the intersection of US 183 and SH 130 at SH 45 Southeast, and is an element of the Central Texas Turnpike System. SH 45 Southeast is a four-lane, controlled access toll facility extending approximately 7.4 miles from I-35 at FM 1327 south of Austin to the SH 130 / US 183 interchange, and was added to the Central Texas Turnpike System (CTTS) by the commission in Minute Order 113243, dated August 30, 2012.

In Minute Order 113244, dated August 30, 2012, the commission approved new toll rates on the CTTS and authorized a toll escalation policy. In Minute Order 113528, dated March 28, 2013, the commission authorized the Texas Department of Transportation (department) to establish temporary toll rate tables on SH 130, Segments 1-4 and SH 45 Southeast for a pilot period of up to one year. During the pilot period, the two-axle rate set in Minute Order 113244, as escalated or amended, will be charged for all vehicles, regardless of classification. The purpose of the pilot program is to reduce traffic congestion on I-35 and to make Central Texas roadways safer by encouraging greater through trips of trucks on Central Texas toll roads. At the end of the pilot program, the toll rates will revert back to the previously approved rates, as amended and escalated. In accordance with Section 502 of the Indenture of Trust for the CTTS (indenture), any change in classification that results in a reduced toll or any new classification shall be subject to a traffic consultant approving the same before it is implemented unless it is temporary. In all events, the commission shall not make a change in classification or any new classification unless the commission determines that such change is not expected to result in the receipt of revenues in amounts less than that contemplated in the rate covenant in the indenture.

In Minute Order 113487, dated February 28, 2013, the commission allocated \$11 million from the payments received from SH 130 Concession Company, LLC for the right to develop, finance, design, construct, operate, and maintain the SH 130, Segments 5 and 6 facility (SH 130 payments), to be used for congestion relief and air quality mitigation strategies. Of that amount, \$5 million was authorized by Minute Order 113528 to be used to make up the difference in revenues between the temporary toll rates charged to vehicles on SH 130, Segments 1-4 and SH 45 Southeast with more than two-axes and the toll rates for those vehicles approved by the commission in

Minute Order 113244, as escalated or amended. The commission has determined that the expenditure of public funds to pay the cost of tolls not paid by vehicles with more than two-axles is a public purpose. In Minute Order 113528, the commission determined that the temporary changes in classification and reduction in toll rates are not expected to result in the receipt of revenues in amounts less than that contemplated in the rate covenant in the indenture, and authorized the department to charge tolls on SH 130, Segments 1-4 and SH 45 Southeast in the amounts stated in Exhibit A from April 1, 2013 to March 30, 2014, as escalated or amended, or until the date of any earlier termination of the pilot program, as described in this order.

The initial \$5 million allocated by the commission is nearing depletion. The department desires to continue the temporary truck toll rates under the pilot program with an additional \$2 million allocation of the SH 130 payments to make up the difference in revenues between the temporary toll rates charged to vehicles with more than two-axles and the toll rates for those vehicles approved by the commission in Minute Order 113244, as escalated or amended. Pursuant to the toll escalation policy authorized in Minute Order 113244, escalated toll rates will become effective on January 2014.

The department's traffic consultant has provided a certification indicating that the adoption of such a temporary change in classification of truck toll rates for the up to one-year pilot program, coupled with and limited by the funds provided by the department necessary to offset any loss in revenue, will not adversely affect the ability of the commission to comply with the rate covenant in Section 501 of the indenture.

IT IS THEREFORE ORDERED that the department shall pay to the appropriate indenture account from the additional \$2 million in funds allocated from the SH 130 payments, and from any other lawfully available funds of the department allocated by the commission, the cost of tolls not paid by vehicles with more than two-axles. The payments to make up the difference in revenues between the temporary toll rates charged to vehicles with more than two-axles and the toll rates for those vehicles approved by the commission in Minute Order 113244, as escalated or amended, are limited to the amount of funds that are allocated by the commission for that purpose, including the \$2 million allocation described in this order. Once the funds allocated by the commission are depleted, the pilot program will end.

IT IS FURTHER ORDERED that the toll rates will revert back to the previously approved rates on March 31, 2014, or on the date of any earlier termination of the pilot program.

Note: Exhibit A is on file with the assistant chief clerk.

#### **ITEM 14. Contracts**

##### **Award or reject contracts for maintenance, highway and building construction**

##### **(a) Highway Maintenance and Department Building Construction (MO)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 3 - 0. This item was presented by Deputy Executive Director John Barton.

113778  
MNT

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on November 5 and 6, 2013 as shown on Exhibit A.

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

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

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

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

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

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

Note: Exhibit A is on file with the assistant chief clerk.

**(b) Highway and Transportation Enhancement Building Construction (MO)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 3 - 0. This item was presented by Deputy Executive Director John Barton.

113779  
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 November 5 and 6, 2013, as shown on Exhibit A.

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 is on file with the assistant chief clerk.

**ITEM 15. Eminent Domain Proceedings**

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

Commissioner Moseley made a motion that the Texas Transportation Commission authorize the Texas Department of Transportation to use the power of eminent domain to acquire the properties described in the minute order set forth in the agenda for the current month for construction, reconstruction, maintenance, widening, straightening, or extending the highway facilities listed in the minute order as a part of the state highway system, and that the first record vote applies to all units of property to be condemned. The motion was seconded and the following minute order was approved by Commissioner Houghton, Commissioner Austin, and Commissioner Moseley (a vote of 3 - 0). This item was presented by Deputy Executive Director John Barton.

113780  
ROW

To facilitate the safety and movement of traffic and to preserve the financial investment of the public in its highways, the Texas Transportation

Commission (commission) finds that public necessity requires the laying out, opening, constructing, reconstructing, maintaining, widening, straightening, extending, and operating of the highway facilities listed below as a part of the State Highway System (highway system).

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

The commission finds and determines that the highway facilities to be constructed or improved on the parcels identified and listed below under "CONTROLLED ACCESS" are designated as a Controlled-Access Highway in accordance with Transportation Code, Section 203.031; and where there is adjoining real property remaining after acquisition of a parcel, the roads are to be constructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted or denied, as designated and set forth on each of the attached Exhibits A - LL. Where there is adjoining real property remaining after acquisition of a parcel with respect to the highway facilities to be constructed or improved on the parcels identified as listed below under "NON-CONTROLLED ACCESS," roads are to be constructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted or denied, as designated and set forth on each of the attached Exhibits 1 - 26, in accordance with Transportation Code, Sections 203.002 and 203.003.

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

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

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

**NON-CONTROLLED ACCESS**

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Harris	SH 99	8	3510-06-006	230
Harris	SH 99	6	3510-06-006	253

Harris	SH 99	26	3510-06-006	255
Harris	SH 99	5	3510-06-006	273
Harris	SH 99	10	3510-06-011	517
Harris	SH 99	14	3510-06-011	521
Harris	US 290	3	0050-09-086	2012
Harris	US 290	24	0050-09-087	513
Harris	US 290	21	0050-09-090	444
Howard	US 87	2	0908-12-020	41
Howard	US 87	1	0908-12-020	43
McLennan	FM 1637	11	0833-03-040	125
McLennan	FM 1637	13	0833-03-040	126
McLennan	FM 1637	15	0833-03-040	127
McLennan	FM 1637	16	0833-03-040	128
McLennan	FM 1637	17	0833-03-040	129
McLennan	FM 1637	18	0833-03-040	130
McLennan	FM 1637	19	0833-03-040	131
McLennan	FM 1637	20	0833-03-040	132
Montgomery	FM 1488	25	0523-10-037	20
Montgomery	SH 99	12	3510-07-007	622
Nacogdoches	US 59	4	0176-01-099	10
Nueces	US 77	7	0102-03-085	12
Rockwall	FM 740	23	1014-03-058	17
Rockwall	FM 740	22	1014-03-058	49
Travis	FM 973	9	1200-03-049	45

**CONTROLLED ACCESS**

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Archer	US 277	O	0156-05-044	26
Archer	US 277	Q	0156-05-044	83
Archer	US 277	Y	0156-05-044	84
Archer	US 277	V	0156-05-044	85
Archer	US 277	L	0156-05-044	86
Bell	IH 35	II	0015-14-123	66
Harris	SH 99	HH	3510-06-005	102, 102TE
Harris	SH 99	CC	3510-06-005	138, 138TE
Harris	SH 99	N	3510-06-005	149
Harris	SH 99	C	3510-06-006	208, 208TE
Harris	SH 99	K	3510-06-006	209
Harris	SH 99	G	3510-06-006	210
Harris	SH 99	H	3510-06-006	251
Harris	SH 99	J	3510-06-006	256
Harris	SH 99	E	3510-06-006	272
Harris	SH 99	I	3510-06-006	274
Harris	SH 99	U	3510-06-006	279

Harris	SH 99	FF	3510-06-006	285
Harris	SH 99	D	3510-06-006	291
Harris	SH 99	R	3510-06-006	317
Harris	SH 99	DD	3510-06-006	331
Harris	SH 99	M	3510-06-006	366
Harris	SH 99	W	3510-06-011	508
Harris	SH 99	BB	3510-06-011	519
Harris	US 290	LL	0050-08-090	826
Harris	US 290	KK	0050-09-087	511
Harris	US 290	B	0050-09-090	423
McLennan	IH 35	EE	0015-02-058	44AC
McLennan	IH 35	GG	0015-02-058	51AC
Montgomery	SH 99	Z	3510-07-007	604
Montgomery	SH 99	S	3510-07-007	612
Montgomery	SH 99	X	3510-07-007	613
Montgomery	SH 99	P	3510-07-007	618
Montgomery	SH 99	T	3510-07-007	623
Montgomery	SH 99	AA	3510-07-007	725, 725TE
Orange	IH 10	A	0028-14-111	1
Tarrant	IH 35W	F	0014-16-266	879
Travis	FM 973	JJ	1200-03-049	29AC

Note: Exhibits A - LL and 1 - 26 are on file with the assistant chief clerk.

#### **ITEM 16. Routine Minute Orders**

Commissioner Moseley made a motion, which was seconded, and the commission approved the following minute orders by a vote of 3 - 0. This item was presented by Executive Director Phil Wilson.

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

**Various Districts - Consider the acceptance of donations made to the department to include: (a) donations in any form, including realty, personalty, money, materials, or services, which are made to the department for the purpose of carrying out its functions and duties; and (b) donations from landowners, with land adjacent to a highway that is part of the state highway system, to construct an improvement on the highway right-of-way that is directly related to improving access to or from the owner's land (See attached itemized list) (MO)**

113781  
CSO

Transportation Code, §201.206, authorizes the Texas Department of Transportation (department) to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation

is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

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

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

The commission finds that the donations further the department's responsibilities and that none of the donors are a party to a contested case before the department nor have been a party to a contested case before the department during the last 30 days.

The commission also finds that none of the donors are subject to department regulation or oversight, and that these donations will not influence or reasonably appear to influence the department in the performance of its duties.

The commission also finds that none of the donors are interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

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

IT IS THEREFORE ORDERED by the commission that the donations identified on the attached Exhibit A are 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 acknowledgement of the donations.

Note: Exhibit A is on file with the assistant chief clerk.

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

(1) Bowie County - FM 989 at FM 559 and FM 2878 in Texarkana - Consider the removal from the system, designation on a new location, re-designation and transfer of surplus right of way to the city (MO)

113782  
ROW

In the city of Texarkana, BOWIE COUNTY, on FARM TO MARKET ROAD 989, the state of Texas acquired certain land by instrument recorded in Volume 320, Page 115, Deed Records of Bowie County, Texas.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that a segment of FM 989 west of FM 2878, shown in

Exhibit A, be removed from the state highway system and that control, jurisdiction, and maintenance be transferred to the city. The executive director has also recommended the designation of a segment of FM 989 on a new location south FM 559 and re-designation of a segment on the old alignment south of FM 559 as FM 2878.

The surplus land, described in Exhibit B, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may waive payment for real property transferred to a governmental entity if the estimated cost of future maintenance on the property equals or exceeds the fair value of the property.

The fair value of the surplus land has been determined to be \$207,840, and the state's costs for maintenance over the next 25 years are estimated to be \$231,690. The city has requested that the surplus land be transferred to the city and that control, jurisdiction, and maintenance be transferred to the city.

The commission finds \$207,840 to be a fair and reasonable value of the state's right, title, and interest in the surplus land.

IT IS THEREFORE ORDERED by the commission that: 1) a segment of FM 989 west of FM 2878 be removed from the system, a distance of 0.3 mile; 2) FM 989 be designated on a new location south of FM 559, a distance of 0.2 mile; and 3) a segment of FM 989 on the old alignment south of FM 559 be re-designated as FM 2878, a distance of 0.02 mile.

FURTHER, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the governor of Texas execute a proper instrument transferring the state's right, title, and interest in the surplus land to the city of Texarkana, Texas, in consideration of the savings to the state of future maintenance costs; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles, and interests, if any, in and to all of the oil, gas, sulphur, and other minerals, of every kind and character, in, on, under, and that may be produced from the surplus state land.

Note: Exhibits A and B are on file with the assistant chief clerk.

(2) Calhoun County - SH 35, old SH 238 connector road known as Sailboat Drive, in Port Lavaca - Consider the transfer of a surplus right of easement to the city (MO)

113783  
ROW

In the city of Port Lavaca, CALHOUN COUNTY, on STATE HIGHWAY 35, the state of Texas acquired an easement interest in certain land for highway purposes by instruments recorded in the Deed Records of Calhoun County, Texas.

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

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the transfer of highway right of way to a governmental entity that assumes jurisdiction, control, and maintenance of the right of way for public road purposes.

The city of Port Lavaca has agreed to assume jurisdiction, control, and maintenance and has requested that the surplus easement be transferred to the city for public road purposes.

NOW, THEREFORE, the commission finds that the surplus easement 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 right and interest in the surplus easement to the city of Port Lavaca, Texas.

FURTHER, if the surplus easement ceases to be used for public road purposes, the surplus easement shall immediately and automatically revert to the state.

Note: Exhibit A is on file with the assistant chief clerk.

(3) Dallas County - SL 12 at SH 183 in Dallas - Consider the quitclaim of surplus right of way to correct an error in the original acquisition (MO)

113784  
ROW

In the city of Dallas, DALLAS COUNTY, on STATE LOOP 12, the State of Texas acquired certain land for highway purposes by instrument recorded in County Clerk’s Number 201000209273, Deed Records, Dallas County, Texas.

Portions of the land (surplus land), described in Exhibit A, were not intended to be acquired and are not needed for highway purposes.

Holt Texas Properties, Inc., an Ohio corporation, was the original grantor and is still the abutting landowner.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend that surplus land be quitclaimed to resolve an error in an instrument that conveyed an interest in real property to the state for a highway right of way.

The commission finds that an error in the legal description resulted in the acquisition of real property not intended to be included and not needed for a highway purpose.

NOW, THEREFORE, the commission finds that the surplus land was acquired in error and is not needed for a state highway purpose and recommends, subject to approval by the attorney general, that the governor of Texas execute a proper instrument quitclaiming all of the state’s right, title, and interest in the surplus land to Holt Texas Properties, Inc., an Ohio corporation, to correct the error.

Note: Exhibit A is on file with the assistant chief clerk.

(4) Harris County - East Beltway 8 from 0.013 miles north of Vista Road to 0.247 miles south of Spencer Highway in Pasadena - Consider the acceptance of a donation of land for a highway improvement project (MO)

113785  
ROW

In HARRIS COUNTY, on Beltway 8 at Vista Road, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

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

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

Latour Partners, L.P. (owner) is the owner of the property described in Exhibit A, and wants to donate this property, estimated at \$19,689, to the department for construction of a highway improvement project.

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

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

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

Note: Exhibit A is on file with the assistant chief clerk.

(5) Tarrant County - BS 114L in Grapevine - Consider the removal from the system, transfer of control, jurisdiction and maintenance to the city and transfer of surplus right of way to the city (MO)

113786  
ROW

In the city of Grapevine, TARRANT COUNTY, on BUSINESS STATE HIGHWAY 114-L, the state of Texas acquired certain land by various instruments. Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that BS 114-L, shown in Exhibit A, be removed from the state highway system and that control, jurisdiction, and maintenance be transferred to the city.

The surplus land, described in Exhibit B, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may waive payment for real property transferred to a governmental entity if the estimated cost of future maintenance on the property equals or exceeds the fair value of the property.

The fair value of the surplus land has been determined to be approximately \$18 million, and the state's cost for maintenance over the next 20 years is estimated to be \$19.192 million.

The city has requested that control, jurisdiction, and maintenance be transferred to the city and that the surplus land be transferred to the city.

The commission finds \$18 million to be a fair and reasonable value of the state's right, title, and interest in the surplus land.

IT IS THEREFORE ORDERED by the commission that BS 114-L be removed from the system from SH 114 eastward to SH 26, a distance of approximately 3.6 miles.

FURTHER, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the governor of Texas execute a proper instrument transferring the state’s right, title, and interest in the surplus land to the city of Grapevine, Texas, in consideration of the savings to the state of future maintenance costs; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state’s rights, titles, and interests, if any, in and to all of the oil, gas, sulphur, and other minerals, of every kind and character, in, on, under, and that may be produced from the surplus state land.

Note: Exhibits A and B are on file with the assistant chief clerk.

(6) Williamson County - US 183, south of County Road 276 in Leander - Consider the sale of surplus right of way to the city (MO)

113787  
ROW

In the city of Leander, WILLIAMSON COUNTY, on US 183, the state of Texas acquired certain land for highway purposes by instruments recorded in Volume 259, Page 561, and Volume 259, Page 36, Deed Records of Williamson County, Texas. A portion of the land (surplus land), described in Exhibit A, is no longer needed for highway purposes.

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

The city of Leander has requested to purchase the surplus land for \$126,729.

The commission finds \$126,729 to be a fair and reasonable value of the state’s right, 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 right, title, and interest in the surplus land to the city of Leander, Texas, for \$126,729; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state’s right, title, and interest, if any, in and to all of the oil, gas, sulphur, and other minerals, of every kind and character, in, on, under, and that may be produced from the surplus land.

Note: Exhibit A is on file with the assistant chief clerk.

c. Highway Redesignation

Howard County - Near the city of Big Spring, designate US 87 concurrent with I-20 and along a new location, and redesignate the existing location of US 87 as Business US 87-M (MO)

113788  
TPP

In HOWARD COUNTY, the Abilene District has requested the designations of US HIGHWAY 87 (US 87).

In order to facilitate the flow of traffic, promote public safety, and maintain continuity on the state highway system, the city and county request the following:

1. A segment of US 87 is designated on the state highway system concurrent with I-20, from the existing intersection of US 87 and I-20 north of Big Spring westward to the intersection of the new location of US 87 west of Big Spring, a distance of approximately 4.3 miles.
2. A segment of US 87 is designated on the state highway system along a new location, from the western terminus of the concurrent location with I-20 southward and eastward to a location near Mitchell Road, a distance of approximately 6.3 miles.
3. A segment of US 87 is redesignated on the state highway system as BU 87-M, from I-20 north of Big Spring southward to a location near Mitchell Road, a distance of approximately 5.5 miles.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended the designations of US 87.

IT IS THEREFORE ORDERED by the Texas Transportation Commission (commission) that:

1. A segment of US 87 is designated on the state highway system concurrent with I-20, from the existing intersection of US 87 and I-20 north of Big Spring westward to the intersection of the new location of US 87 west of Big Spring, a distance of approximately 4.3 miles.
2. A segment of US 87 is designated on the state highway system along a new location, from the western terminus of the concurrent location with I-20 southward and eastward to a location near Mitchell Road, a distance of approximately 6.3 miles.
3. A segment of US 87 is redesignated on the state highway system as BU 87-M, from I-20 north of Big Spring southward to a location near Mitchell Road, a distance of approximately 5.5 miles.

IT IS FURTHER ORDERED that upon approval by the commission, this minute order, along with all other pertinent information, be forwarded to the American Association of State Highway and Transportation Officials Special Committee on US Route Numbering for their consideration.

IT IS UNDERSTOOD that following approval of the application by the AASHTO Special Committee on US Route Numbering, the commission will confirm the designation by minute order.

**d. Transportation Planning**

**(1) 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)**

113789  
TPP

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

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

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

Pursuant to Transportation Code, §228.012, the SH 121 payments may be used to pay the costs of a transportation project, highway project, or air-quality project within a region in which any part of the SH 121 toll project is located. Money must be allocated to projects authorized by Transportation Code, §228.0055 or §228.006, as applicable. An air-quality project is a project or program of the department or another governmental entity that the Texas Transportation Commission (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 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 NCTCOG Metropolitan Planning Area (MPA)

boundary 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; Minute Order 112568, dated January 27, 2011; Minute Order 112603, dated February 24, 2011; Minute Order 112758, dated July 28, 2011; Minute Order 112844, dated September 29, 2011; Minute Order 112976, dated January 26, 2012; Minute Order 113102, dated April 26, 2012; Minute Order 113222, dated July 26, 2012; Minute Order 113276, dated August 30, 2012; Minute Order 113344, dated October 25, 2012; and Minute Order 113473, dated January 31, 2013; 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 NCTCOG MPA boundary 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,. The costs of department staff incurred in the development, procurement, and construction of on-system projects to be funded from the SH 121 payments subaccounts will not themselves be funded from the SH 121 payments subaccounts. Funds from the SH 121 payments subaccounts that were used to reimburse the costs of department staff will be returned to the subaccounts without interest at least quarterly.

Note: Exhibit A is on file with the assistant chief clerk.

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

113790  
TPP

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

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

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

Pursuant to Transportation Code, §228.012, the SH 161 payments may be used to pay the costs of a transportation project, highway project, or air-quality project within a region in which any part of the SH 161 toll project is located. Money must be allocated to projects authorized by Transportation Code, §228.0055 or §228.006, as applicable. An air-quality project is a project or program of the department or another governmental entity that the Texas Transportation Commission (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 commission approved, and authorized the department's executive director to enter into a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), the transportation policy council of the North Central Texas Council of Governments (NCTCOG), a federally designated MPO, concerning the administration, sharing, and use of surplus toll revenue and CDA concession payments in the region served by the NCTCOG. The SH 161 toll project is located in the region served by the NCTCOG.

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

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

The department has established a work program to account for and track projects and project costs in the NCTCOG Metropolitan Planning Area (MPA)

boundary funded with the SH 161 payments. In Minute Order 112759, dated July 28, 2011; Minute Order 112845, dated September 29, 2011; Minute Order 112977, dated January 26, 2012; Minute Order 113103, dated April 26, 2012; Minute Order 113221, dated July 26, 2012; Minute Order 113275, dated August 30, 2012; Minute Order 113343, dated October 25, 2012; Minute Order 113472, dated January 31, 2013; and Minute Order 113573, dated April 25, 2013; 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 NCTCOG MPA boundary to be funded with the SH 161 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 161 payments, and approves the placement of the projects in the work program with CONSTRUCT authority, to be developed consistent with applicable state and federal laws, regulations, and procedures. Pursuant to the finding of the RTC, the commission determines that the projects shown in Exhibit A are transportation or highway projects, or air-quality projects that will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads, and are therefore eligible to be funded with the SH 161 payments.

IT IS FURTHER ORDERED that, unless otherwise approved by the commission, all direct costs associated with the projects for which federal and state funds have not been allocated shall be charged to this work program, including the costs of right-of-way acquisition, preliminary engineering, and construction engineering. The costs of department staff incurred in the development, procurement, and construction of on-system projects to be funded from the SH 161 payments subaccounts will not themselves be funded from the SH 161 payments subaccounts. Funds from the SH 161 payments subaccounts that were used to reimburse the costs of department staff will be returned to the subaccounts without interest at least quarterly.

Note: Exhibit A is in file with the assistant chief clerk.

**g. Speed Zones**

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

113791  
TPP

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 - C are on file with the assistant chief clerk.

**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 department. No action will be taken. Each speaker will be allowed a maximum of three minutes. Speakers must be signed up prior to the beginning of the open comment period.

The commission received comments from John Adair a Texas cyclist.

**ITEM 17. Executive Session** Pursuant to Government Code, Chapter 551

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

The commission did not meet in Executive Session.

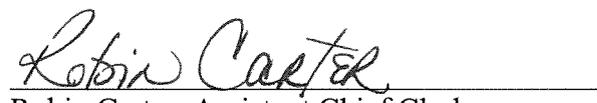
The regular meeting of the Texas Transportation Commission was adjourned at 12:27 p.m.

APPROVED:

  
\_\_\_\_\_  
Ted Houghton, Chairman  
Texas Transportation Commission

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I hereby certify that the above and foregoing pages constitute the full, true, and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on November 21, 2013, in Tyler, Texas.

  
\_\_\_\_\_  
Robin Carter, Assistant Chief Clerk  
Texas Department of Transportation