



These are the minutes of the Texas Transportation Commission Audit Subcommittee quarterly meeting held on March 30, 2016, at 125 E. 11th Street, Austin, Texas 78701. The meeting convened at 10:03 a.m. with the following members present:

Audit Subcommittee Members:

Jeff Austin, III	Commissioner, Audit Subcommittee Chair
J. Bruce Bugg, Jr.	Commissioner, Audit Subcommittee Member

Administrative Staff:

Benito Ybarra	Chief Audit and Compliance Officer
Jeff Graham	General Counsel
Brian Ragland	Chief Financial Officer
Rich McMonagle	Chief of Staff

A sign-in sheet listing others in attendance is on file with TxDOT's Office of Internal Audit.

A public notice of this meeting containing all items on the proposed agenda was filed in the office of the Secretary of State at 11:27 a.m. on March 22, 2016, as required by Chapter 551 of the *Texas Government Code*, referred to as "The Open Meetings Act."

Commissioner Austin opened the meeting and invited opening remarks.

Item 1. Approval of Minutes from the December 16, 2015, Meeting

The Minutes were presented by Benito Ybarra, Chief Audit and Compliance Officer, and approved by the Audit Subcommittee.

Item 2. Approval of the Audit and Compliance Charter

Benito Ybarra introduced the proposed Audit and Compliance Charter, describing it as the annual affirmation of conformance with the Texas Internal Auditing Act. Responding to **Commissioner Austin**, Mr. Ybarra explained that the only change from last year's charter is the reference to the Compliance Office. He also affirmed to **Commissioner Austin** that the audit and compliance functions are being carried out with total objectivity and independence, and that the offices have sufficient resources to do their work.

Commissioner Austin thanked Audit and Compliance for doing a great job; adding that even though it may not always be a popular job, it is necessary.

The Audit Subcommittee approved the Charter as presented.

Item 3. Legislative Implementation Update

a. Legislative Implementation Update - State

Trent Thomas, Director for State Legislative Affairs (SLA), presented the recurring update on the implementation of state legislation. TxDOT is currently behind schedule on two of the 73 bills in the agency's 84th Legislative Session Implementation Plan, namely, HB 1295 relating to the disclosure of interested parties by persons contracting with governmental entities and state agencies, and SB

1877, relating to the development and maintenance by each state agency of a data use agreement for the agency's employees.

Referring to HB 1295, **Commissioner Bugg** asked why the agency would be behind schedule on such an important transparency issue. Mr. Thomas explained that all steps required by the House Bill have been carried out but the relevant TxDOT internal manuals have not yet been updated. Jeff Graham, General Counsel, further assured the Audit Subcommittee that, starting January 1 of this year, the disclosure requirements are being fulfilled but that the documentation in the manual is still being completed. Mr. Graham and Mr. Thomas agreed with **Commissioner Bugg** that the functional implementation of HB 1295 is complete. **Commissioner Bugg** urged those responsible to achieve full implementation as soon as possible.

Referring to bills from the 84th legislative session that have not been fully implemented because TxDOT is waiting for third party action, **Commissioner Austin** asked for a list of those third parties. In the same context, with special reference to the Highway Memorial bills, **Commissioner Austin** reiterated his proposal that those bills be “sunsetting” after two years.

Responding to **Commissioner Bugg’s** request at the prior Subcommittee meeting, Mr. Thomas provided an Implementation Plan to the Subcommittee.

Commissioner Austin commended Mr. Thomas for the work done and update provided. Responding to **Commissioner Austin**, Mr. Thomas confirmed that no additional resources were needed.

b. Legislative Implementation Update - Federal

Andrea Lofye, Director, Federal Affairs, provided the recurring update regarding federal legislation and mandates. While the volume of federal bills impacting TxDOT is much smaller compared to state legislation, those that do effect TxDOT have a much larger implementation impact.

Presenting the tracking chart for Moving Ahead for Progress in the 21st Century Act (MAP-21), Ms. Lofye referred to a recent meeting with the U.S. Department of Transportation (USDOT). The USDOT Inspector General is conducting an audit of the implementation of MAP-21 by the Federal Highway Administration (FHWA). One reason they came to Texas is that TxDOT is one of only seven states taking advantage of MAP-21 Section 1304: “Innovative Project Delivery Methods.” In response to **Commissioner Austin’s** question, she listed the projects funded under this section.

Commissioner Austin asked whether the MAP-21 provision regarding the interoperability of toll tags across states is still on track for October. Ms. Lofye reported that it was and that this was one of the discussion points for the upcoming meeting between **Commissioner Austin** and Chairman Mica (U.S. Representative John Mica, R-Florida; Chairman of the Oversight and Government Reform Committee’s Subcommittee on Transportation and Public Assets).

Referring to the tracking sheet for the Water Resources Reform and Development Act (WRRDA), Ms. Lofye explained that full implementation of the TxDOT-related provisions of the act are dependent on the Army Corps of Engineers (Corps) issuing guidance. Guidance for Section 1014 was released in

late December; the section may be used for the Colorado River floodgates and locks which were also included in the Corps' workplan. Referring to WRRDA's Section 1020 (Transfer of Excess Credit), **Commissioner Austin** asked what the level of unused credit is. Ms. Lofye promised to get the details from the TxDOT Maritime Division.

The Fixing America's Surface Transportation Act of 2015 (FAST Act) was passed in December 2015. Ms. Lofye reported that we are early in the process of USDOT issuing guidance and TxDOT responding with implementation actions. The most substantive work so far has been done in the context of Section 1105 (National Significant Freight and Highway Projects), with TxDOT developing grant funding applications and working on the allocation of formula funding. Ms. Lofye expects that she will be able to report on progress regarding other sections of the FAST Act during the next quarter.

Responding to **Commissioner Austin**, Ms. Lofye confirmed that she has adequate resources to do her work and praised the superb cooperation she has received from divisions and districts.

Item 4. Finance Division Update

a. Approval of the Independent Auditor's Financial Audit

In a prior Subcommittee meeting, **Commissioner Austin** had requested that the contract renewal for the independent audit provider be reviewed by the Subcommittee. In response, Benito Ybarra presented a summary of the key elements of the proposed contract extension for the FY17 independent annual audit.

Commissioners Austin and **Bugg** congratulated Chief Financial Officer Brian Ragland on his recent promotion.

Responding to a question by **Commissioner Austin** regarding the independent audit's mention of TxDOT's share of the unfunded pension liability for all state agencies, Mr. Ragland explained that recent media reports citing a much higher number were based on pension liabilities including other statewide systems such as the Teacher Retirement System.

Mr. Ragland went on to explain that the FY15 independent audit had been reviewed by the Subcommittee during its December 2015 meeting. As required by the relevant bond covenants, the portions relating to the Central Texas Turnpike System and the Texas Mobility Fund were formally accepted by the full Texas Transportation Commission during their February 25, 2016, meeting. **Commissioner Austin** asked if the Subcommittee should accept the annual audit in full. Mr. Ragland responded that an acceptance in full by the Subcommittee was planned for the current FY16 audit.

Responding to **Commissioner Bugg**, Mr. Ragland said that this was the third year of the contract with Crowe Horwath. The contract had been competitively bid twice and the contract presented to the Subcommittee is the first of four possible one-year extensions of the contract resulting from the second bid. In reference to the substantial cost, **Commissioner Bugg** asked if there was an annual periscopic comparison of the cost of the contract. Brian Ragland and Arthur Levine, Assistant Manager for Financial Reports, explained that the contract had been bid last year and that Crowe

Horwath was the lowest bid, competitive in both price and service. The contract price of over half a million dollars is an estimated maximum based on the anticipated hours needed to complete the audit. Mr. Ragland added that prior to using Crowe Horwath, TxDOT used the State Auditor's Office, paying a similar amount. **Commissioner Bugg** reiterated his opinion that an annual comparison of the price tag would be good governance. **Commissioner Austin** recommended that TxDOT go forward with the extension. **Commissioner Bugg** and Mr. Ragland agreed that in January 2017, prior to the contract extension for FY18, there should be a cost comparison with peer audit firms. In order to be able to conduct such a review, Mr. Ybarra offered to work with Contract Services to develop a plan for a periscope review. **Commissioner Bugg** presented a motion to approve the contract extension as presented. The motion carried unanimously.

Item 5. Internal Audit Update

a. Management Action Plans (MAP) Status

Craig Otto, Director of the Office of Internal Audit, presented the recurring update on the progress of resolving the 43 MAP Follow-Ups assigned as part of the FY16 Audit Plan. The number of open MAPs has gone down and the number of pending responses has been cut in half since the last Subcommittee meeting, thus effectively mitigating the underlying risk to the agency. The response rate has remained strong and the expectation is that the follow-ups will be completed. Any unresolved MAPs will be included in the FY17 Audit Plan.

Responding to **Commissioner Austin's** question regarding the FY17 Audit Plan, Mr. Ybarra laid out that the underlying risk assessment is currently under way and that the proposed plan will be presented to the Subcommittee and subsequently to the full commission in August. **Commissioner Austin** urged Mr. Ybarra to include staff, districts, and the other commissioners on the risk assessment.

Commissioner Austin asked whether since the adoption of the FY16 Audit Plan, Mr. Otto and his teams had found any hotspots. Mr. Ybarra responded that they had found nothing that had not been included in the original plan, even though the Contract Administration audit had to be expanded and divided into subsets. Mr. Ybarra added that he had received requests from TxDOT executive management for more reports and more guidance. Mr. Ybarra reconfirmed to the **Commissioners** that he had adequate resources.

Commissioner Austin commended the work on the MAPs.

b. Fair Labor Standards Act (FLSA) Overtime Audit

Craig Otto introduced the Fair Labor Standards Act Overtime audit report. The overall engagement assessment was "*needs improvement.*" The audit identified a small percentage of inaccurate balances, mostly stemming from the conversion to PeopleSoft. One of the audit's aims was to make districts more cognizant of the need to monitor FLSA overtime and clearly identify who is responsible for monitoring the balances.

Commissioner Austin addressed Randy Hopmann, Director of District Operations, asking whether the monitoring of overtime balances, which potentially could be a major cost to the agency, was part of the performance evaluation for district engineers. Mr. Hopmann said that working with HRD and Mr. Otto's audit team, he has issued a memorandum to all 25 districts with a procedure establishing accountability. Responding to **Commissioner Austin**, Mr. Ybarra predicted that there will be an FLSA MAP follow-up in the next fiscal year.

Mr. Ybarra went on to introduce a procedural change in audit follow-ups: going forward, any audit finding that is considered "unsatisfactory" (red) will trigger an automatic follow-up three months after the MAP's due date. Mr. Ybarra also emphasized that this was one of five PeopleSoft post-implementation audits.

Commissioner Bugg asked Mr. Hopmann to report back at the next Subcommittee meeting on how much of the overtime accrued in districts is related to emergency situations and how much occurs due to an "overtime habit," which would be indicative of either a lax management structure or an overworked staff. Mr. Ragland added that once the 100% of salary level had been reached, the benefits paid by TxDOT did not increase any further. As these benefits amount to approximately 50% of salary, it means that paying for overtime does not cost more than hiring additional staff. **Commissioner Austin** summarized the discussion by saying that some overtime will always be necessary but it should not be used as a crutch.

In conclusion, Mr. Otto added that another area of concern was the lack of clarity regarding the May Call status for some employees. HRD has been asked to provide clarity in cases when an employee turns down an assignment while on May Call duty and the impact this may have on performance evaluations.

c. Fleet Operations Rental Equipment

Craig Otto introduced the Fleet Operations Rental Equipment audit report, The overall assessment was "satisfactory." **Commissioner Austin** asked whether the return-on-investment was better when renting rather than owning fleet equipment. Dalton Pratt, Statewide Fleet Director, responded that they were still measuring this but were also assessing the benefit of the increased flexibility in managing the fleet when renting equipment. Mr. Pratt agreed with **Commissioner Bugg's** summary that TxDOT buys equipment for its core functions and rents it to gain flexibility and respond to short-term and immediate needs for equipment. He added that all equipment has TxDOT GPS and is being monitored. **Commissioner Austin** reported that he heard from a number of districts that, while initially frustrating, the Fleet Forward program is working really well now.

Item 6. Compliance Office Update

Kristin Alexander, Director of the Compliance Office (CMP), offered an overview of three areas of activity by CMP.

a. Change Order Evaluation

Ms. Alexander reported that CMP has reviewed change orders from the second quarter of FY16, including supplemental agreements. Having selected of 30 of the 846 change orders, the focus was on those executed at *TxDOT's convenience*. Nine of the 30 had insufficient documentation or incorrect approvals or recording; however, all of the examined change orders were allowable and reasonable.

Responding to **Commissioner Austin**, Ms. Alexander stated that there was no detectable concentration of change orders by district. CMP will supply an aggregation of change orders by vendor to the commissioners by the end of the week.

Commissioner Bugg asked Mr. Hopmann if the ongoing interest by the commissioners in change orders has had a discernable behavioral impact in the districts. Mr. Hopmann responded that the district engineers are aware of the Subcommittee's interest as well as of the audit work done by Audit and Compliance.

Overall, the rate of change orders is around 2%. Mr. Ybarra has been contacting other states' departments of transportation and will report the comparison data at the next Subcommittee meeting.

Mr. Ybarra summarized the discussion by saying that the evaluation of change orders has so far revealed that while some documentation can be improved, overall they are appropriate and necessary.

b. Summary of Investigations

Kristin Alexander presented a summary of the investigative activities for the second quarter of fiscal year 2016. The number of allegations received has increased over the same quarter last year, as has the percentage of substantiated cases.

c. Sanctions Update

Kristin Alexander highlighted that districts, divisions, and offices are actively identifying sanctionable cases. This has led to an increase in the number of cases; four sanctions have been issued; these were spread across the different types of entities doing business with TxDOT.

Item 7. Executive Session

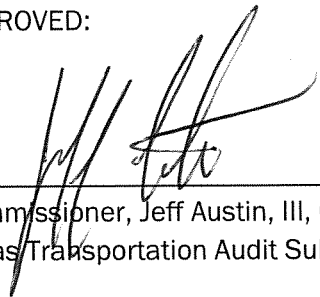
An Executive Session was not deemed necessary.

Closing Comments

There being no closing comments, **Commissioner Austin** stated that this concluded the agenda for the day. The next Audit Subcommittee meeting will be held on June 29, 2016, in Austin. **Commissioner Austin** asked that the meeting be held in the afternoon to accommodate his travel schedule. The Commissioners thanked all for attending the meeting.

The meeting was adjourned at 11:21 a.m.

APPROVED:



Commissioner, Jeff Austin, III, Chair
Texas Transportation Audit Subcommittee