

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on April 29, 2004, in Waco, Texas. The meeting opened at 9:12 a.m. with the following commissioners present:

Texas Transportation Commission:

Ric Williamson	Chair
Robert L. Nichols	Commissioner
Hope Andrade	Commissioner
Ted Houghton, Jr.	Commissioner

Commissioner John W. Johnson was not present.

Administrative Staff:

Michael W. Behrens, Executive Director
 Steven E. Simmons, Deputy Executive Director
 Richard Monroe, General Counsel
 Dee Hernandez, Chief Minute Clerk

Registration sheets listing others in attendance are on file with the Texas Department of Transportation’s Chief Minute 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 2:01 p.m. on April 20, 2004, as required by Chapter 551, of the Government Code, referred to as “The Open Meetings Act.”

ITEM 1. Approval of Minutes of the April 29, 2004, regular meeting of the Texas Transportation Commission

Commissioner Andrade made a motion, seconded by Commissioner Nichols, and the commission approved the minutes of the April 29, 2004, regular meeting of the Texas Transportation Commission.

Report by the Waco District. Receive comments from area public officials, community and civic leaders, and private citizens.

The commission received comments from Richard Skopik, district engineer, Waco; Larry Groth, city manager, Waco; Mary Gauer, mayor, city of Harker Heights; and Jim Reed, KTUTS, MPO director.

ITEM 11. ROUTINE MINUTE ORDERS

a. Donations to the Department

(2) Various Counties - Acknowledge a donation from the Associated General Contractors of Texas for participation in a statewide work zone safety public information campaign

109632
OGC

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.

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 Associated General Contractors of Texas proposes to donate \$25,000.00 to help fund a statewide public information campaign concerning work zone safety. The cash donation will fund the placement of public service announcements that warn the public to use caution in work zones.

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that acceptance of the donation is in the best interest and welfare of the traveling public.

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

The commission finds that the donor is interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department. The commission has determined that acceptance of the donation would nonetheless provide significant public benefits and would not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of \$25,000.00 by the Associated General Contractors of Texas is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

(3) Various Counties - Acknowledge a donation from the American Traffic Safety Services Association of Texas for participation in a statewide work zone safety public information campaign

109633
OGC

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.

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 American Traffic Safety Services Association of Texas proposes to donate \$1,500.00 to help fund a statewide public information campaign concerning work zone safety. The cash donation will fund the placement of public service announcements that warn the public to use caution in work zones.

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that acceptance of the donation is in the best interest and welfare of the traveling public.

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

The commission finds that the donor is interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department. The commission has determined that acceptance of the donation would nonetheless provide significant public benefits and would not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of \$1,500.00 by the American Traffic Safety Services Association of Texas is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

The commission received comments from Dane Alsobrook, board of directors, American Traffic Safety Services Association.

ITEM 2. PUBLIC TRANSPORTATION

Various Counties - Award §5309 discretionary funds and flexible funds to urban and rural transportation operators for the replacement of public transportation vehicles

Commissioner Houghton made a motion, seconded by Commissioner Nichols, and the commission approved the following minute order, presented by Public Transportation Division Director Sue Bryant:

109634
PTN

Transportation Code, Chapter 455 assigns a broad spectrum of public transportation roles and missions to the Texas Department of Transportation (department), and Transportation Code, Chapter 456 authorizes the Texas Transportation Commission (commission) to administer funds appropriated for public transportation.

The commission, by Minute Order 108412, dated January 25, 2001, approved the programming of flexible federal funding of \$5 million annually for fiscal years 2001-2004 to purchase replacement vehicles for small urban and rural transit systems. The department retains designated recipient status in administering any grants that may result from the transfer of flexible funding contained within this minute order.

The department has consulted with the transit industry and has allocated the available funds among urban and rural transit agencies based on vehicle depreciation and replacement costs as described in Exhibit A. Matching funds will come from local and other non-federal sources.

Project deobligations and underruns from prior capital replacement programs for urban and rural public transportation totaling \$523,154 are included in this minute order. Should further deobligations occur, those funds will be offered to agencies on the contingency project lists included in Exhibit A.

IT IS THEREFORE ORDERED by the commission that the executive director, or the director's designee, is directed to make application to the Federal Transit Administration for the transit vehicle replacement funds. The executive director, or the director's designee, is also directed to notify the recipients in writing and to proceed with the allocation of these grant funds for public transportation as described in Exhibit A, and to enter into the necessary contracts with the local recipients.

Note: Exhibit A on file with minute order clerk.

ITEM 3. PROMULGATION OF ADMINISTRATIVE RULES Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

a. Proposed Adoption

(to be published in the Texas Register for public comment)

(1) Chapter 27 - Toll Projects

Amendments to §27.3, General Rules for Private Involvement in Department Turnpike Projects (Alternate Forms of Security)

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

109635
TTA

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §27.3, concerning general rules for private involvement in department turnpike projects (alternate forms of security), 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 at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments 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 on file with minute order clerk.

(2) Chapter 31 - Public Transportation

Amendments to §31.3, Definitions, §31.11, State Formula Program, §31.13, Discretionary Program, and §31.36, Section 5311 Grant Program

Commissioner Andrade made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Public Transportation Division Director Susan Bryant:

109636
PTN

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §31.3, relating to definitions, §31.11, relating to state formula program, §31.13, relating to discretionary program, and §31.36, relating to Section 5311 Grant Program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A-D, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments 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 through D on file with minute order clerk.

The commission received comments from Amy Foerster, general manager, City Link Abilene; Mark Sweeney, director, Regional Development and Services, East Texas Council of Governments; and Tom King, member, East Texas Justice Transportation Alliance, Public Transportation Alliance.

b. Final Adoption

(1) Chapter 2 - Environmental Policy

Amendments to §2.21, Purpose; and Repeal of §2.24 and New §2.24, Memorandum of Understanding with the Texas Historical Commission

Commissioner Andrade made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Environmental Division Director Dianna Noble :

109637
ENV

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §2.21, relating to purpose, the repeal of §2.24 and to simultaneously adopt new §2.24, relating to memorandum of understanding with the Texas Historical Commission, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, repeal, and new section, attached to this minute order as Exhibits A, B, C, and D, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §2.21, the repeal of §2.24 and new §2.24 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

(2) Chapter 9 - Contract Management

Amendments to §9.87, Selection (Contracts for Scientific, Real Estate Appraisal, Right of Way Acquisition, and Landscape Architectural Services)

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by General Counsel Richard Monroe:

109638
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §9.87, relating to selection of contracts for scientific, real estate appraisal, right of way acquisition, and landscape architectural services, 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 at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §9.87 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 on file with minute order clerk.

(3) Chapter 15 - Transportation Planning and Programming

Amendments to §15.150 and §15.151 and New §15.154 and §15.155, Rail Facilities

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

109639
TPP

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §15.150 and §15.151 and new §15.154 and §15.155, relating to the acquisition, construction, maintenance, and operation of rail facilities, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments and new sections, attached to this minute order as Exhibits A, B, and C, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments and new sections are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

(4) Chapter 25 - Traffic Operations**Amendments to §§25.40-25.43 and New §§25.44-25.47, Congestion Mitigation Facilities**

Commissioner Houghton made a motion, seconded by Commissioner Nichols, and the commission approved the following minute order presented by Traffic Operations Division Director Carlos Lopez:

109640
TRF

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§25.40-25.43 and new §§25.44-25.47, relating to congestion mitigation facilities to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments and new sections, attached to this minute order as Exhibits A, B, and C, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments and new sections are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

c. Rule Review**In accordance with Government Code, §2001.039, Readoption of 43 TAC Chapter 17, Vehicle Titles and Registration; Chapter 18, Motor Carriers; and Chapter 28, Oversize and Overweight Vehicles and Loads**

Commissioner Nichols made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by General Counsel Richard Monroe:

109641
OGC

Government Code, §2001.039 requires state agencies to readopt their rules every four years and, prior to readopting, to consider whether the reason for each rule continues to exist.

During March and April 2004, the Texas Department of Transportation reviewed Title 43, Texas Administrative Code, Part 1, Chapter 17, Vehicle Titles and Registration; Chapter 18, Motor Carriers; and Chapter 28, Oversize and Overweight Vehicles and Loads. The Notice of Intention to review was published in the *Texas Register* on March 12, 2004 (29 TexReg 2756).

No comments were received regarding this rule review.

The Texas Transportation Commission (commission) finds that the reasons for initially adopting these rules continue to exist.

IT IS THEREFORE ORDERED by the commission that the executive director provide for filing with the Office of the Secretary of State, Texas Register Division, a notice readopting these rules.

ITEM 4. DISCUSSION ITEM

Amendments to 43 TAC Chapter 9, Subchapter G, relating to Contractor Sanctions

This item was presented by Construction Division Director Thomas Bohuslav.

ITEM 6. FINANCE

Accept the Quarterly Investment Report as of February 29, 2004 as required by the Public Funds Investment Act, Government Code, Chapter 2256

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Finance Division Director James Bass:

109642
FIN

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

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

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

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy and written investment strategy applicable to funds of the commission held under the Indenture of Trust dated July 15, 2002 securing the outstanding bonds, notes or other obligations issued by the commission to finance a portion of the cost of the initial phase (2002 Project) of the Central Texas Turnpike System. The investment policy and investment strategy have been amended pursuant to Minute Order 109066, dated October 31, 2002, and Minute Order 109339, dated July 31, 2003. The commission has designated the department's Director of Finance and Deputy Director of Finance as investment officers.

Section 9.0 of the investment policy requires the investment officer to prepare and submit to each member of the commission and the executive director of the department an investment report on no less than a quarterly basis. The report must be prepared in accordance with the requirements of that section, including containing sufficient information to provide for a comprehensive review of investment activity and current investment instruments and performance for the reporting period.

Quarterly investment reports will be prepared for each quarter of the department's fiscal year. A quarterly investment report for the period ending February 29, 2004, attached as Exhibit A, has been prepared in accordance with Government Code, §2256.023 and Section 9.0 of the investment policy.

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

Note: Exhibit A on file with minute order clerk.

ITEM 7. STATE INFRASTRUCTURE BANK

a. Cass County - City of Atlanta - Grant preliminary approval of an application from the City of Atlanta to borrow \$1,000,000 from the State Infrastructure Bank to pay for utility relocation along FM 249 from US 59 to FM 785 in Atlanta

Commissioner Nichols made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Finance Division Director James Bass:

109643
FIN

Section 350 of the National Highway System Designation Act of 1995 (Public Law No. 104-59) authorizes states to establish a State Infrastructure Bank (SIB) for the purpose of making loans and providing other financial assistance to public and private entities, so as to encourage public and private investment in transportation facilities, expand the availability of funding for transportation projects, and reduce state costs.

Pursuant to this legislation, Transportation Code, Chapter 222, Subchapter D, created a SIB within the Texas Department of Transportation (department).

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

Pursuant to Transportation Code, Chapter 222, Subchapter D, the commission has adopted administrative rules implementing that subchapter and establishing eligibility criteria for an entity applying for financial assistance from the SIB, codified as Title 43, Texas Administrative Code (TAC), Chapter 6.

Title 43, TAC §6.23 authorizes eligible entities to submit applications for financial assistance from the SIB and prescribes requirements for an application.

In accordance with 43 TAC §6.23, the City of Atlanta (city) has submitted an application to borrow \$1,000,000 from the SIB, to pay for the relocation of utilities made necessary by the reconstruction of FM 249 from US 59 to FM 785.

The project to expand FM 249 is a Priority 1 Trunk System project that will further the completion of the four-lane trunk system in the state, indicating there is a transportation need for and anticipated public benefit in the proposed project, and a resulting improvement in the efficiency of the state's transportation system.

The city has pledged economic development sales tax revenue as security for the loan and to guarantee repayment of the financial assistance to the SIB, indicating the projects and applicant are likely to have sufficient revenue to assure repayment of the requested financial assistance.

On January 20, 2004, in Resolution No. 2004-03 the Atlanta City Council authorized city staff to submit an application to the State Infrastructure Bank for a loan to finance the utility relocation, indicating the official written approval of the projects by the governing body of the city.

The project will have a positive impact in the city and the surrounding region as the project will upgrade and improve the safety and traffic operations of the FM 249.

In accordance with 43 TAC §6.32(d), a study of the social, economical, and environmental impact of the projects, consistent with the National Environmental Policy Act (42 U.S.C. §4321 et seq.), and in compliance with the requirements of the department's environmental rules, was conducted as part of the department's environmental assessment of the projects, resulting in findings of no significant impact.

The present and projected financial condition of the SIB is sufficient to cover this request.

The project is listed in the 2004-2006 Statewide Transportation Improvement Program, indicating the project is consistent with the Statewide Transportation Plan.

The proposed project and loan are in conformity with the purposes of the SIB, as it will expand the availability of funding for transportation projects and will reduce direct state costs.

In accordance with 43 TAC §6.31, the department has reviewed and analyzed the application, finds the application to be in compliance with the requirements of 43 TAC, Chapter 6, and recommends that the commission grant approval of the application pursuant to 43 TAC §6.32.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the City of Atlanta meets the requirements of 43 TAC §6.32(b) and §6.32(e) and, in accordance with that section, the commission grants preliminary approval of the application to borrow \$1,000,000 from the SIB and directs the executive director to implement the actions authorized and required by that section.

b. Cass County - City of Linden - Grant preliminary approval of an application from the City of Linden to borrow \$400,000 from the State Infrastructure Bank to pay for utility relocation along US 59 from SH 11 to SH 155 in Linden

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Finance Division Director James Bass:

109644
FIN

Section 350 of the National Highway System Designation Act of 1995 (Public Law No. 104-59) authorizes states to establish a State Infrastructure Bank (SIB) for the purpose of making loans and providing other financial assistance to public and private entities, so as to encourage public and private investment in transportation facilities, expand the availability of funding for transportation projects, and reduce state costs.

Pursuant to this legislation, Transportation Code, Chapter 222, Subchapter D, created a SIB within the Texas Department of Transportation (department).

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

Pursuant to Transportation Code, Chapter 222, Subchapter D, the commission has adopted administrative rules implementing that subchapter and establishing eligibility criteria for an entity applying for financial assistance from the SIB, codified as Title 43, Texas Administrative Code, Chapter 6.

Title 43, TAC §6.23 authorizes eligible entities to submit applications for financial assistance from the SIB and prescribes requirements for an application.

In accordance with 43 TAC §6.23, the City of Linden (city) has submitted an application to borrow \$400,000 from the SIB, to pay for the relocation of utilities made necessary by the reconstruction of US 59 in two projects with the following limits: (1) 0.2 mile north of SH 11 to 0.1 mile north of SH 155 in the city; and (2) 0.1 mile south of SH 155 to 0.3 mile north of Jim's Bayou.

The project to reconstruct and widen US 59 are Priority 1 Trunk System project that will further the completion of the four-lane trunk system in the state, indicating there is a transportation need for and anticipated public benefit in the proposed project, and a resulting improvement in the efficiency of the state's transportation system.

The city has pledged economic development sales tax revenue as security for the loan and to guarantee repayment of the financial assistance to the SIB, indicating the projects and applicant are likely to have sufficient revenue to assure repayment of the requested financial assistance.

On November 10, 2003, in Resolution No. 11-0, the Linden City Council authorized city staff to submit an application to the SIB for a loan to finance the utility relocation, indicating the official written approval of the projects by the governing body of the city.

The project will have a positive impact in the city and the surrounding region as the project will upgrade and improve the safety and traffic operations of the US 59 corridor.

In accordance with 43 TAC §6.32(d), a study of the social, economical, and environmental impact of the projects, consistent with the National Environmental Policy Act (42 U.S.C. §4321 et seq.), and in compliance with the requirements of the department’s environmental rules, was conducted as part of the department’s environmental assessment of the projects, resulting in findings of no significant impact.

The present and projected financial condition of the SIB is sufficient to cover this request.

The projects are listed in the 2004-2006 Statewide Transportation Improvement Program (STIP), indicating the projects are consistent with the Statewide Transportation Plan.

The proposed projects and loan are in conformity with the purposes of the SIB, as it will expand the availability of funding for transportation projects and will reduce direct state costs.

In accordance with 43 TAC §6.31, the department has reviewed and analyzed the application, finds the application to be in compliance with the requirements of 43 TAC, Chapter 6, and recommends that the commission grant approval of the application pursuant to 43 TAC §6.32.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the City of Linden meets the requirements of 43 TAC §6.32(b) and §6.32(e) and, in accordance with that section, the commission grants preliminary approval of the application to borrow \$400,000 from the SIB and directs the executive director to implement the actions authorized and required by that section.

ITEM 8. REGIONAL MOBILITY AUTHORITIES

Grayson County - Authorize Grayson County to create a Regional Mobility Authority

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

109645
TTA

Pursuant to Chapter 370 of the Transportation Code, and 43 TAC Chapter 26 (RMA Rules), Grayson County (county) petitioned the Texas Transportation Commission (commission) for authorization to form a Regional Mobility Authority (RMA) in Grayson County. The petition was filed on February 11, 2004. The county filed an amended petition on February 24, 2004.

By letter dated March 9, 2004, the Texas Department of Transportation (department) notified the county that the petition met the requirements of §26.11 of the RMA Rules.

The petition identifies an approximately 12 mile extension of SH 289 as the initial project for development by the RMA. The project would begin at SH 56 in Sherman and end at FM 120 in Pottsboro, generally paralleling US 377 to the west.

The board of directors of the RMA, as set forth in the petition, will be composed of three members, with two members appointed by the Grayson County Commissioners Court, and the presiding officer appointed by the Governor.

On April 6, 2004, the department conducted a public hearing in Grayson County, pursuant to §26.12 of the RMA Rules, to receive public comment on the proposed formation of the RMA. Notice of the public hearing was published in the *Texas Register* and in a newspaper of general circulation in Grayson County.

At the public hearing, six individuals spoke in favor of the creation of the RMA. One individual was curious about the location of the project and whether he would lose any more land because of the project. A number of individuals completed sign in sheets at the public hearing, indicating that they were in favor of the creation of the RMA, and two individuals indicated that they were neutral. No written comments were submitted.

The commission finds that the creation of the RMA has sufficient public support. The commission bases this finding on: (1) the support indicated at the public hearing; and (2) resolutions of support from the Sherman-Denison Metropolitan Planning Organization, which serves as the metropolitan planning organization for that urbanized area, and the Grayson County Commissioners Court.

The commission finds that creation of the 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. The RMA will benefit the state by constructing needed roadway projects, such as the project identified in the county's petition as the county's initial project. The RMA will benefit local governments by increasing local control over transportation planning. The traveling public will also benefit through improved mobility and traffic safety throughout the region encompassed by the RMA. The RMA will improve the efficiency of the state's transportation systems through the construction of the initial project, which will enhance mobility and safety within this segment of the state highway system, and through the development and financing of additional projects in the future.

The commission finds that the initial project is: consistent with the approved Texas Transportation Plan; included in the Statewide Transportation Improvement Program; and included in the approved plan of the Metropolitan Planning Organization. Subject to commission approval of the project under §26.31 of the RMA Rules, the commission also finds that the project will benefit the traveling public.

The commission finds that the composition of the board as described in the petition will adequately represent affected political subdivisions.

IT IS THEREFORE ORDERED that the commission authorizes the creation of the RMA.

IT IS FURTHER ORDERED that the area encompassed by the RMA shall be the entire geographic area of Grayson County, Texas.

IT IS FURTHER ORDERED that the initial project to be developed, maintained, and operated by the RMA shall be the project to extend SH 289 identified above. This order does not constitute final commission approval of the project, which must be obtained pursuant to Chapter 370 of the Transportation Code and the applicable provisions of the RMA Rules.

IT IS FURTHER ORDERED that the initial board of directors shall be comprised of three members, with two members appointed by the Grayson County Commissioners Court, and the presiding officer appointed by the Governor.

The commission received comments from Representative Larry Phillips; and Tim McGraw, Grayson county judge.

ITEM 9. TURNPIKE PROJECTS

a. Various Counties - Authorize publication of Request for Competing Proposals and Qualifications for development of the proposed tolled (managed) lanes along IH 820 and SH 183 from IH 35W to IH 35E in Tarrant and Dallas counties, as well as portions of IH 35W, IH 35E, and other facilities to the extent necessary for connectivity and financing; Request for Proposals relates to unsolicited proposal from Managed Lanes, LP (MLLP), a subsidiary of Peter Kiewit Sons', Inc.

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

109646
TTA

Subchapter I, Chapter 361, Transportation Code prescribes the process by which the Texas Department of Transportation (department) may enter into a comprehensive development agreement with a private entity that provides for the design, construction, financing, maintenance, or operation of a turnpike project on the state highway system.

The department has received an unsolicited proposal from Managed Lanes, LP, a subsidiary of Peter Kiewit Sons', Inc. (MLLP), to develop, design, construct, finance, maintain, and operate tolled managed lanes along IH 820 and SH 183 from IH 35W to IH 35E in Dallas and Tarrant counties, as well as portions of IH 35W, IH 35E, and other facilities to the extent necessary for connectivity and financing.

Section 361.3022, Transportation Code prescribes requirements for an unsolicited proposal and requires the department, if a decision is made to further evaluate the unsolicited proposal, to publish a request for competing proposals and qualifications in the Texas Register that includes the criteria that will be used to evaluate the original proposal and any competing proposals, the relative weight given to the criteria, and a deadline by which the competing proposals must be received.

Development of this project is a crucial element in responding to severe traffic bottlenecks that exist in the Dallas/Fort Worth Metroplex, particularly along the IH 820/SH 183 corridor. There exists the potential for expediting the completion of this project through the development of a public/private partnership and the employment of innovative methods such as those described in the unsolicited proposal.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the department is authorized and directed to publish in the Texas Register and in one or more newspapers of general circulation a request for competing proposals and qualifications for the development of the proposed tolled managed lanes along IH 820 and SH 183 from IH 35W to IH 35E in Dallas and Tarrant counties, as well as portions of IH 35W, IH 35E, and other facilities to the extent necessary for connectivity and financing.

IT IS FURTHER ORDERED that the request include a notification to interested parties that the department intends to evaluate the proposal submitted by Managed Lanes, LP, a subsidiary of Peter Kiewit Sons', Inc., and that the department will accept for simultaneous consideration any competing proposals and qualifications responsive to the request that are received within 90 days of the date the request is published in the Texas Register.

The commission received comments from Gerald S. Pfeffer, vice president, Peter Kiewit Sons', Inc.

ITEM 10. Contracts

a. Award or Reject Highway Improvement Contracts

(1) Maintenance

Commissioner Nichols made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Construction Division Director Thomas Bohuslav:

109647
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on April 7 and 8, 2004.

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.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway maintenance 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 highway maintenance 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, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

(2) Highway and Building Construction

Commissioner Houghton made a motion, seconded by Commissioner Nichols, and the commission approved the following minute order, rejecting Project No. C 1179-2-28 in Parker County and Project No. STP 2000 (635)TE in Wood County, as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

109648
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 April 7 and 8, 2004.

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.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway improvement contracts identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the highway improvement 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, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

b. Contract Claim

Walker County - Project IM 45-2(97) - Claim by Pennsylvania General Insurance Company for additional compensation

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

109649
AEO

In WALKER COUNTY on INTERSTATE HIGHWAY 45, Pennsylvania General Insurance Company (surety) assumed construction project IM 45-2(97) after the original contractor declared themselves in default due to their subcontractor leaving the project.

The surety set up the completion contractor to act on its behalf as to the prosecution, but not final settlement, for claims. The completion contractor filed a claim on behalf of the surety against the Texas Department of Transportation (department) for additional compensation in the amount of \$312,454.95 for a unit bid price adjustment for Item 361, Repairing Existing Concrete Pavement, for the quantity of work exceeding 125 percent of the original plan quantity and for work performed for which no payment was received.

Pursuant to Title 43, Texas Administrative Code, §9.2, the Contract Claim Committee met informally with the completion contractor on behalf of the surety, and the claim was successfully resolved.

The agreed resolution requires that the surety be paid the sum of \$125,000 in full and final satisfaction of the claim. This consideration shall be payable only after the department is in receipt of a duly authorized and completed Settlement Agreement and Release containing a specific promise by the surety to release and hold harmless the State of Texas, its officers, and employees with regard to all claims and disputes arising from the contract.

IT IS THEREFORE ORDERED by the Texas Transportation Commission (commission) that the sum of \$125,000 is authorized to be expended from funds under the control and jurisdiction of the commission, and the executive director is directed to take the necessary steps to secure a warrant in this amount payable to the surety.

ITEM 11. Routine Minute Orders (continued)

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute orders, presented by Executive Director Michael W. Behrens :

a. Donations to the Department

(1) Travis County - Acknowledge a donation from the New Mexico Recycling Coalition to pay for all travel expenses for a department employee to make a presentation at a New Mexico Department of Transportation workshop on the benefits of compost use on right of way of highways on March 17-19, 2004

109650
OGC

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.

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 New Mexico Recycling Coalition donated \$610.35 for travel expenses for a department employee to make a presentation at the New Mexico Department of Transportation workshop on the benefits of compost use on highway right of ways on March 17-19, 2004. This donation was accepted by the department in accordance with 43 TAC § 1.503(d).

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that acceptance of the donation is in the best interest and welfare of the traveling public.

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

The commission also finds that the donor is not subject to department regulation or oversight and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of \$610.35 for travel expenses is acknowledged.

b. Eminent Domain Proceedings

(1) Travis and Williamson County - controlled access turnpike projects

109651
ROW

The Texas Transportation Commission (commission) has determined that in order to promote the public safety, to facilitate the safety and movement of traffic, and to preserve the financial investment of the public in its highways, public necessity requires the construction, expansion, enlargement, extension, or operation of the following turnpike projects in this state as a part of the state highway system (highway system), as described in this order.

The commission has determined that each of the following listed parcels of land, each being more particularly described in the exhibits attached to this order and being designated, identified, and listed by an alphabetical exhibit reference in this order under “CONTROLLED ACCESS”, and such additional lesser estates or property interests described in the exhibits, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Transportation Code, §361.131, §361.132, §361.135, and §203.054, as a part of the highway system to be constructed, expanded, enlarged, extended, or operated thereon.

The commission has determined that in order to facilitate the flow of traffic and promote the public safety and welfare and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the turnpike projects to be constructed on said parcels of land are designated as controlled access highways, and on such parcels of land where there is remaining abutting private property, roads are to be built as a part of said turnpike projects whereby the right of ingress and egress to or from the remaining private property abutting on said turnpike project is to be permitted and/or denied, as designated and set forth on each of the exhibits attached to this order.

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

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

CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>CSJ NO.</u>	<u>PARCEL</u>
A	Williamson	SH 130	0440-05-007	4
B	Williamson	SH 130	0440-05-007	24
C	Williamson	SH 130	0440-05-007	49
D	Williamson	SH 130	0440-05-007	58, parts 1,2,3
E	Williamson	SH 130	0440-05-007	64
F	Williamson	SH 130	0440-05-007	72
G	Williamson	SH 130	0440-05-007	79
H	Williamson	SH 130	0440-05-007	82

CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>CSJ NO.</u>	<u>PARCEL</u>
I	Williamson	SH 130	0440-05-007	101
J	Williamson	SH 130	0440-05-007	110
K	Williamson	SH 130	0440-05-007	111
L	Williamson	SH 130	0440-05-007	112
M	Williamson	SH 130	0440-05-007	121C
N	Williamson	SH 130	0440-05-007	131 part 1
	Travis	SH 130	0440-06-008	131 part 2
O	Travis	SH 130	0440-06-008	141
P	Travis	SH 130	0440-06-008	190
Q	Travis	SH 130	0440-06-008	192, parts 1&2
R	Travis	SH 130	0440-06-008	193

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

(2) Various Counties - noncontrolled and controlled access highways

109652
ROW

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

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

The commission has found in order to promote the public safety, to facilitate the safety and movement of traffic, to preserve the financial investment of the public in its highways and reconstructing, maintaining, and operating of Controlled Access Highways in the state as a part of the highway system at such locations as are necessary throughout the state and has determined that each of the following listed parcels of land, described in those Exhibits designated, identified and listed by an alphabetical exhibit reference under "CONTROLLED ACCESS" and same being more particularly described in the exhibits attached hereto and such additional lesser estates or property interests described thereon, are necessary and suitable for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by law, as a part of the highway system to be so constructed, reconstructed, maintained, and operated thereon and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the highway to be constructed on each such parcel of land is designated as a Controlled Access Highway, and on such parcels of land listed herein where there is remaining abutting private property, roads are to be built as a part of said highway whereby the right of ingress and egress to or from the remaining private property abutting on said highway is to be permitted and/or denied, as designated and set forth on each of the exhibits attached hereto.

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

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

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
1	Dallas	SH 78	0009-02-055	1Pts1&2
2	Hidalgo	US 83	0039-04-099	6A
3	Hidalgo	US 83	0039-17-145	13
4	Hidalgo	US 83	0039-17-145	65
5	Jasper	US 96	0065-01-049	31
6	Jasper	US 96	0065-01-049	39
7	Milam	SH 36	0185-04-043	31
8	Smith	US 69	0190-04-035	42
9	Henderson	US 175	0197-06-046	12
10	Bexar	US 281	0253-04-125	4B
11	Bexar	SP 421	0291-10-084	38Pts1&2
12	Smith	FM 346	0492-05-018	105
13	Hidalgo	FM 495	0865-01-079	127
14	Hunt	SH 276	1017-03-022	63
15	Hunt	SH 276	1017-03-022	65&65E
16	Hunt	SH 276	1017-03-022	68
17	Hunt	SH 276	1017-03-022	69&69E

CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
A	Dallas	US 75	0047-07-196	2
B	Brazos	SH 6	0050-02-087	11&11AC
C	Travis	US 183	0151-09-039	24
D	Harris	IH 10	0271-06-099	466
E	Harris	IH 10	0271-06-099	499TE
F	Harris	IH 10	0271-07-261	211
G	Harris	IH 10	0271-07-261	213
H	Harris	IH 10	0271-07-261	215
I	Harris	IH 10	0271-07-261	217
J	Harris	IH 10	0271-07-261	235
K	Harris	IH 10	0271-07-261	236
L	Harris	IH 10	0271-07-262	520Pts1&2
M	Harris	IH 10	0271-07-263	617
N	Harris	IH 10	0271-07-263	622
O	Harris	IH 10	0271-07-264	102
P	Harris	IH 10	0271-07-264	110
Q	Harris	IH 10	0271-07-264	114
R	Harris	IH 10	0271-07-264	139
S	Harris	IH 10	0271-07-264	143
T	Harris	IH 10	0271-07-265	656
U	Harris	IH 10	0271-07-265	667
V	Harris	IH 10	0271-07-265	672
W	Johnson	US 67	0422-05-002	2
X	McLennan	FM 1695	2506-01-023	9

Note: Exhibits 1 through 17 and A through X on file with minute order clerk.

c. Highway Designation

Freestone County - Loop 307 - Remove the proposed designation of Loop 307 from the state highway system

109653
TPP

In FREESTONE COUNTY (county), in the city of Teague (city), city and county officials have requested the designation removal of STATE HIGHWAY LOOP 307 from the state highway system. The proposed location was completed in 1978 as FARM TO MARKET ROAD 553 and as a result the designation of Loop 307 is no longer needed on the state highway system.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that the designation of Loop 307 be removed from the state highway system.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the designation of STATE HIGHWAY LOOP 307 is removed from the state highway system from US 84 northeast of the city of Teague, southward to SH 179.

IT IS UNDERSTOOD that the existing location will remain designated and signed on the state highway system as FM 553 from US 84, northeast of the city of Teague, southward to SH 179, a distance of approximately 0.773 miles.

d. Load Zones & Postings

Various Counties - Revise load restrictions on various bridges on the state highway system:

109654
BRG

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

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

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

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

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be moved over those bridges described in Exhibit A be removed as set forth therein, superseding any portion of previous action in conflict. The executive director shall proceed with the removal of signs as appropriate, making the removal of these load limitations effective and operative.

Note: Exhibit A on file with minute order clerk.

e. Right of Way Dispositions and Donations

(1) Bee County - Business US 181 south of Beeville - Amend Minute Order No. 109317 to correct the legal description for the sale of the former Beeville maintenance site

109655
ROW

In BEE COUNTY, on BUSINESS US HIGHWAY 181, the State of Texas (state) acquired certain land for use as a maintenance site by instruments recorded in Volume 124, Page 415; Volume 186, Page 631; and Volume 197, Page 132, Deed Records of Bee County, Texas.

The Texas Transportation Commission (commission) approved Minute Order No. 109317 on June 26, 2003 authorizing the sale of the land and the improvements (surplus property) by sealed bid to the highest valid bidder, South Texas Rainbow Limited Partnership (partnership), for \$60,100.

Minute Order No. 109317 and the legal description attached as Exhibit A contained a clerical error for one of the recording references. Volume 197, Page 32, Deed Records of Bee County, Texas should be Volume 197, Page 132, Deed Records of Bee County, Texas.

The sale has been completed, and a Quitclaim Deed with the incorrect legal description has been filed for record.

NOW, THEREFORE, IT IS ORDERED that Minute Order No. 109317 be amended so that the legal description be replaced with the legal description of the surplus property described in Exhibit A of this minute order, and the commission recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument correcting the recorded Quitclaim Deed so that the proper deed references are made to convey all of the state's rights, title and interest in the surplus property to the partnership for the cash consideration already received; 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 property.

Note: Exhibit A on file with minute order clerk.

(2) Clay County - FM 1197 approximately 1 mile north of Henrietta - Consider the exchange of surplus right of way for needed right of way

109656
ROW

In CLAY COUNTY, on FARM TO MARKET ROAD 1197, the State of Texas (state) acquired certain land for highway purposes by instrument recorded in Volume 176, Page 512, Deed Records of Clay County, Texas.

A portion of the land (surplus right of way), described in Exhibit A, is no longer needed for highway or public transportation purposes. The surplus right of way includes the surface only of the 0.124 acre drainage easement (drainage easement) described in Exhibit A. The drainage easement will be reserved in the conveyance recommended by this minute order.

Frey Ranch, Inc. (the corporation) has conveyed to the state a parcel needed for highway right of way and an easement interest in land needed for highway drainage purposes (new right of way), described in Exhibits B and C, and desires to make a partial donation to the state of the value of the new right of way.

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

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

An Agreement Concerning the Donation of Property to the Texas Department of Transportation (donation agreement) has been executed by the corporation and tendered to the department for acceptance under the provisions of Title 43, Texas Administrative Code, Chapter 1, Subchapter G, since the value of the new right of way, which is \$9,700, exceeds the value of the surplus right of way, which is \$2,700.

The corporation has executed and delivered conveyance documents under the terms of the donation agreement to convey the new right of way to the state and has requested that the state's rights, title and interest in the surplus right of way be conveyed to the corporation with the reservation of the drainage easement.

It is the opinion of the commission that it is proper and correct that the state convey its rights, title and interest in the surplus right of way with the reservation of the drainage easement in exchange and as consideration for the donation and conveyance of the new right of way to the state.

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

FURTHER, in consideration of the foregoing premises and in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus right of way is no longer needed for highway or public transportation purposes and recommends, pursuant to House Bill 2377, 78th Legislature, that the executive director execute a proper instrument conveying all of the state's rights, title and interest in the surplus right of way to the corporation with a reservation of the drainage easement in exchange and as consideration for the conveyance of the new right of way to the state, said conveyance not requiring approval from the attorney general; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur, and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

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

(3) Harris County - IH 10 at Washington Avenue in Houston - Consider the exchange of drainage easements

109657
ROW

In the city of Houston, HARRIS COUNTY, on INTERSTATE HIGHWAY 10, the State of Texas (state) acquired an easement interest in certain land for highway drainage purposes by instrument recorded in Volume 5882, Page 468, Deed Records of Harris County, Texas.

The easement (surplus easement), described in Exhibit A, is no longer needed for highway or public transportation purposes.

Silver Eagle Distributors, L.L.P., a Texas limited partnership (owner), has conveyed to the state an easement interest in land needed for the realignment and reconstruction of a new drainage facility (new easement), described in Exhibit B, and desires to make a partial donation to the state of the value of the new easement and construction cost.

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

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

An Agreement Concerning the Donation of Property to the Texas Department of Transportation (donation agreement) has been executed by the owner and tendered to the department for acceptance under the provisions of Title 43, Texas Administrative Code, Chapter 1, Subchapter G, since the value of the new easement provided by the owner, which is \$337,041, plus construction costs of \$469,215, totaling \$806,256, exceeds the value of the surplus easement, which is \$142,600.

The owner has executed and delivered a conveyance document under the terms of the donation agreement to convey the new easement to the state and has requested that the state's rights and interest in the surplus easement be released.

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

It is the opinion of the commission that it is proper and correct that the state release its rights and interest in the surplus easement in exchange and as consideration for the partial donation and the conveyance of the new easement to the state.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of the new easement and that 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, Texas Administrative Code, Chapter 1, Subchapter G.

FURTHER, in consideration of the foregoing premises and in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus easement is no longer needed for highway or public transportation purposes and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument releasing all of the state's rights and interest in the surplus easement in exchange and as consideration for the conveyance to the state of the new easement.

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

(4) Johnson County - US 67 at Glenwood Drive in Alvarado - Consider the sale of surplus right of way

109658
ROW

In the city of Alvarado, JOHNSON COUNTY, on US HIGHWAY 67, the State of Texas (state) acquired certain land for highway purposes by instrument recorded in Volume 326, Page 9, Deed Records of Johnson County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for highway or public transportation 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 the abutting landowners.

Joseph D. Marcum and wife, Betty E. Marcum, are the abutting landowners and have requested that the state sell the surplus land to them for \$430.

The commission finds \$430 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for highway or public transportation purposes and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Joseph D. Marcum and wife, Betty E. Marcum, for \$430; **SAVE AND EXCEPT**, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(5) Terry County - US 62/385 at FM 213 in Wellman - Consider the sale of surplus right of way

109659
ROW

In the city of Wellman, TERRY COUNTY, on US HIGHWAY 62/385, the State of Texas (state) acquired certain land for highway purposes by instruments recorded in Volume 217, Page 383, and Volume 221, Page 129, Deed Records of Terry County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for highway or public transportation 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 the abutting landowner.

Golden Peanut Company, L.L.C. is the abutting landowner and has requested that the state sell the surplus land to the corporation for \$4,023.

The commission finds \$4,023 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for highway or public transportation purposes and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Golden Peanut Company L.L.C. for \$4,023; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(6) Travis County - US 183 - Consider the donation of two parcels, 0.447 acres and 0.099 acres for a highway improvement project

109660
ROW

In TRAVIS COUNTY, on US 183, from East of US 290 to SH 71. 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.

PO 183, L.P., a Texas limited partnership (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property estimated at \$7,313 to the department for a highway improvement project to widen US 183.

The owner is not subject to department regulations or oversight, is not currently a party to a contested case before the department, and is not interested in or likely to become interested in any 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 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, Texas Administrative Code, §1.504.

Note: Exhibit A on file with minute order clerk.

109661
ROW

In TRAVIS COUNTY, on US 183, from East of US 290 to SH 71. 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.

PO 183, L.P., a Texas limited partnership (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property estimated at \$57,680 to the department for a highway improvement project to widen US 183.

The owner is not subject to department regulations or oversight, is not currently a party to a contested case before the department, and is not interested in or likely to become interested in any 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 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, Texas Administrative Code, §1.504.

Note: Exhibit A on file with minute order clerk.

f. Speed Zones

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

109662
TRF

Transportation Code, §545.352, establishes prima facie reasonable and prudent speed limits for various categories of public roads, streets and highways.

Transportation Code, §545.353, empowers the Texas Transportation Commission (commission) to alter those prima facie limits on any part of the state highway system as determined from the results of an engineering and traffic investigation conducted according to the procedures adopted by the commission.

The Texas Department of Transportation (department) has conducted the prescribed engineering and traffic investigations to determine reasonable and safe prima facie maximum speed limits for those segments of the state highway system shown in Exhibits A and B.

Exhibit A lists construction speed zones in effect when signs are displayed within construction projects. The completion and/or acceptance of each project shall cancel the provision of this minute order applying to said project and any remaining construction speed zone signs shall be removed.

Exhibit B lists speed zones for sections of highways where engineering and traffic investigations justify the need to alter the speeds.

It has also been determined that 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 cities which have the authority to set speed limits on these sections of highways.

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

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

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

ITEM 12. Executive Session Pursuant to Government Code, Chapter 551

a. Section 551.071 - Consultation with and advice from legal counsel

b. Section 551.072 - Discussion of real property purchase, exchange, lease, donations. Discussion of the possible purchase of that certain facility known as the Camino Colombia in Webb County, Texas

c. Section 551.074 - Discuss the evaluation, designation, reassignment, and duties of department personnel, including district engineers, division directors, and office directors.

At 1:56 p.m. the chair recessed the regular meeting for executive session. Commissioner Houghton did not attend.

At 2:33 p.m. chairperson Williamson reconvened the meeting and stated that no decisions were made and no action was taken during the executive session.

5. TRANSPORTATION PLANNING

Webb County - Consider the Webb County International Bridge Application

Commissioner Andrade made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order, presented by Transportation Planning and Programming Division Director Jim Randall:

109663
TPP

Transportation Code, §201.612 provides that a political subdivision or private entity authorized to construct or finance the construction of a bridge over the Rio Grande must obtain approval from the Texas Transportation Commission (commission) and from the United States for the construction of the bridge, and requires the political subdivision or private entity to submit to the commission a report that details the feasibility, location, economic effect, and environmental impact of the bridge and any other information the commission by rule may require.

Pursuant to this statute, the commission has adopted rules prescribing information required to be contained in an application for approval of a proposed project to construct a bridge over the Rio Grande, actions that must be taken by the Texas Department of Transportation (department) in processing an application, and criteria and information that may be considered by the commission in determining whether to approve an application, codified as Title 43, Texas Administrative Code, §§15.70-15.76 (international bridge rules).

The department received an application from Webb County on September 17, 2003 to construct the Webb County Puente De La Unidad International Bridge. The department reviewed the application, considered it to meet the requirements of 43 TAC §15.74, and accordingly held a public hearing on October 20, 2003 to receive public comment on the project. The department further submitted the application to the entities required under the international bridge rules, requesting review and comments. The commission considered all oral and written comments on the application.

In Minute Order 109520, dated December 18, 2003, the commission disapproved the application based on: (1) the lack of a written commitment from the appropriate jurisdictions of the United Mexican States to provide adequate roadway connections to the proposed bridge; (2) the fact that sufficient information did not exist to indicate that the bridge is consistent with the regional transportation plan developed by the metropolitan planning organization with jurisdiction over the project; and (3) the lack of public support for the construction of the bridge.

By letter dated February 19, 2004, Webb County submitted the county's response to the commission's rationale for disapproving the application, and requested that the application be reconsidered by the commission.

Section 15.76(a) of the international bridge rules provides that the commission, in analyzing an application, may consider the advice of the staff of the department and consultants that the commission may choose regarding the sufficiency of the information, the probable accuracy of projections, the anticipated financial condition of the application and the project, the impact of the project on the economy and free trade, and any other information the commission determines appropriate.

Section 15.76(e) of the international bridge rules provides that approval or disapproval of a project shall be by written order of the commission, and shall include the rationale, findings, and conclusions on which approval or disapproval is based. The commission has considered the criteria contained in 43 TAC §15.76 and has also considered Webb County's February 19, 2004 letter and the supporting documentation enclosed with that response. The commission finds that approval of the bridge application is in the interest of the public and the state transportation system for the reasons contained in this order.

IT IS THEREFORE ORDERED by the commission that the Webb County Puente De La Unidad International Bridge application is approved. The following is the rationale, and the findings and conclusions on which this approval is based.

- Webb County provided a copy of Diplomatic Note EUA-01087, addressed from the Embassy of Mexico to the U.S. Department of State, expressing, with regard to the proposed construction of the Webb County Puente De La Unidad International Bridge, the Mexican government's interest for the necessary studies to be conducted on both sides of the border to determine the feasibility of the project. The Embassy of Mexico also informed the Department of State that there is a promoter interested in the development of this project in Mexico. Webb County provided a copy of the letter from the promoter, which stated that after reviewing all of the information presented by Webb County, the promoter requested approval from the Ministry of Foreign Relations and any other Mexican federal agency to be the official sponsor for Bridge No. 5 (Puente De La Unidad), including the roads necessary to connect to Mexico 85. This information provides the necessary written commitment from the appropriate jurisdictions of the United Mexican States to provide adequate roadway connections to the proposed bridge.
- A fifth international bridge is contained in the metropolitan transportation plan, indicating there is a need for a fifth bridge. The metropolitan transportation plan cannot indicate which entity would construct and own the bridge, and the bridge's location, until such time as the competing bridge applications are resolved, and the federal environmental review and approval process is completed. Accordingly, sufficient information exists to indicate that the Webb County bridge is consistent with the regional transportation plan developed by the metropolitan planning organization having jurisdiction over the project.

- Webb County has provided letters of support for the construction of the Webb County Puente De La Unidad International Bridge from the mayors of the cities of Rio Bravo and El Cenizo. Webb County also provided documentation of attempts to convince the city of Laredo to join in a cooperative effort to develop the fifth international bridge, in lieu of the competing bridge applications. Webb County also provided an opinion from counsel that “[u]nder Texas law, a county has direct and specific authority to construct an international toll bridge within the limits of a city located within the county, without the requirement that the county receive the city’s consent (see §364.001 of the Texas Transportation Code).” The foregoing establishes evidence of public support for the construction of the bridge, and evidence that construction of the project, and the resulting positive effect on the economy and the free flow of trade, is not speculative.

The commission received comments from Judith Gutierrez, county commissioner, Webb County.

ITEM 9. TURNPIKE PROJECTS

b. Webb County - Authorize the Executive Director or his designee to enter into necessary agreements to acquire the Camino Colombia toll road

Commissioner Andrade made a motion, seconded by Commissioner Nichols, and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

109664
TTA

Transportation Code, Chapter 361, authorizes the Texas Department of Transportation (department) to acquire a turnpike project to be part of the state highway system, and authorizes the Texas Transportation Commission (commission) to provide for the expenditure of money for the acquisition of a turnpike project.

Transportation Code, §361.132 authorizes the department to acquire public or private real property it determines necessary or convenient for the construction, expansion, enlargement, extension, improvement, or operation of a turnpike project.

In WEBB COUNTY, Camino Colombia, Inc., a private corporation chartered under the laws of the state of Texas, constructed and operated a private toll road (Camino Colombia Toll Road) from the intersection of FM 255 and FM 1472 adjacent to the Colombia Solidarity Bridge to Interstate 35 in the vicinity of the city of Laredo.

As the result of Camino Colombia Inc.’s default under the financing agreements for the Camino Colombia Toll Road, a non-judicial foreclosure sale of the Camino Colombia Toll Road and other Trust Property, as defined in the Deed of Trust for the benefit of the holders of the obligations issued to finance the project, was held in Webb County in January 2004, resulting in the toll road being acquired by the project lenders.

Title to the Camino Colombia Toll Road is now held by Camino Texas Partnership, LP, which is in turn owned by the project lenders. Camino Texas Partnership, LP has offered to convey the Camino Colombia Toll Road to the department for the price of \$20 million.

The commission has determined that the acquisition of the Camino Colombia Toll Road would facilitate the efficient operation of the state highway system, including providing system continuity with Mexico, and would benefit the state and the traveling public. The commission has determined that the acquisition of the right of way and improvements thereon comprising the Camino Colombia Toll Road is necessary or convenient for use for such purpose.

IT IS THEREFORE ORDERED by the commission that the executive director or designee is authorized to negotiate and enter into any necessary agreements to acquire the Camino Colombia Toll Road, at a cost not to exceed \$20 million to be funded in Category 12, Strategic Priority.

Commissioner Houghton abstained from voting on this item.

The commission received comments from Marco Antonio Garza Campos, head of planning, Nuevo Leon State Government.

OPEN COMMENT PERIOD - The commission did not receive any comments.

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commissioners approved adjourning the meeting. The regular meeting of the Texas Transportation Commission adjourned at 2:59 p.m.

The regular meeting of the Texas Transportation Commission adjourned at 2:59 p.m.

APPROVED:

Ric Williamson, Chair
Texas Transportation Commission

xxx

I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on April 29, 2004, in Waco, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation