

These are the minutes of the special meeting of the Texas Transportation Commission, which met on August 29, 2007, in Austin, Texas. The meeting opened at 9:07 a.m. with the following members present:

Texas Transportation Commission

Ric Williamson	Chair
Ted Houghton, Jr.	Commissioner
Hope Andrade	Commissioner
Ned Holmes	Commissioner
Fred Underwood	Commissioner

Administrative Staff

Michael W. Behrens, Executive Director
 Steve Simmons, Deputy Executive Director
 Bob Jackson, General Counsel
 Roger Polson, Executive Assistant to the Deputy Executive Director

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

A public notice of this meeting was filed in the office of the Secretary of State at 4:12 p.m. on August 21, 2007, as required by Chapter 551, of the Government Code, referred to as "The Open Records Act."

The commission met and received information from staff regarding the following agenda items:

ITEM 1. TOLL PROJECTS

a. Collin, Dallas, and Denton Counties – Consider the cancellation of the procurement for the development, financing, design, construction, operation, and maintenance of the SH 121 toll project from Business SH 121 to US 75 under a comprehensive development agreement (MO)

This minute order was passed at the August 23, 2007 Texas Transportation Commission meeting and assigned Minute Order Number 111029.

b. Collin, Dallas, and Denton Counties – Authorize the actions required for the finalization of an agreement with the North Texas Tollway Authority for the development, financing, design, construction, operation, and maintenance of the SH 121 toll project from Business SH 121 to US 75 (MO)

This minute order was passed at the August 23, 2007 Texas Transportation Commission meeting and assigned Minute Order Number 111030.

c. Dallas and Denton Counties – Consider the removal from the state highway system and transfer to the North Texas Tollway Authority the portion of SH 121 comprising the mainlanes and associated right of way, from 0.23 miles east of Business 121 to the ramp pair on the west side of FM 2281 (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Assistant Executive Director for Field Operations Amadeo Saenz.

111066
AEO

There has been an increasingly critical need for a continuous express lane facility within the SH 121 corridor extending from Business SH 121 in Denton County to US 75 in Collin County, a total length of approximately 26 miles (SH 121 Toll Project), in order to better serve the traveling public, relieve unacceptable levels of traffic congestion on the existing state highway system, and improve mobility in the rapidly developing portions of Collin, Dallas and Denton counties.

Through its “Mobility 2025: The Metropolitan Transportation Plan, 2005 Update”, the Regional Transportation Council (RTC) of the North Central Texas Council of Governments, the metropolitan planning organization for North Central Texas, identified the SH 121 Toll Project as an integral element of its regional transportation plan for the Collin, Dallas and Denton county areas.

Pursuant to Resolution No. 07-42 passed on May 7, 2007, the Board of Directors of the North Texas Tollway Authority (NTTA) determined that the SH 121 Toll Project can be constructed and operated most effectively and economically as an integrated tollway project with the NTTA System, and resolved that the SH 121 Toll Project should be constructed as an extension and enlargement of the NTTA System.

Transportation Code, §228.151 authorizes the Texas Department of Transportation (department) to lease, sell, or transfer in another manner a toll project or system that is part of the state highway system, including a nontolled state highway or a segment of a nontolled state highway converted to a toll project, to a governmental entity that has the authority to operate a tolled highway. The Texas Transportation Commission (commission) and the Governor must approve the transfer of the toll project or system as being in the best interests of the state and the entity receiving the project or system.

Transportation Code, §228.153 requires the governmental entity to reimburse the department for any expenditures of the department for the financing, design, development, construction, operation, or maintenance of the highway that have not been reimbursed with the proceeds of bonds issued for the highway, unless the commission finds that the transfer will result in substantial net benefits to the state, the department, and the public that equal or exceed that cost.

Pursuant to Transportation Code, §§228.151-228.154, the commission has adopted Title 43, Texas Administrative Code, §§27.11-27.16 to prescribe the policies and procedures governing commission approval of the lease, sale, or transfer of a toll project to a governmental entity that has the authority to operate a tolled highway.

On July 18, 2007, the NTTA, in compliance with the requirements of 43 TAC §27.13, submitted a request to the executive director of the department for the removal from the state highway system and transfer to the NTTA of the portion of Segment 1 of the SH 121 Toll Project comprising the mainlanes and associated right of way, from 0.23 miles east of Business 121 to the ramp pair on the west side of FM 2281 in Dallas and Denton counties, to be utilized by the NTTA under Transportation Code, Chapter 366 for the design, financing, construction, operation, and maintenance of a turnpike project. Under the request, attached as Exhibit A to this order, the removal and transfer would be effective upon the service commencement date for Segment 1, estimated to be on or about July 1, 2008.

In Minute Order 111030, dated August 23, 2007, the commission authorized the department, after compliance with the applicable requirements of Transportation Code, §§228.151-228.154 and 43 TAC §§27.11-27.16, to submit for the commission's approval additional agreements providing for the removal of segments of the SH 121 Toll Project from the state highway system and the transfer of those project segments to the NTTA, to be operated by the NTTA under terms as negotiated in the Project Agreement for a period that, for each segment, does not exceed 50 years from the service commencement date for Segment 1 of the SH 121 Toll Project.

Under 43 TAC §27.13(e), a lease, sale, or transfer is subject to a prior public hearing in each county in which the project is located. In accordance with §27.13(e), the department conducted public hearings on August 7, 2007 in Coppell, Texas, and on August 9, 2007 in Lewisville, Texas, for the purpose of receiving comments from interested persons concerning the proposed removal from the state highway system and transfer to the NTTA of Segment 1 of the SH 121 Toll Project. A summary of the public hearings is attached as Exhibit B to this order. No oral or written comments were received.

IT IS THEREFORE DETERMINED by the commission, having reviewed the NTTA's request, and after having considered the conditions and requisites for such actions under Transportation Code, §228.151 and 43 TAC §§27.11-27.16, that the NTTA has made the commitments required under 43 TAC §27.13, and that the proposed

removal from the state highway system and transfer to the NTTA of the portion of SH 121 comprising the mainlanes and associated right of way, from 0.23 miles east of Business 121 to the ramp pair on the west side of FM 2281:

1. is in the best interests of the state and the NTTA; and
2. will not adversely affect:
 - (i) the financial viability of the SH 121 Toll Project; or
 - (ii) regional mobility.

IT IS FURTHER ORDERED by the commission that:

1. subject to the approval of the Governor, the commission approves the removal from the designated state highway system and transfer to the NTTA of that portion of SH 121 comprising the mainlanes and associated right of way, from 0.23 miles east of Business 121 to the ramp pair on the west side of FM 2281, as depicted and described in Exhibits C and D to this order, effective on the date of commencement of normal and continuous tolling operations and maintenance for Segment 1 of the SH 121 Toll Project by the NTTA after the occurrence of substantial completion of the work required to be performed by the department or the NTTA, as applicable, on such segment (service commencement date);
2. the executive director is directed to forward this order to the Governor of Texas for approval of the transfer in accordance with Transportation Code, §228.151;
3. repayment of any expenditures of the department for the financing, design, development, construction, operation, or maintenance of the SH 121 Toll Project is waived under Transportation Code, §228.153, as the transfer will result in substantial net benefits to the state, the department, and the public, including the upfront payments to the department in exchange for the right to design, finance, construct, operate and maintain the SH 121 Toll Project, that equal or exceed those expenditures;
4. the executive director is authorized and directed to negotiate and enter into a transfer agreement with the NTTA necessary to implement this order consistent with applicable laws and regulations, including the transfer of legal title to the right of way and other interests generally depicted and described in Exhibits C and D to this order, by instrument acceptable to the department and the NTTA and utilizing a legal description acceptable to the department, and subject to such handback requirements and reverter provisions determined necessary by the department and consistent with the terms of the Project Agreement.

ITEM 2. EXECUTIVE SESSION Pursuant to Government Code, Chapter 551

- a. **Section 551.074** – Interview and discuss the election of the executive director of the Texas Department of Transportation
- b. **Section 551.074** – Discuss the appointment of the interim executive director of the Texas Department of Transportation

The meeting was recessed at 9:17 a.m. and the commission entered into executive session under provisions of Item 2.b. The commission meeting reconvened at 2:20 p.m. with no action taken. The commission recessed for lunch and reconvened at 3:05 p.m. and returned to executive session at 3:06 p.m. The meeting reconvened at 6:31 p.m.

ITEM 3. ELECTION OF EXECUTIVE DIRECTOR

Elect the executive director of the Texas Department of Transportation and approve compensation

No action was taken on this item.

ITEM 4. ELECTION OF INTERIM EXECUTIVE DIRECTOR

Appoint an interim executive director of the Texas Department of Transportation and approve compensation:

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the following minute order presented by Assistant Executive Director for Support Operations Ed Serna.

111067
OGC

Transportation Code, Section 201.301, provides that the Texas Transportation Commission (commission) shall elect an executive director for the Texas Department of Transportation (department), who shall be a registered professional engineer in the state of Texas experienced and skilled in transportation planning, development, construction, and maintenance.

Due to the scheduled August 31, 2007, retirement of the incumbent executive director, Michael W. Behrens, it is necessary to elect and appoint an interim executive director to assume those duties until a permanent successor executive director is appointed by the commission.

Deputy Director Steve Simmons, P.E., possesses the qualities necessary to ensure an orderly transition of duties, thereby protecting the safety and welfare of the traveling public.

Recognizing the professional expertise and qualifications, the commission determines that Steve Simmons possesses skills and experience that fully satisfy the requisites of law and policy applicable to the position of chief executive officer of the department.

NOW THEREFORE, IT IS ORDERED that Steve Simmons, P.E., is appointed as interim executive director, to assume the full range of duties and responsibilities of that position effective September 1, 2007, and to remain in that position until a successor to Executive Director Michael W. Behrens is elected by the commission.

IT IS FURTHER ORDERED that the interim Executive Director of the department be compensated at the rate of \$192,500 per year

The special meeting of the Texas Transportation Commission adjourned at 6:35 p.m.

APPROVED:

Ric Williamson, Chair
Texas Transportation Commission

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I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its special meeting on August 29, 2007, in Austin, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation