

**AGENDA ITEM 26**

**Discuss and consider formal action on comments regarding the Texas Department of Transportation proposed rules for Regional Mobility Authorities and Financial Assistance for Toll Facilities.**

Road Bond Manager Mike Weaver presented a draft of comments on the proposed rules for RMAs and Financial Assistance for Toll Facilities.

Moved: **Judge Doerfler**

Seconded: **Commissioner Heiligenstein**

Motion: For approval of the comments to Texas Department of Transportation on the proposed rules for RMAs.

Vote: **4 - 0**

< Attachment >

**John C. Doerfler**  
County Judge  
Williamson County



WILLIAMSON COUNTY COURTHOUSE  
710 MAIN, SECOND FLOOR  
GEORGETOWN, TEXAS 78626  
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March 12, 2002

Phillip E. Russell, P.E.  
Director  
Texas Turnpike Authority Division  
Texas Department of Transportation  
125 E. 11th Street, 5th Floor  
Austin, Texas 78701

Re: Comments on Proposed Regional Mobility Authority ("RMA") Rules

Dear Mr. Russell:

Summarized below are the comments of Williamson County on the proposed RMA rules which appeared in the February 15, 2002 issue of the *Texas Register*. The County appreciates the opportunity to offer these comments, and do so with the hope that the Texas Department of Transportation ("TxDOT") and the Texas Transportation Commission (the "Commission") will make the changes necessary to allow RMAs to be formed and operate as viable entities through which to develop, primarily under local control, badly needed transportation projects.

As was expressed by Representative Mike Krusee at the public hearing on these rules held on February 27, 2002, Williamson and Travis Counties, with the support of other state and local elected officials and the leadership of civic and business organizations throughout the region, are very interested in forming an RMA. Indeed, Commissioner Ric Williamson has, on numerous occasions, encouraged the Counties to anticipate the formation of an RMA to operate planned toll projects in the combined Travis and Williamson Counties geographic area. Unfortunately, as we articulated in our comments at the February 27<sup>th</sup> hearing, and as is further explained in the enclosed comments, the proposed RMA rules contain several features which would make it imprudent for Williamson County to further explore the formation of an RMA at this time. There are aspects of the rules which we believe would preclude the ability of an RMA to secure financing from the capital markets, and the rules do not permit the degree of autonomy and local control over an RMA that we were initially led to believe would be the case.

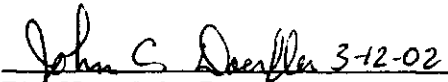
In reviewing the comments of Williamson County, it is worth remembering that each of us, as well as our colleagues on our respective Commissioners Courts, are elected officials and are accountable to the residents of the counties that we serve. We hear, on a daily basis, the concerns of our constituents, and solving our current transportation crisis is the most consistent concern we hear. We will not act imprudently at a local level in the course of transportation

project improvements, and we cannot, as elected officials, ignore the wishes, desires, and opinions of our county residents. Therefore it seems appropriate to vest considerably more autonomy into an RMA than the current rules propose. Let us, at the local level, take the primary role in solving our transportation problems, working with TxDOT as a partner.

We believe that this partnership would also be embraced by the capital markets from whom we will seek financing to develop future transportation projects, and who will want assurances that decisions made in the project development process will be made by a body accountable to them through trust indentures, as well as accountable to the public. That accountability is lost when third parties, such as the Commission and TxDOT, are able to negatively impede or impact the project development process or to impose restrictions on use of RMA revenues beyond those provided for in State law.

It is in that spirit, and with hope for a realization that more local control is appropriate, that we submit these comments for your consideration. Please feel free to contact me or any member of our Court if you have any questions or would like to discuss our comments further.

Sincerely,

  
The Hon. John Doerflinger  
Williamson County Commissioners Court

cc: The Hon. Steve Ogden  
State Senator

The Hon. Mike Krusee  
State Representative

Commissioner John W. Johnson  
Texas Transportation Commission

Ric Williamson  
Texas Transportation Commission

Robert L. Nichols  
Texas Transportation Commission

Williamson County Commissioners

Travis County Judge and County Commissioners

## Resolution

The State of Texas     )

                                  ) Know All Men By These Presents:  
County of Williamson )

That on this, the 12th day of March, A. D. 2002, the Commissioners Court of Williamson County, Texas, met duly called and convened lawful Session at the County Courthouse in Georgetown, Texas, with the following members present:

John Doerfler, County Judge, Presiding  
Mike Heiligenstein, Commissioner Precinct One, and  
Greg Boatright, Commissioner Precinct Two, and  
David Hays, Commissioner Precinct Three, and  
Frankie Limmer, Commissioner Precinct Four

WHERE, among other matters, came up for consideration and adoption the following Resolution:

WHEREAS, Senate Bill 342 of the 77<sup>th</sup> Legislature of the State of Texas authorizes the creation of Regional Mobility Authorities to accelerate the development and construction of critical transportation infrastructure in the State of Texas, and

WHEREAS, Williamson County supports the intent of the Regional Mobility Authorities as envisioned by the 77<sup>th</sup> Texas Legislature and has been working diligently with the region's elected officials and neighboring governmental entities to develop a working partnership towards the implementation of a Central Texas Regional Mobility Authority, and

WHEREAS the Texas Department of Transportation has published proposed rules regarding the creation and administration of Regional Mobility Authorities,

THEREFORE, BE IT RESOLVED that Williamson County has reviewed the aforementioned rules and has identified several areas of concern, including the composition of the governing board, project development control, use of surplus revenues, and other governance issues that would affect the Regional Mobility Authorities' ability to attract capital market financing, and

FURTHER RESOLVED, that Williamson County submits Attachment A which outlines the County's comments on the proposed RMA rules, and

Further Resolved, that County Judge John Doerfler be, and is hereby, authorized to sign this Resolution as the act and deed of Commissioners Court and to execute any and all necessary documents in connection with this project.

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The foregoing Resolution was lawfully moved by Judge Doerfler, duly seconded by MIKE HEILIGENSTEIN, and was then adopted by a vote of 4 voting for and 0 voting against. County Judge John C. Doerfler was duly authorized to sign said resolution as the act and deed of Commissioner's Court of Williamson County and of said County.

John C. Doerfler 3-12-02

John Doerfler, Williamson County Judge

Nancy E. Rister

Attest:

Nancy Rister, Williamson County Clerk

## Comments of Travis and Williamson Counties on Proposed RMA Rules

Set forth below are the comments of Williamson and Travis Counties (the "Counties") on various of the Regional Mobility Authority ("RMA") rules proposed by the Texas Department of Transportation ("TxDOT"). Proposed deletions are marked as strike-throughs, and new (or modified) language is shown in italics. Only those rules for which a change is proposed are shown, and each such rule is followed by an explanation of the proposed change.

\* \* \*

**§ 26.13. Approval.** The commission may authorize the petitioner to create an RMA if it finds that:

- (1) the creation of an RMA:
  - (A) has sufficient public support based upon:
    - ~~(i) public comments received at public hearings;~~
    - (i)(ii) resolutions of support from affected political subdivisions; and
    - (ii)(iii) the expressed opinion, if any, of metropolitan planning organizations;
  - (B) will result in direct benefits to the state, local governments, and the traveling public; and
  - (C) will improve the efficiency of the state's transportation systems; and
- (2) each project:
  - (A) comes from a conforming transportation plan and transportation improvement program, if the project is located in a nonattainment area;

(B) is consistent with the Texas Transportation Plan, the metropolitan transportation plan, and the Statewide Transportation Improvement Program; and

(C) subject to the completion of required studies and subject to commission approval under §26.43 of this chapter, will benefit the traveling public.

**Explanation of Proposed Change:** Consistent with the proposed deletion of 26.12, there should be no public hearings (conducted by the department) from which to consider "public comments."

\* \* \*

#### § 26.14. Commission Action

(a) Order. If approved under §26.13 of this subchapter, the commission will adopt a minute order authorizing the creation of the RMA. The minute order will:

(1) designate the geographic area of the state in which the RMA may operate, which shall be along county lines;

(2) describe each the initial turnpike project to be developed, maintained, and operated by the RMA; ~~and, with any restrictions on that development, operation, or maintenance deemed by the commission to be necessary for the protection of the public safety or the natural environment;~~

~~(3) describe any restrictions or limitations on the operations of the RMA; and~~

~~(3)(4)~~ establish, consistent with Transportation Code, §361.003, the initial size of the board, which shall be composed of an odd number of directors; ~~and~~

~~(5) designate any political subdivisions that will be represented on the board by directors appointed under §26.16(d) of this subchapter.~~

(b) Approval of project. Approval of the creation of an RMA shall not constitute final commission approval of any turnpike project, which are subject to approval under §26.43 of this chapter.

**Explanation of Proposed Change:** As written, section 26.14(a)(2) implies that only a turnpike project identified at the time of the formation of an RMA can, or will, be developed by that RMA. RMAs should not be precluded from later developing additional turnpike projects (with appropriate Commission approvals). The proposed reference to the "initial" project is intended to eliminate the inference and make it clear that an RMA is not limited to developing only those projects identified at the time of its formation.

Also in Section 26.14(a)(2), the reference to the Commission's minute order containing additional restrictions on the project necessary for the protection of public safety and of the natural environment should be eliminated. Such issues will necessarily be considered through the environmental review process and through the turnpike planning and design process, and it is unreasonable to expect that the Commission will be able to accurately identify, at this very preliminary stage of the turnpike project development, what protections are justified and that would not otherwise be provided for through the project permitting and design.

Section 26.14(a)(3) refers to additional restrictions or limitations which may be placed on the operations of an RMA. The Counties are concerned that the potential for such restrictions or limitations will be a matter of great concern to the capital markets. The capital markets will expect RMAs to have a considerable degree of local autonomy to make operational decisions (aAnd to make decisions as to how best to meet the requirements of any trust indenture). Any potential for a third party (i.e., the Commission) to impose additional restrictions or limitations would undermine the authority and credibility of the RMA to carry out its fiduciary responsibilities. It is also unclear whether these restrictions or limitations could be added subsequent to the formation of an RMA, which would be of even more concern to the capital markets since unanticipated or unexpected restrictions or limitations could be imposed on an RMA after it is already operating or is far into the project development process. Thus, the potential for additional restrictions or limitations is unnecessary and may well create an unacceptable level of risk in the view of capital markets.

Section 26.14(a)(5) refers to the potential for additional "political subdivisions" to be appointed to the RMA board of directors by the Commission. This is a serious, and potentially fatal, flaw in the RMA rules due to the uncertainty it introduces. It is addressed in more detail in connection with proposed changes to Section 26.16 described below, and for the reasons explained there Section 26.14(a)(5) should be deleted.

\* \* \*

#### **§26.16. Board of Directors.**



(a) Purpose. A board of directors shall administer and operate the RMA.

(b) County appointees. The petitioner shall appoint directors to the board as required by Transportation Code, §361.003(b) and (c).

(c) Presiding officer. The governor will appoint one director to the board who shall serve as the presiding officer.

~~(d) Additional directors.~~

~~(1) The commission may authorize the appointment of additional directors as it deems necessary to ensure fair representation of affected political subdivisions within the geographic area of the RMA.~~

~~(2) If the commission determines under paragraph (1) of this subsection that additional board members are necessary, the commission will request the affected political subdivision to appoint a director subject to approval by the commission. The commission will approve the political subdivision's selection if the commission determines that appointment of the individual will benefit the board as a whole.~~

~~(3) The commission may authorize the appointment of one or more directors to represent more than one political subdivision, and may rotate these appointments to allow for equitable representation.~~

~~(d)(e)~~ Term of office. Directors shall be appointed to terms of two years. Directors may be reappointed at the discretion of the appointing entity.

~~(e)(f)~~ Compensation. A director serves without compensation but is entitled to reimbursement for expenses incurred in board service. Reimbursement shall be the responsibility of the entity county the member is representing, and shall be in accordance with the entity's county's procedures governing reimbursement of employees.

~~(f)(g)~~ Removal. A director serves at the pleasure of the appointing entity and may be removed for any reason.

~~(g)(h)~~ Eligibility. The following individuals are ineligible to serve as a director:

(1) persons who are not residents of a county within the geographic area of the RMA;

(2) persons owning an interest in real property that has been or will be acquired for an RMA project;

(3) persons ineligible under §26.33 of this chapter (relating to Conflict of Interest);

- (4) elected officials; and
- (5) department employees.

**Explanation of Proposed Change:** Section 26.16(d) should be deleted in its entirety. That section provides the Commission with the authority and discretion to appoint additional directors to an RMA board if the Commission determines that additional directors are necessary to assure adequate representation of "affected political subdivisions." This authority is not explicit in SB 342 and granting it through rules appears inconsistent with the intent of SB 342 (which suggests that RMA boards will be comprised solely of county representatives and a gubernatorial appointee). The ability of the Commission to alter the composition and dynamics of an RMA board of directors creates the possibility for instability among the board, which will be of grave concern to the capital markets. Furthermore, the perceived need for the authorization to appoint additional directors assumes that county officials, who represent all within geographic borders, will not be responsive or sensitive to the needs and positions of the political subdivisions located within their counties. Again, the governing body of any county is comprised of elected officials, and if they are not responsive or they are insensitive to the needs of the political subdivisions within their boundaries they will be accountable to the voters. The capital markets will demand stability and predictability in the composition of an RMA board of directors, and while the individuals on a board may change, the number and their origin should not be subject to change at the whim of the Commission. This provision should be deleted.

The changes recommended in Section 26.16(e) are consistent with this change.

\* \* \*

**§ 26.21. Addition of Counties.**

(a) One or more counties may request the commission for consent to join an existing RMA. The commission may approve the request if:

(a)(1) the county has submitted a resolution from its commissioners court indicating support for the request;

(b)(2) the board of the RMA has agreed in writing to the addition; and

(c)(3) the commission finds that the addition will benefit the mobility of the region.

~~(b) If the commission approves the addition, the commission may provide for the appointment of additional directors as prescribed in §26.16(d) of this chapter.~~

**Explanation of Proposed Change:** Subparagraph (b) refers to the same issue as is discussed above in connection with Section 26.16(d). This specific paragraph puts the potential for the appointment by the Commission of additional directors in the context of the potential addition of one or more counties to an RMA. In addition to creating the possibility of instability on an RMA board (and the corresponding perception by the capital markets of increased risk), 26.21(b) adds the further problem of providing a disincentive for an RMA to join with additional counties in the future if doing so will create the possibility for the appointment of additional, unknown directors. This provision should be deleted. The addition of counties will occur as necessitated by the projects being undertaken by the RMA.

\* \* \*

**§ 26.23. Dissolution of an RMA.**

(a) Voluntary dissolution. The board of an RMA may request the commission for consent to dissolve. The commission may approve the request if:

(1) all debts, obligations, and liabilities of the RMA have been paid and discharged or adequate provision has been made for the payment of all debts, obligations, and liabilities;

(2) there are no suits pending against the RMA, or adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit; and

(3) the RMA's turnpike projects, if any, including all components and appurtenances, are in a condition that complies with the requirements of §26.52(a) of this chapter.

(b) Involuntary dissolution.

(1) If the RMA has no outstanding bonded indebtedness, the commission may by order require the RMA to dissolve if it finds that:

(A) the RMA has not, as determined by the commission, substantially complied with the requirements of this chapter or the terms of an agreement required by this chapter; or

(B) the RMA has failed to expeditiously pursue the development of a project identified under §26.14(a)(2) of this chapter.

(2) The commission may not require dissolution unless the conditions described in subsection (a)(1) and (2) of this section have been met.

(3) At least 30 days prior to adopting an order under this section, the department will provide written notice to the RMA's board offering an opportunity for the RMA to speak before the commission.

(c) The commission may not consent to or order the dissolution of an RMA if the RMA has outstanding bonded indebtedness and the holders of that indebtedness have not evidenced their agreement to the dissolution.

**Explanation of Proposed Change:** As written, Section 26.23(b) provides for the possible involuntary dissolution of an RMA by the Commission even if the RMA has outstanding bonded indebtedness. This could occur because the Commission could make a determination, under subsection (a)(1), that "adequate provision" has been made for payment of the debt. Unfortunately, this will not provide adequate certainty to the capital markets that an RMA with outstanding indebtedness cannot be dissolved without consent of the bondholders or the holders of such debt. That is the level of assurance potential bondholders or others will seek; that is, that there can be no voluntary or involuntary dissolution of an RMA unless and until its indebtedness has been paid or the holders of that debt have consented to a means by which they are adequately protected. Vesting that discretion in the Commission will create considerable uncertainty in the minds of potential investors, and may very well prevent RMAs from accessing the capital markets. The change to 26.23(b)(i) and the addition of 26.23(c) will eliminate this problem.

\* \* \*

**§ 26.32. Administrative Expenses.**

(a) Expenses necessary to administer an RMA shall be the sole responsibility of the political subdivisions who are represented on the board. The board is responsible for equitably allocating responsibility for administrative expenses.

(b) For purposes of this subchapter, "administrative expenses" means expenses, such as salaries, office supplies, and rent, necessary to operate the RMA.

(c) Nothing in these rules is intended to prevent an RMA from using toll revenues, bond proceeds, or funds loaned or granted by the department for the payment of reasonable administrative expenses incurred in connection with the planning, development, operation, and maintenance of a turnpike project.

**Explanation of Proposed Change:** Section 26.32 is overly restrictive in defining the sources of funding for RMA's administrative expenses. It is unreasonable to expect that an RMA would not pay any of its administrative expenses out of toll revenues, bond proceeds, or even out of funds advanced for project development, provided those expenses related to the legitimate operations of the RMA. Ultimately RMAs should be self sufficient organizations from a financial standpoint, however their only sources of revenue will be toll revenues, bond proceeds, or granted or loaned funds. It is unreasonable to expect the participating counties to continue to fund those expenses which are properly attributable to the RMA and its operations. The proposed addition addresses this concern.

\* \* \*

Regarding 26.41 – 26.56 In the case where federal highway funds are granted or loaned to a project then it is understood that the applicable federal requirements must be followed. However, if only State funds or no TxDOT money is involved in the project then the federal guidelines should not be invoked.

**§ 26.41. Social and Environmental Impact.**

(a) General. An RMA shall develop a turnpike project in accordance with Transportation Code, Section 361.103 and consistent with the spirit and intent of the National Environmental Policy Act, 42 United States Code §§4321 et seq, and 23 United States Code §109(h) by conducting a study of the social and environmental impact of the project.

(b) Federal-aid project. If federal-aid funds are requested for construction, or if federal approval or another federal action is required with respect to a turnpike project under this subchapter, an environmental review shall also be conducted in compliance with 23 C.F.R. 771 or its successor regulations.

(c) Commission approval. If Federal funds are to be used on the project~~The commission must approve the environmental document, each environmental review under this section before the construction contract for the~~ of a project beginshas been advertised for bids. The Commission agrees to process such approval within thirty days of receipt of the environmental document.

**Explanation of Proposed Change:** The Commission approval should apply in the case where Federal funds are being granted or loaned to the project. Subsection (c) purports to require Commission approval of each environmental review project before construction of a project has been advertised for bids. However, Section 361.103(c) of the Transportation Code only requires that such approval be obtained prior to the commencement of construction of a turnpike project. By requiring Commission approval prior to advertisement for bids, the rules will force a delay in the project development process. This is particularly true if an RMA desires to use an exclusive development agreement ("EDA") (assuming legislative authority for use of EDAs is secured) or similar mechanism, a contract which would encompass construction of a project. EDA solicitations and negotiations will likely begin prior to securing all of the necessary environmental reviews, and therefore the rule, as written, would force a delay in that process and ultimately a delay in the development of the project.

\* \* \*

#### **§ 26.43. Project Approval.**

(a) In accordance with Transportation Code, Sections 361.101 and 362.051, the RMA must request final commission approval of the project. The RMA must obtain approval after receiving approval of each environmental review under §26.41(c) of this subchapter and before final designation of the project as a turnpike project and before the construction of contract for the project beginshas been advertised for bids.

(b) To secure approval under this section, the RMA shall submit the following information to the executive director:

(1) an updated summary of the anticipated financing plan for purposes of seeking the approval described in subsection (c)(2) of this section; and

(2) a report identifying relocations or reconstruction to state highway system facilities anticipated in connection with the proposed project.

(c) In deciding whether to grant approval under this section, the commission will consider whether:

(1) the project may be effectively integrated into the state highway system; and

(2) the department is able to construct any connecting roads necessary for the project to generate sufficient revenue to pay the debt incurred for its construction.

**Explanation of Proposed Change:** See section 26.41(c) discussion above. This is a consistent and conforming change.

\* \* \*

#### **§ 26.44. Design and Construction.**

(a) Responsibility. The RMA is fully responsible for the design and construction of each project it undertakes, including ensuring that all EPIC are addressed in project design.

(b) Design criteria.

(1) State criteria. All designs developed by or on behalf of the RMA shall comply with the latest version of the department's manuals, including, but not limited to, the Roadway Design Manual, Pavement Design Manual, Hydraulic Design Manual, the Texas Manual on Uniform Traffic Control Devices, Bridge Design Manual, and the Texas Accessibility Standards.

(2) Alternative criteria. An RMA may request approval to use different nationally accepted criteria for a particular item of work. Alternative criteria may include, but are not limited to, the latest version of the AASHTO Policy on Geometric Design of Highways and Streets, the AASHTO Pavement Design Guide, and the AASHTO Bridge

Design Specifications. The use of alternative criteria is subject to the approval of the Federal Highway Administration for those projects involving federal funds. The executive director may approve the use of alternative criteria if the alternative criteria are determined to be sufficient to protect the safety of the traveling public and protect the integrity of the transportation system.

(3) Exceptions to design criteria. An RMA may request approval to deviate from the state or alternative criteria for a particular design element on a case by case basis. The request for approval shall state the criteria for which an exception is being requested and must include a comprehensive description of the circumstances and engineering analysis supporting the request. The executive director may approve an exception after determining that the particular criteria could not reasonably be met due to physical or environmental factors and that the proposed design is the best engineering solution.

(c) Project development.

(1) Frontage roads. Frontage roads are not allowed unless they are determined by the department to be in compliance with the department's frontage road policy in §15.54 of this title (relating to Construction).

(2) Access. For proposed projects that will change the access control line to an interstate highway, the RMA shall submit to the department all data necessary for the department to request Federal Highway Administration approval.

(d) Preliminary design submission and approval. When design is approximately ~~60~~90% complete, the RMA will send the following preliminary design information to the department for review and approval. The department will complete its review and comments within 30 days:

(1) a completed Design Summary Report form as contained in the department's Project Development Process Manual;

(2) current average daily traffic volumes on existing roads and streets included in the project limits;

(3) five-year and twenty-year forecasts of average daily traffic volumes including traffic loadings by axle load spectrum or vehicle classifications as defined by the Federal Highway Administration on existing and proposed roads and streets within or affected by the facility;

(4) horizontal layout information showing the horizontal alignment and any superelevation proposed for each roadway;

(5) typical sections showing existing and proposed horizontal dimensions, cross slopes, location of profile grade line, pavement layer thickness and composition, earthen slopes, and right of way lines;



(6) profile grade information showing existing ground and proposed roadway elevations for each alignment, including vertical curve data;

(7) bridge, retaining wall, and sound wall layouts including horizontal and vertical clearances to adjacent features and showing the type of structure, foundation, and railings proposed;

(8) drainage area maps showing the drainage of waterways entering the project and local project drainage (hydraulic and hydrologic studies and reports used to size bridges and culverts shall be submitted and include specifications for the basis of design and the design coefficients, rainfall intensities, drainage area sizes, and calculated flow quantities for each drainage structure and, when applicable, for each inlet and storm sewer);

(9) an explanation of the anticipated handling of existing traffic during construction;

(10) when structures meeting the definition of a bridge as defined by the National Bridge Inspection Standards are proposed, an indication of structural capacity in terms of design loading;

(11) proposed temporary and permanent measures for controlling erosion;

(12) an explanation of how the U.S. Army Corps of Engineers permit requirements, including associated certification requirements of the Texas Natural Resource Conservation Commission, will be satisfied if the project involves discharges into waters of the United States; and

(13) for freeways, the location and text of proposed mainlane guide signs shown on a schematic that includes lane lines or arrows indicating the number of lanes.

(e) Construction specifications.

(1) All plans, specifications, and estimates developed by or on behalf of the RMA shall conform to the latest version of the department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to department required special specifications and special provisions.

(2) The executive director may approve the use of an alternative specification if the proposed specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public.

(f) Submission and approval of final design plans and contract administration procedures. When final plans are complete, the RMA shall send the following

information to the executive director for review and approval. The department will forward complete its review and comments within 30 days.

(1) seven copies of the final set of plans, specifications, and engineer's estimate (PS&E) that have been signed and sealed by the responsible engineer;

(2) revisions to information provided with the preliminary design submission summarized or highlighted for the department;

(3) proposal necessary for bidding the project in compliance with applicable state and federal requirements;

(4) contract administration procedures containing criteria that comply with the applicable~~appropriate~~ national or state administration criteria and manuals; and

(5) location and description of all EPIC addressed in construction.

(g) Contract bidding and award. The RMA shall not advertise the project for receipt of bids any earlier than thirty days after submission of final design plans to TxDOT~~until it has received approval of the PS&E from the department~~. Procedures relating to bidder qualification, bidding, award, and execution of a contract for the development and maintenance of a project that is financed with state or federal funds shall comply with the policies and procedures prescribed in Chapter 9, Subchapter B of this title (relating to Highway Improvement Contracts).

(h) Construction inspection and oversight. Unless the department in writing agrees to assume responsibility for some or all of the following items, the RMA is responsible for:

(1) overseeing all construction operations, including the oversight and follow through with all EPIC;

(2) assessing contract revisions for potential environmental impacts;  
and

(3) obtaining any necessary EPIC required for contract revisions.

(i) Contract revisions. All contract revisions shall comply with the latest version of the applicable~~appropriate~~ national or state administration criteria and manuals, ~~and must be submitted to the executive director for approval prior to beginning the revised construction work.~~

(j) As-built plans. Within six months after final acceptance of the construction project, the RMA shall file with the department a set of the as-built plans incorporating any contract revisions. These plans shall be signed, sealed, and dated by a licensed professional engineer in Texas certifying that the project was constructed in accordance with the plans and specifications.

(k) Document and information exchange. If available, the RMA agrees to deliver to the department all materials used in the development of the project including, but not limited to, aerial photography, computer files, surveying information, engineering reports, environmental documentation, general notes, specifications, and contract provision requirements.

(l) State and federal law. The RMA shall comply with all federal and state laws and regulations applicable to the project and ~~the state highway system~~, and shall provide or obtain all applicable permits, plans, and other documentation required by a federal, state, or local governmental entity.

(m) Work on state right of way. All work required within the limits of state owned right of way shall be accomplished only pursuant to express written agreement with the department and at the sole expense of the RMA.

**Explanation for Proposed Change:** It is essential for any toll authority to expedite project delivery in order to minimize cost of the project and the cost of issuing debt. The capital markets will place a higher cost of issuance on the debt if a third party, that is not liable for the debt, has approval authority over the development of the project. The RMA must have the right to control the development of the project without undue burden. If Federal funds are used for the project then all applicable federal requirements will be followed.

\* \* \*

~~§ 26.47. Pooling. Prior to pooling turnpike projects under Transportation Code, §361.331, an RMA shall seek commission approval in the manner required by §27.20 of this title (relating to Pooling of Turnpike Projects).~~

**Explanation of Proposed Change:** The ability to pool turnpike projects in an important means by which to achieve efficiencies and economies of scale, as well as to provide for a more integrated method in which to finance turnpike project development. Therefore, provided it is acting within the scope of any trust indenture for outstanding bonded indebtedness, an RMA should be able to make its own decisions concerning whether, and when, to pool turnpike projects. The act of pooling does not cause any changes to the physical configuration of a turnpike project, and therefore the Commission should have little or no interest in whether turnpike projects within an RMA are, in fact, pooled. It is primarily an accounting, financial, and operations and maintenance issue which should be left to the local authority. This is another example

of an area of discretion which the capital markets will want to see vested in an RMA. They will want to know that their borrower can make financial decisions unfettered from required approvals of generally unaffected third parties.

\* \* \*

**§ 26.55. Project Constructed by the Department.**

(a) Request. An RMA may request that the department transfer to the RMA a segment of tolled state highway that was constructed by the department.

(b) Effect of transfer. Upon transfer, the highway is considered for all purposes a turnpike project of the RMA. The RMA is responsible for the operation and maintenance of the project and assumes responsibility for all project debt.

(c) Approval. The commission may approve a transfer under this section if the commission determines that:

(1) the transfer is allowed by the trust agreement or indenture entered into by the commission for that project;

(2) property and contract rights in the project and bonds issued by the commission for the project would not be affected unfavorably; and

(3) the RMA is capable of maintaining and operating the project in a safe and efficient manner.

~~(d) Surplus revenue. Notwithstanding the provisions of Subchapter G of this chapter to the contrary, the commission may, as a condition to the transfer, restrict the use of surplus revenue derived from a transferred highway.~~

(d)(e) Agreement. If the commission approves a transfer, the department and the RMA shall enter into a project agreement under §26.54 of this subchapter.

**Explanation of Proposed Change:** Senate Bill 342 defines the permissible uses of surplus revenues from a turnpike project developed or operated by an RMA. Section 26.56(d) provides the opportunity for the Commission to add additional restrictions to the uses of surplus revenue from a transferred project. The capital markets will be very adverse to any further restrictions on the use of surplus revenues, and particularly to a vague reference in the rules to the possible imposition of future restrictions on the uses of surplus revenues. This provision will likely preclude an RMA from accessing the capital markets to finance the acquisition of a project from TxDOT. Potential investors

will expect that RMA revenues will be available for use in connection with the turnpike project and will be free from pressure to generate surplus revenues for purposes not otherwise defined or permitted under SB 342.

\*\*\*

**§ 26.56. Department Assuming Jurisdiction of RMA Project.**

(a) An RMA turnpike project may become a non-tolled facility under the jurisdiction of the department when:

(1) all debt issued for the project and the interest on the debt has been paid; or

(2) firm banking and financial arrangements have been made for the discharge and final payment or redemption of the debt in accordance with law; and

(3) the RMA requests that the department assume jurisdiction over the project.

(b) If the conditions of subsections (a)(1) ~~and (2)~~ and (3) are met, the commission may continue to charge a toll sufficient to pay the costs of maintaining the facility.

(c) An RMA shall ensure that, prior to the department assuming jurisdiction under subsection (a) of this section, the turnpike project, including all its components and appurtenances, is in a condition that complies with §26.52(a) of this subchapter.

**Explanation of Proposed Change:** As written, this rule assumes that an RMA turnpike project will automatically be transferred to the department when the conditions identified in subparagraphs (a)(1) and (a)(2) are met. There is no logical basis for this automatic transfer of a project at that time, and it should be up to the RMA, which developed and/or operated the turnpike project, to determine when it desires to transfer it to the department. Just as the Commission is permitted to continue operating and project and charging a toll sufficient to pay costs of maintaining the facility (26.56(b)), an RMA may see benefits in operating a project in the same manner, particularly if surplus revenues can be used for purposes permitted under SB 342. Thus, the rule should be revised to eliminate any presumption that an RMA project will be subject to transfer immediately upon the payment of all debt.

\* \* \*

~~26.63. Notification of Financial Assistance. Prior to providing financial assistance under §26.62(1) of this subchapter, the RMA shall provide the commission at least 45 days written notice of its intentions. The notice shall describe in sufficient detail the project to be funded and the amount of funding.~~

**Explanation of Proposed Change:** This rule suggests that prior notice be provided to the Commission before an RMA utilizes surplus revenue to assist in the financing of a transportation project of a governmental entity. While the rule does not provide that Commission approval is required, that may be implicit in the prior notice requirement. Furthermore, neither prior notice nor Commission approvals is required under the provisions of SB 342 with respect to the expenditure of surplus revenues by an RMA to assist in the financing of a transportation project of a governmental entity. This provision is unnecessary and should be deleted.

\* \* \*

**§ 26.64. Commission Approval.**

(a) The commission will approve an RMA constructing a transportation project under §26.62(2) of this subchapter if:

- (1) the project is eligible under §26.65 of this subchapter;
- (2) the project comes from a conforming transportation plan and transportation improvement program, when required by federal law;
- (3) the project is consistent with the Texas Transportation Plan, the metropolitan transportation plan, and the Statewide Transportation Improvement Program; and
- (4) the commission determines that the project will have a significant positive impact on the mobility of the region of the RMA.

(b) When approving or disapproving a project under subsection (a) of this section, the commission will consider:

- (1) the anticipated reduction to traffic congestion;
- (2) potential social, environmental, and economic impacts of the project, and the extent to which the RMA has complied with all EPIC;
- (3) benefit to state and local government; and
- (4) whether the construction will expand the availability of funding for transportation projects or reduce direct state costs.

**Explanation of Proposed Change:** It appears that the reference in subparagraph (a) to 26.62 should actually be to 26.62(2). That is the only section which refers to an RMA constructing an transportation project, and pursuant to SB 342, is the only use of surplus revenues which requires the consent of the commission.

\* \* \*

**§ 26.74. Use of Surplus Revenue.**

- ~~\_\_\_\_\_ (a) Prior to transfer under this subchapter, the executive director will determine the asset value of the segment of highway to be transferred.~~
- ~~\_\_\_\_\_ (b) Notwithstanding the provisions of Subchapter G of this chapter to the contrary, an RMA may only use surplus revenue derived from the transferred highway for the improvement of the state highway system.~~
- ~~\_\_\_\_\_ (c) The commission may waive the requirements of subsection (b) of this section if it determines that the project will provide a substantial benefit to the traveling public.~~
- ~~\_\_\_\_\_ (d) The requirements of subsection (b) of this section no longer apply once, as determined by the executive director, the total expenditures of surplus revenue for the improvements to the state highway system have equaled the asset value determined under subsection (a) of this section.~~

**Explanation of Proposed Change:** This rule purports to add a restriction on the use of surplus revenue derived from a segment of the state highway system converted to a tolled project and transferred to an RMA. This is not a restriction which was required under SB 342 in defining the permissible uses of surplus revenues, and is not necessary to achieve any purpose or requirement of state law. To the extent the concern is the state receiving fair compensation for the value of the asset transferred, in all likelihood the relief to the state from the operations and maintenance costs of the segment of the system as well as the benefits to the public to be gained from the operation of the project by the RMA are sufficient to provide any "value" necessary to support the transfer. Furthermore, this restriction on the use of surplus revenue will be a matter of serious concern to the capital markets for the reasons discussed in connection with 26.56(d) and may preclude an RMA's ability to access necessary capital.



**AGENDA ITEM 27**

Discuss and take appropriate action on Riverbend Oaks Street reconstruction.

Tim Haynie of Haynie Consulting discussed the reconstruction of streets in Riverbend Oaks. He stated that they were having problems obtaining drainage easements from some of the property owners that are necessary for the project. He said that Joe Bland of Bland Schroeder Archer has given him written authorization to extend his bid for another 60 days.

Ginny Atkinson with Purchasing noted that the bid for street reconstruction in Riverbend Oaks has not been awarded. She stated that Bland Schroeder Archer is the apparent low bidder for the project.

No action was taken on this agenda item.

**AGENDA ITEM 28**

Discuss and take appropriate action on awarding bid for Cedar Breaks Road.

*Bids were received from the following:*

*Austin Bridge & Road, Inc.*

*Capital Excavation Company*

*Bland/Schroeder/Archer, L.P.*

*Dayco Construction Company*

Moved: **Commissioner Boatright**

Seconded: **Commissioner Limmer**

Motion: To award the bid for Cedar Breaks Road to Austin Bridge & Road, Inc. in the amount of \$6,574,000.00.

Vote: **3 – 0. Commissioner Heiligenstein was absent from the dais.**

< Attachment >