

MINUTES
MICHIGAN STATE TRANSPORTATION COMMISSION MEETING
March 27, 2008
Lansing, Michigan

Meeting noticed in accordance with Open Meetings Act, Public Act 267 of 1976.

Present: Ted B. Wahby, Chair
Linda Miller Atkinson, Vice Chair
Jerrold M. Jung, Commissioner
James R. Rosendall, Commissioner
James S. Scalici, Commissioner

Also Present: Jackie Shinn, Chief Deputy Director
Frank E. Kelley, Commission Advisor
Marneta Young, Commission Executive Assistant
Jerry Jones, Commission Auditor, Office of Commission Audit
Patrick Isom, Attorney General's Office, Transportation Division
John Friend, Bureau Director, Highway Delivery
John Polasek, Bureau Director, Highway Development
Myron Frierson, Bureau Director, Finance and Administration
Susan Mortel, Bureau Director, Transportation Planning
Rob Abent, Bureau Director, Aeronautics and Freight Services
Tim Hoeffner, Administrator, Intermodal Policy
Sharon Edgar, Administrator, Bureau of Passenger Transportation
Melvin Williams, Administrator, Freight Services and Safety Division

Excused: Kirk T. Steudle, Director
Maureen Miller Brosnan, Commissioner

A list of those people who attended the meeting is attached to the official minutes.

Chair Wahby called the meeting to order at 10:06 a.m. in the Bureau of Aeronautics Commission Conference Room in Lansing, Michigan.

I. COMMISSION BUSINESS

Commission Minutes

Chair Wahby entertained a motion for approval of the minutes from the State Transportation Commission meeting of February 28, 2008.

Moved by Commissioner Atkinson, with support from Commissioner Scalici, to approve the minutes of the Commission meeting of February 28, 2008. Motion carried.

Chair Wahby entertained a motion for approval of the minutes from the State Transportation Commission workshop of February 28, 2008.

Moved by Commissioner Atkinson, with support from Commissioner Scalici, to approve the minutes of the Commission workshop of February 28, 2008. Motion carried.

II. RESOLUTIONS

Resolution of the State Transportation Commission Amending the Project List - State Trunk Line Fund (STF) Bond Series 2004 – Myron Frierson

At the Commission meeting held on January 31, 2008, the Commission approved a resolution which authorized the notice of intent to revise the project list for the State Trunk Line Fund (STF) Bond Series 2004 previously adopted by the Commission and last revised on September 27, 2007. The department has afforded the 30-day legislative notification period required by statute for the STF Series 2004 Bonds resolution. The department is seeking the Commission's approval to finalize the changes to this project list.

Mr. Frierson asked for questions and a roll call vote approving this resolution; no questions were forthcoming.

Chair Wahby entertained a motion to approve the Resolution of the State Transportation Commission Amending the Project List - State Trunk Line Fund (STF) Bond Series 2004. Motion was made by Commissioner Atkinson and supported by Commissioner Rosendall to approve the resolution. Mr. Kelley called the roll; all answers were affirmative. Motion carried on a unanimous roll call vote.

Resolution of the State Transportation Commission Amending the Project List - Jobs Today Program – Myron Frierson

At the Commission meeting held on January 31, 2008, the Commission approved a resolution which authorized the notice of intent to revise the project list for the Jobs Today Program previously adopted by the Commission and last revised on September 27, 2007. The department has afforded the 30-day legislative notification period required by statute for the Jobs Today Program resolution. The department is seeking the Commission's approval to finalize the changes to this two project list.

Mr. Frierson asked for questions and a roll call vote approving this resolution; no questions were forthcoming.

Chair Wahby entertained a motion to approve the Resolution of the State Transportation Commission Amending the Project List - Jobs Today Program. Motion was made by Commissioner Jung and supported by Commissioner Scalici to approve the resolution. Mr. Kelley called the roll; all answers were affirmative. Motion carried on a unanimous roll call vote.

Resolution of the State Transportation Commission Authorizing the Issuance and Sale of State of Michigan State Trunk Line Fund Bonds and Grant Anticipation Notes – Myron Frierson

The department is requesting the Commission's approval to issue bonds for up to \$150 million to support the Governor's Economic Stimulus Program. Attached is the bond

resolution for consideration by the Commission. The resolution allows the department to issue bonds backed up by either State Trunk Line funds or federal grant anticipation revenue depending on the market conditions when the bonds are sold. It would also allow the department to enter into an interest rate lock agreement. You may notice that the project list is different than the projects being advanced in the Governor's announced Economics Stimulus Program. This is to avoid a burden on local agencies whose Act 51 match requirements are higher for non-federal supported projects. Upon approval by the Commission, the resolution will be transmitted to the Legislature for the required 30-day notification period.

Mr. Frierson asked for questions and a roll call vote approving this resolution.

Chair Wahby asked Mr. Isom, MDOT Attorney General's Office, if it were unusual for the Commission to vote on giving the department a choice without approving a specific item.

Mr. Isom stated that the department is asking the Commission to approve of them choosing a process which would be best when the time comes, and there is no problem with them doing this.

Mr. Frierson stated that prior to selling the bonds he would come back with more definitive information on the nature of the bond issue.

Commissioner Rosendall asked if this were approved today would they still come back later and ask them to approve another.

Mr. Frierson stated that they would have the information related to that specific sale.

Chair Wahby asked if they would have already proceeded.

Mr. Frierson stated that would have started the process but would not have issued the bonds (closed on the bonds) without the Commission's approval.

Commissioner Atkinson asked if the real effect of this issue today is to allow them to incur the cost of preparing for the next resolution.

Mr. Frierson answered yes.

Chair Wahby entertained a motion to approve the Resolution of the State Transportation Commission Authorizing the Issuance and Sale of State of Michigan State Trunk Line Fund Bonds and Grant Anticipation Notes. Motion was made by Commissioner Atkinson and supported by Commissioner Rosendall to approve the resolution. Mr. Kelley called the roll; all answers were affirmative. Motion carried on a unanimous roll call vote.

Commissioner Jung asked if the first 2 bonds were basically the re-paid bonds that were maturing.

Mr. Frierson answered no. The 2004 STF was part of a program we had in 2004 that financed new projects. The 2006 resolution that deals with Jobs Today was where the Commission authorized up to \$630 million in bonding. We have so far issued \$485 million in bonds and hope to issue the remaining balance of those bonds sometime later this year or early next year depending on market conditions. We will have some possible refunding opportunities later this summer—a 1998 bond will be available for refunding.

Commissioner Jung commented that the entire construction budget for MDOT is in the neighborhood of \$700 million and the 2 bonds issues exceed that.

Mr. Frierson stated that the construction part of the overall program is over \$1 billion because you have other associated costs (design, right-of-way, etc.) to the program. If you look at the Five Year Program template, the Program is averaging \$1.3 billion.

Commissioner Jung asked if it would be possible at future meetings to break out MDOT's use of funds between administration, construction, right-of-way acquisition, and outside design consultants.

Mr. Frierson responded that he could do that.

No other questions were forthcoming.

III. OVERSIGHT

Commission Agreements (Exhibit A) – Myron Frierson

Mr. Frierson presented information on 79 agreements. Forty-nine of these relate to Jobs Today related loans for local units of government. Pending any questions, Mr. Frierson asked for approval of Exhibit A; none were forthcoming.

Chair Wahby entertained a motion. Motion was made by Commissioner Rosendall and supported by Commissioner Atkinson to approve Exhibit A. Motion carried on a unanimous voice vote.

Bid Letting Pre-Approvals (Exhibit A-1) – Myron Frierson

Mr. Frierson gave a brief recap of the March letting: 55 State projects with a total engineer's estimates of \$177.7 million were let. The low bids received on these projects totaled \$165.2 million. The average low bid for the 55 State projects let was \$3.0 million. In March 2007, 71 State projects were let with low bids totaling \$117.7 million, an average of \$1.7 million per project let. The State low bids for fiscal year 2008 through March total \$441.2 million compared to \$595.7 million for the same period in fiscal year 2007.

The department's letting schedule has proceeded as planned. Leading up to and including the March letting, 100.7% of the construction cost estimate of projects scheduled for this period has been let. In comparison for this same period through March 2007, 98.8% of the construction cost estimate of projects scheduled for the year was let.

There are currently 19 State projects with engineer's estimates totaling \$89.5 million scheduled to be let on April 4, 2008. Of the 19 State items, 6 have warranties. There are 76 (includes one postponed) Local projects scheduled to be let in April. Of these, 52 include work in the Jobs Today program. The total value, based on engineers' estimates, is \$173 million.

Pending any questions, Mr. Frierson asked for approval of Exhibit A-1.

Commissioner Atkinson stated that a large number of these involve the use of hot mix asphalt, therefore asked if this is still fluctuating as much as it has been over the pass 2 years and what system are we using for pricing this.

Mr. Frierson deferred to John Polasek for an answer.

Mr. Polasek responded that the department has been following this. Our estimates have been on top of those increased costs. Asphalt is a good fix for our rehabilitation program and the larger asphalt projects are based on lifecycle cost analysis—we pick those projects because of this. As far as the index goes, he's not sure where this is going but we do have a handle on the estimates.

Commissioner Atkinson asked if we expect another wave of overruns.

Mr. Polasek answered no.

Commissioner Rosendall asked if this is because we have adjusted our cost scale upward to mitigate them coming back and asking for more money.

Mr. Polasek responded that when we review the average unit prices for a period of time, those are the things we use to estimate projects.

Commissioner Rosendall asked how we were stacking up against concrete—are we getting to the point where concrete is going to be the same price.

Mr. Polasek said that he couldn't say for sure but he knows that there are types of projects that we haven't gone with concrete in the past but are using it now. Lifecycle cost analysis takes care of that. If there is an increased cost in any asphalt product, that cost is plugged into the formula.

Commissioner Rosendall asked if that is something that is done on every project.

Mr. Polasek responded that it is only done on pavements over \$1 million.

Mr. Friend added that there is a program being initiated for 2009 and 2010. We are looking at letting some of our contract work out using alternative pavement bids. We will prepare a concrete roadway design and an asphalt pavement design. We will do an analysis on those two and bid them out to both industries for that type of work. You'll see us pile up those projects in 2009 and ramp up even more of them in 2010. We have

to go through a special experimental project program with FHWA to do that so it's not possible to implement that on a mass scale but you'll see this over the course of the next couple years.

Commissioner Rosendall asked if there were any projects slated to do that in 2008.

Mr. Friend answered that the design, build, finance project that is scheduled for I-69 is also an alternative pavement bid—a \$50 million job that you'll see in the next 3 months or so.

Commissioner Rosendall asked if that is the only one.

Mr. Friend answered yes; the only one in 2008.

Commissioner Rosendall asked, based on what happens with the I-69 project, if we would be able to see more of these if what we think is going to happen actually occurs.

Mr. Friend responded that once we go through the special experimental project program with FHWA, we can build a business case with them asking their approval to use that routinely if MDOT so wishes.

Commissioner Scalici asked if the cost of diesel fuel would affect any.

Mr. Polasek answered yes, it affects everything.

Commissioner Jung commented that we are seeing new construction with asphalt as compared to concrete, and asked if we are seeing more miles paved with asphalt or with concrete right now on new construction or reconstruction.

Mr. Polasek responded that he'd have to take a look at that. With the prices that are going up for asphalt (25/75 concrete/asphalt mixture), when you do lifecycle costs that is where concrete might come out on top.

Commissioner Jung asked how many years need to go by before you re-build asphalt compared to how many years for concrete—what numbers are used in the lifecycle cost.

Mr. Polasek answered that it is not a perpetual pave but for asphalt it is 18 years and 25 years for concrete. He also offered to get the exact information (whether it's total reconstructions, how much rehabilitation is done, how much concrete reconstruction—inlays and overlays—is done) and provide it to the Commission.

Mr. Frierson added that the vast majority of the April letting is local system projects which have a predominant asphalt pavement. Of the 19 state projects there is a mixture.

Commissioner Atkinson stressed that the comments Mr. Friend made regarding alternative pavement bidding are very important.

Chair Wahby entertained a motion. Motion was made by Commissioner Atkinson and supported by Commissioner Rosendall to approve the April bid letting. Motion carried on a unanimous voice vote.

Letting Exceptions Agenda (Exhibit A-2) – John Polasek

Mr. Polasek provided information on 7 State projects that were over the engineers' estimates and 4 of them are accompanied by justification memos. One revision to a memo (Item #0803-036) corrected the name of the low bidder from Payne and Dolan, Inc. to Musson Bros., Inc. The other 3 projects are projects with a single bid and are not over 10% so don't require a justification memo. Pending any questions, Mr. Polasek asked for approval of Exhibit A-2.

No questions were forthcoming.

Chair Wahby entertained a motion. Motion was made by Commissioner Rosendall and supported by Commissioner Jung to approve Exhibit A-2. Motion carried on a unanimous voice vote.

Letting Exceptions Agenda (Exhibit A-2 Supplemental) – John Polasek

Mr. Polasek provided information on 1 State project (Highways for Life Project) that was under the engineers' estimate. This project has been pre-approved, and is being returned for re-approval after meeting the exception criteria by the Commission. Pending any questions, Mr. Polasek asked for approval of Exhibit A-2 Supplemental.

No questions were forthcoming.

Chair Wahby entertained a motion. Motion was made by Commissioner Atkinson and supported by Commissioner Rosendall to approve Exhibit A-2 Supplemental. Motion carried on a unanimous voice vote.

Information Items (Exhibit A-3) – Myron Frierson

Mr. Frierson provided information on 1 Local project, for which the bid was under \$500,000 and has less than two bidders or is a low bid rejection, or has other bid issues, is being submitted for informational purposes only. No action is required.

Chairman Wahby asked for questions; none were forthcoming.

Contract Adjustments (Exhibit B) – John Friend

Mr. Friend introduced Bobbi Welke, Southwest Region Engineer, and Roger Safford, Grand Region Engineer, who were in town for the meeting.

Mr. Friend stated that in the month of February we finaled out at just over \$74 million and for the fiscal year 2008 we finaled out just short of \$350 million. We continue to operate within that 5% standard that was set by the Commission.

Mr. Friend provided information for 9 MDOT and 4 Local projects. Particular attention was brought to Extra 2008-024 (revised—withdrawn from the January 31, 2008 STC

meeting) (2.61 miles of freeway reconstruction and widening...in the cities of Kalamazoo and Portage, Kalamazoo County). This is a value engineering project where the contractor was allowed to come in after construction had started and proposed changes to the MDOT/FHWA that would make the project either more cost efficient, and participate in the cost savings associated with that project. This results in some new pay items.

Attention was also brought to Extra 2008-057 (3.71 miles of freeway reconstruction, ramps...in the cities of Woodhaven, Southgate, Taylor and Flat Rock, Wayne County). During the construction staging of this project during construction the engineer encountered a significant amount of vehicular crashes with some resulting in fatalities. The project office and the region tried to make staging changes to the project. They identified user cost delays that were in place of about \$150,000 in both northbound and southbound directions. They spoke with the contractor about changing the staging but also about accelerating the project to be done early by compensating them for additional costs associated with overtime; then based that on user costs. We were about to cut about 60-days off the contract at an estimated user cost of \$300,000 or so for both directions. This is about \$1.8 million but the additional cost associated with that in terms of staging changes and project acceleration were about \$1.4 million.

Commissioner Rosendall commented that Extra 2008-045 and Overrun 2008-09 (102.49 acres of wetland mitigation...on Curtis Road...Little Prairie Hunt Club, Saginaw County) appear to be off the same project. It seems that if he were to go out and look at a project to do wetland mitigation, it would be assumed that it was wet. In the write-up their excuse is that there is an unusual amount of water present, therefore feels that they should have expected it to be wet.

Mr. Friend stated that he didn't know enough project detail to give him a quality answer as far as what an unusual amount of water is relative to wetland construction.

Commissioner Rosendall went on to say that the other part of his question relates to the fact that they anticipated, it appears, to use a scraper of sorts to move the material. Being that this is Dan's Excavating and they move a lot of dirt, they're a big company, what gave them the inkling that they could drive a pan into a wetland and expect to move dirt?

Mr. Friend reiterated that he struggles with not knowing enough project detail to give him what he considers a quality answer. He suggested either approving the items with him providing a good answer after talking with Mr. Safford's staff, or withdrawing them and bringing them back at a later time. He did not feel comfortable speculating as to what the answer to those questions would be.

Commissioner Rosendall stated that he would like to know the answers to his questions before he could support this item. He then asked, for those we went back to in 2007, what was collected from consulting engineers to cover some of the errors they made.

Mr. Friend responded that information regarding cost and recovery from consultant errors would be provided.

Commissioner Rosendall further stated that the issues look like they revolve around engineering.

Commissioner Atkinson asked if this could be done using an annual index.

Commissioner Rosendall commented that it really isn't an annual index because there shouldn't be any more than two or three of them.

Commissioner Atkinson stated that cost recovery in 2007 will probably reflect issues in 2005 or 2006.

Commissioner Rosendall responded that it could but assumes it will have the dates on it from when the project occurred.

Mr. Friend responded that he would gather the information in whatever form he would like to see it.

Commissioner Rosendall reiterated that what he would like to see is, for 2007, how many consulting engineers we went back to on their errors and omissions insurance, and did we collect anything.

Jerry Jones, regarding the design phase on Extra 2008-045, stated that Commission Audit asked the question as part of their review how the wetland ended up so much wetter at the time of construction. What we were told was, at least at the time of design, the land in that area was unusually dry so the engineer didn't think there was quite the drainage problem that existed at the time of construction. With regard to the contractor using the pan, that question was not pursued.

Commissioner Rosendall stated that he would still like those items (Extra 2008-045 and Overrun 2008-09) withdrawn before we go down that road.

Chair Wahby confirmed that Commissioner Rosendall asks that those 2 items be withdrawn.

Commissioner Rosendall answered yes.

Pending any questions, Mr. Friend asked for approval of Exhibit B; no other questions were forthcoming.

Chair Wahby entertained a motion. Motion was made by Commissioner Rosendall and supported by Commissioner Atkinson to approve Exhibit B **excluding Extra 2008-045 and Overrun 2008-09 pending additional information**. Motion carried on a unanimous voice vote.

Six Month Internal Audit Follow-up (Exhibit C) – Jerry Jones

Exhibit C is our Six Month Follow-Up Report on outstanding Internal Audits and the status of the department's actions to implement the recommendations. This report

reflects the status of reports with open recommendations as of December 31, 2007, and March 14, 2008, as shown in the Summary on Page 2 of the Report.

As you can see from this Report, three Audit Reports were closed in this reporting cycle, an additional recommendation has been completed in the Contract Services Division Audit and one recommendation in the Freight Services and Safety Division Audit has been implemented. Work on the remaining recommendations in the Freight Services and Safety Division are nearly complete and the department is continuing to work on the remaining recommendations in the Contract Services Division Audit.

Mr. Jones asked for questions and recommended that the Commission accept this report. With no questions forthcoming, he then called on Chair Wahby for his response.

Chair Wahby stated that he has reviewed the report and recommends that the Commission accept the report.

Commissioner Atkinson stated that from reviewing the Audit with respect to Contract Services, the main issue is that the division is saying they need more performance information in order to do this, and the Report talks of looking at outcomes this year. She asked if this is a fair understanding on her part and if this is an excuse coming from the division.

Mr. Jones responded that they do need real information. In March they analyzed two projects, sent them out to the regions and TSCs, and that information on that analysis is just coming back in to us. In April they intend to analyze six of the 19 state projects which are about 30%. That information will then be gathered, including how much time and resource it takes to do this analysis, and get the information back in a timely fashion so those projects can be let. It also involves a great deal of coordination between the Bureau of Finance and Administration (BFA) and the Bureau of Highway Delivery (BHD). Of course the folks in the field have to do the analysis so what guidelines is it that they are going to follow in conducting this analysis? Especially so we can be consistent in the application so we don't end up with bid appeals; ultimately if a bid is rejected because of the analysis. The BFA is responsible for the oversight of that part of the process.

Motion was made by Chair Wahby and supported by Commissioner Rosendall to approve Exhibit C. Motion carried on a unanimous voice vote.

Six Month Financial Audit Follow-up (Exhibit D) – Jerry Jones

Exhibit D is our Six Month Follow-Up Report on Financial and Compliance audits of contract projects that have been outstanding over 120 days since being issued. This report covers 7 audits, with approximately \$377,913 in net recommended adjustments. As the report indicates, the department is working with the audited entities and Commission Audit, to close these audits out.

Mr. Jones recommended that the Commission accept this report, and then called on Chair Wahby for his response.

Chair Wahby stated that he has reviewed the report with Mr. Jones, and recommends that the Commission accept the report.

No questions were forthcoming.

Motion was made by Chair Wahby and supported by Commissioner Rosendall to approve Exhibit D. Motion carried on a unanimous voice vote.

IV. **PUBLIC COMMENTS**

Chair Wahby asked if any member of the audience wanted to address the Commission.

Mr. Polasek asked to clarify his answer to the question raised (by Commissioner Jung in Exhibit A-1) regarding the length (of life) of concrete and asphalt pavements. The fix life for concrete and asphalt can vary greatly due to the type of fix and the material under the surfacing. The specific answer for pavement cost over \$1,000,000 is that a Life Cycle Cost Analysis (LCCA) is performed and a fix life of 26 year is evaluated for asphalt and concrete that includes work necessary (maintenance, crack seal, etc.) on the specific project that would be needed to attain the fix life as evaluated. That cost is then converted into a cost per lane mile and the lowest cost is chosen.

Chair Wahby asked if that were the driving force in terms of how you pick the job.

Mr. Polasek answered yes, for projects over \$1 million.

Chair Wahby commented that that is what was approved by the Commission a long time ago.

Chair Wahby asked if any Commissioner wanted to address the Commission; none were forthcoming.

ADJOURNMENT

There being no further business to come before the Commission, Chair Wahby entertained a motion. Motion was made by Commissioner Atkinson and supported by Commissioner Rosendall for adjournment. Motion carried on a unanimous voice vote. Chair Wahby declared the meeting adjourned at 10:47 a.m.

The next full meeting of the Michigan State Transportation Commission will be held on April 24, 2008, in the 1st floor Bureau of Aeronautics Auditorium in Lansing, Michigan, commencing at the hour of 9:00 a.m.