

MINUTES
MICHIGAN STATE TRANSPORTATION COMMISSION MEETING
March 29, 2007
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
Maureen Miller Brosnan, Commissioner
James S. Scalici, Commissioner

Also Present: Kirk Steudle, Director
Larry Tibbits, Chief Operations Officer
Leon Hank, Chief Administrative Officer
Frank E. Kelley, Commission Advisor
Marneta Griffin, 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
Susan Mortel, Bureau Director, Transportation Planning
Myron Frierson, Bureau Director, Finance and Administration
Susan Gorski, Section Manager, Statewide Planning
Tim Hoeffner, Administrator, Intermodal Policy

Excused: James R. Rosendall, Commissioner

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

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

I. COMMISSION BUSINESS

Commission Minutes

Chair Wahby entertained a motion for approval of the minutes of the State Transportation Commission meeting of February 22, 2007.

Moved by Commissioner Atkinson, with support from Commissioner Brosnan, to approve the minutes of the Commission meeting of February 22, 2007. Motion carried.

II. DIRECTOR'S REPORT – DIRECTOR KIRK STEUDLE

Director Steudle's turned his presentation over to Leon Hank, Chief Administrative Officer. Mr. Hank's presentation focused on:

Revised Intergovernmental Agreement for the International Bridge

One key issue that the Canadian government asked us to deal with was called the "parity" clause in the agreement. When payments are triggered by the bridge that benefits one

government or the other, this clause says that we must make an equal payment to the other government so that no one side is advantaged in that transaction.

Another key issue was the organization that runs the international bridges for the Canadian governments called the Federal Bridge Corporation Limited. They were wondering if we could re-negotiate the agreement so that we were more consistent with how they run some of their other bridges.

This agreement established the Sault Ste. Marie Bridge Authority (SSMBA) to replace the former Joint International Bridge Authority (JIBA). We increased the membership of SSMBA to 4 from each country (total of 8) – rather than the present 3 from each country. Existing members continue to serve out their appointed terms, subject to replacement at the will of the appointing authority (the Governor for Michigan). To get around this parity issue, we have instituted separate Owner's Reserve Accounts (surplus funds deposited twice each year). The Owner's Reserve Accounts are to be used to pay for Capital Improvements (contracts over \$500,000 in a given year and country), miscellaneous Owner expenses, and for any taxes or assessments that may be levied by the country of that Owner (importantly, for the Canadian Owner, to pay for Canadian Customs and Sault Ste. Marie, Ontario taxes).

We have reduced from \$100,000 to \$50,000 the value of contracts that require approval of SSMBA, as well as provided for 10-year automatically renewable terms for the Agreement – rather than the previous 40 year term.

On capital projects we agreed to use the expertise of both governments in managing projects, and to establish performance measures for bridge managers (accountable to SSMBA for performance). We validated, and got the Canadian government to agree, that we are performing well and will continue to use State of Michigan employee workforce.

The approval process for an agreement like this is much like an international treaty, because we are entering into a contract with the Canadian government. Governor Granholm will have to approve this agreement (Director Steudle has submitted this to her staff for her consideration), and it also must go through the approval level at the national level (U.S. State Department).

Mr. Hank asked for questions; no questions were forthcoming.

Director Steudle had no further comments.

III. **SPECIAL PUBLIC COMMENT**

Nancy Krupiarz, Executive Director of Michigan Trails and Greenways Alliance, spoke briefly regarding the upcoming vote for the revision to the State Rail Freight Policy (CP 10012). On behalf of the Alliance, Ms. Krupiarz asked the Commission to vote in favor of the revision.

No other comments were forthcoming.

IV. **POLICY**

Draft Revision to State Rail Freight Policy, CP 10012 – Tim Hoeffner, Administrator, Intermodal Policy

On July 18, 2006, Governor Jennifer M. Granholm announced that the state will work with the Michigan Natural Resources Trust Fund to link Michigan's trail system by building new trails and upgrading existing trails throughout the state. The Governor's plan to link Michigan trails would involve support from the trust fund, state agencies, local units of government, and private donors and foundations. It is expected to be completed by 2009.

A primary means for trail development is the acquisition of abandoned rail lines. Current Transportation Commission policy restricts the department's acquisition of additional rail facilities, even though this is otherwise permissible under the State Transportation Preservation Act. The policy also caps the number of year's inactive rail lines can be held before they are subject to divestiture. This policy was adopted in a time when rail line abandonment occurred at an alarming rate. It was also prior to the more integrated approach to transportation systems planning and service delivery that the Michigan Department of Transportation (MDOT) is pursuing today.

In view of the Governor's intentions and the above mentioned changing conditions, I am requesting that the Transportation Commission revisit Policy 10012 – State Rail Freight Policy, and consider the changes that will clarify MDOT's ability to acquire and hold abandoned rail lines for the purpose of future trail development.

Pending any questions, Mr. Hoeffner asked for approval of the revised Commission Policy.

No questions were forthcoming.

Chair Wahby entertained a motion. Motion was made by Commissioner Brosnan and supported by Commissioner Atkinson to approve the Policy. Motion carried on a unanimous voice vote.

V. **OVERSIGHT**

Commission Agreements (Exhibit A) – Myron Frierson

Mr. Frierson stated that information on 30 agreements has been given for review. Pending any questions, Mr. Frierson asked for approval of Exhibit A.

No questions were forthcoming.

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

Commission Agreements (Exhibit A-Supplemental – Myron Frierson

Mr. Frierson stated that information on 1 agreement has been given for review, and pending any questions he asked for approval of Exhibit A-Supplemental.

No questions were forthcoming.

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

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

Mr. Frierson gave a brief re-cap of the March 2007 bid letting activities: 71 State projects with total engineers' estimates of \$120.1 million were let. The low bids announced on these projects totaled \$117.7 million. The average low bid of all 71 State projects was \$1.7 million. There are seven State projects that are classified as TBA, with low bids totaling \$26.8 million. All bids were rejected on one project, with the low bid of \$150.5 thousand. Thirty projects let with total low bids of \$72.3 million had warranties. Electronic proposals were provided for all 71 of the State projects let. In March 2006, 89 State projects were let with low bids totaling \$181.0 million, an average of \$2.0 million.

The State low bids for year to date FY 2007 totaled \$589.8 million compared to \$534.6 million for the same period in FY 2006.

As of October 23, 2006, it was estimated that 407 State projects with construction costs totaling \$905.8 million would be let during the 2007 fiscal year. Through March of this year, 272 State projects with engineers' estimates of \$602.5 million were let; representing 66.5% of the total amount projected to be let this fiscal year. In comparison, through March 2006, 304 projects with total engineers' estimates of \$565.5 million were let; representing 51.1% of the FY 2006 projection. The department's letting schedule is proceeding as planned. Through March 2007, 98.8% of the construction cost estimate of projects scheduled for the first six months of the year was let. In comparison through March 2006, 95.2% of the construction cost estimate of projects scheduled for the first six months of the year was let.

The total number of bids submitted for this letting was 623, of which 304 were submitted for State projects. There was an average of 5.3 bids submitted for each project that was let, and an average of 4.3 bids for each State project. Of the 427 contractors eligible to submit bids, 175, or 41.0%, submitted bids for this letting.

In addition to the State projects let, six of the Local program area items let included projects in the Jobs Today, Jobs Tomorrow program.

There are 27 State projects with engineers' estimates totaling \$34.5 million scheduled to be let on April 6, 2007; eight of these items have warranties. Of all the items scheduled to be let, eleven include work in the Jobs Today, Jobs Tomorrow program.

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

No questions were forthcoming.

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

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

Mr. Polasek reported on 7 projects (6 State, 1 Local) that were at least 10% over/under the engineers' estimates which are accompanied by justification memos. 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 Atkinson and supported by Commissioner Brosnan to approve Exhibit A-2. Motion carried on a unanimous voice vote.

Information Items (Exhibit A-3) – Myron Frierson

Mr. Frierson stated that this item is included for information purposes only. One project is listed with a single bidder, is under \$500,000 and within the engineers' estimate.

There is no action required.

Chairman Wahby asked for questions; none were forthcoming.

Contract Adjustments (Exhibit B) – John Friend

Mr. Friend has 8 MDOT projects and 5 Local Agency projects before the Commission.

Mr. Friend drew attention to Item #2007-56 (1.41 miles of hot mix asphalt reconstruction, ... on US-12 (Michigan Avenue) ... in the City of Wayne, Wayne County), \$697,000 worth of work. The contractor proposed to make changes to the materials used for the roadway base. The change proposed was from a cross section of 18 inches of sand and 4 inches of OGDC to 19 inches of OGDC. The proposed substitution was acceptable to MDOT and reduced the overall cost of the contract.

Pending any questions, Mr. Friend asked for approval of Exhibit B.

No questions were forthcoming.

Chair Wahby entertained a motion. Motion was made by Commissioner Brosnan and supported by Commissioner Scalici to approve Exhibit B. Motion carried on a unanimous voice vote.

Auditor's Report on the Metro Region-Blue Water Bridge (Exhibit C) – Jerry Jones

Exhibit C is our operational audit report on Highway Operations, Metro Region-Blue Water Bridge. The audit covered the period February 24, 2001, through June 30, 2006, as further clarified in the report. The purpose of our audit was to provide an independent

evaluation of Blue Water Bridge's processes, as further defined within the scope of the Audit. For the internal controls reviewed, we determined that the Blue Water Bridge operated in substantial compliance with policies, procedures, and applicable regulations. We believe the recommendations contained in this report will strengthen internal control, improve administrative practices, and strengthen compliance with applicable policies, procedures, and regulations. The Department concurred with the recommendations made, and that response is attached to the Report.

Mr. Jones recommended that the Commission accept the report and the response, and then called on Commissioner Brosnan for her response.

Commissioner Brosnan stated that she has reviewed the Office of Commission Audits' audit report on the Blue Water Bridge, along with the Department response to the audit. She has also had the opportunity to discuss the report and the response with the Commission Auditor, and recommends that the Commission accept the report and response.

No questions were forthcoming.

Chair Wahby entertained a motion. Motion was made by Commissioner Brosnan and supported by Commissioner Scalici 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 contains 12 audits, with approximately \$1,000,000 in net recommended adjustments. As the report comments indicate, the Department is working with the audited entities and our office to complete the process and close these audits out.

Mr. Jones recommended that the Commission accept this report and response, and then called on Commissioner Brosnan for her response.

Commissioner Brosnan stated that she has reviewed the report along with the Department response to the audit. She has also had the opportunity to discuss the report and the response with the Commission Auditor. Commissioner Brosnan encouraged the staff to continue working with Mr. Jones and his staff to close-out these audits, and recommends that the Commission accept the report and response.

No questions were forthcoming.

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

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

Exhibit E is our Six Month Follow-Up Report on outstanding Internal Audits we have issued, and the status of the Department's actions to implement the recommendations.

Normally, this report would reflect the status of reports with open recommendations as of December 31, 2006. However, to reflect the on-going discussion and exchange of information on the Contract Services Division audit with the Department, this report reflects the status of the implementation of the recommendations as of March 19, 2007.

As is shown in the Follow-Up Status presented in the Report, three of the recommendations have been completed, four of the recommendations are nearly complete and have new anticipated completion dates of April 30, 2007, and the Department is working on the remaining report recommendations which now have revised anticipated completion dates of April 30, June 1, and June 30, 2007.

Mr. Jones recommended that the Commission accept this report and response, and then called on Commissioner Brosnan for her response.

Commissioner Brosnan stated that she has reviewed the report and the Follow-up Status as of March 19, 2007. She has also discussed the report extensively with Mr. Jones. Finally, because of the number of times we have now reviewed this report and the status of the Department's progress in regard to implementation of these recommendations, she has spent time discussion it with Director Steudle.

Considering the initial issuance of the Audit Report on Contract Services Division and three Follow-up Reports, this audit has now been before the Commission four times. I can not overemphasize the importance of strictly adhering to the new completion dates presented in this Follow-up and implementation of these recommendations.

As a State Transportation Commissioner and as the Audit Subcommittee Chair, Commissioner Brosnan believes that this Audit Report presents some real opportunities for MDOT to strengthen its Internal Control Structure, to help ensure that its processes and procedures are documented, and that those processes and procedures are delivering the results that they should be.

Further, the Commission is anxious to look closely to see that the in-depth analysis, documentation, and conclusions drawn by the Department in regard to the implementation of the recommendations in this report, do address the recommendations that were made. In the end we want to be assured that we have truly looked into our processes and procedures and have fairly evaluated whether or not there are opportunities for us to improve upon what we do.

Commissioner Brosnan recommended that the Commission accept the report and response.

Commissioner Atkinson asked Mr. Jones what happens if the Commission does not approve this report. The fact that it has previously come before the Commission, that the Department is working on these deadlines and the deadlines stretch out to some period of time, if it is approved today, does it take the impetus out of the need to meet those deadlines, or if we hold it over their head, do we get to those deadlines?

Mr. Jones answered no. The Department is working very closely with us. Significant

discussions have been held with Director Steudle, Mr. Frierson and his staff regarding this. They recognize the importance of getting this done. What they have done is give us a fair estimate of the remaining dates that are needed to make this work. No one in the Department, especially the Director, is happy that these dates have been moved out. When we establish dates, we work very closely to make sure the dates are do-able. This one is just a tough one to handle; it is still going to take us to those dates to finish it.

Chair Wahby interjected that if the dates are missed, the Department has the responsibility to provide a good explanation as to why they weren't met.

Chair Wahby entertained a motion. Motion was made by Commissioner Brosnan and supported by Commissioner Scalici to approve Exhibit E; **however there were not enough affirmative votes for this motion to pass.** This exhibit will be revisited at a future Commission meeting.

VI. PRESENTATIONS

Update on Material Indexing – John Friend

Mr. Friend updated the Commission on the Departments' search for information related to material indexing in preparation for the May workshop. This search is taking the following steps:

1) Gathering national perspective on use of material indexing (how many and which states use indexing; what materials are indexed; why do they use indexing; how can the information be presented in an unbiased manner): *FHWA has forwarded a recently completed national review on indexing and have agreed to present this information at the May workshop.*

2) Provide the Commission with historical MDOT use of material indexing (why did we historically use it; why did we stop; what is the administrative cost to implement indexing on an item): *MDOT is in the process of surveying a group of retired MDOT Executives. We are reviewing Commission minutes from 1985 to the present, however this is presenting some challenges for pre 1991 meeting minutes as they have been archived—but we are working on it. To date, not a lot of new information has been located. We will provide a summary which will be forwarded to the Commissioners in their April mailing.*

3) Continue the review of material price indexing with the Commission (what is the format; when would the issue be revisited): *MDOT continues to plan for the May workshop with potential agenda items being the national perspective, and the historical perspective and administrative costs involved to implement indexing. Since the Commission has already heard from MITA, APAM, MCPA, MAA, and MDOT, do they wish to hear from asphalt cement suppliers (Marathon, Bridge Petroleum (BP))?*

Information obtained during this search will be forwarded to the Commissioners in the April meeting packets so that they have the materials a full 30 days before the workshop.

Mr. Friend asked for questions.

Commissioner Atkinson thanked Mr. Friend for the work he has reported on.

Chair Wahby said that he looks forward to the information being sent.

VII. **PUBLIC COMMENTS**

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

No comments were forthcoming.

Chair Wahby asked if any Commissioner wanted to address the Commission.

Commissioner Atkinson stated that she would like to hear from the asphalt suppliers regarding indexing.

Chair Wahby stated that it would be a good idea to have them speak.

Commissioner Scalici asked if this was going to be for information purposes only; he didn't understand what they were going to tell us.

Mr. Friend proposed that, as representatives of suppliers, they may say that they will not take a position (will remain neutral); they will rely on their own individual members. Some individual asphalt suppliers will believe that indexing is the appropriate thing to do and has done it in a lot of other states; some will frankly think it is the wrong thing to do.

No other comments were forthcoming.

ADJOURNMENT

There being no further business to come before the Commission, Chair Wahby declared the meeting adjourned at 10:50 a.m.

The next full meeting of the Michigan State Transportation Commission will be held on April 26, 2007, in the 1st floor Bureau of Aeronautics Auditorium in Lansing, Michigan, beginning at the hour of 9:00 a.m.

Frank E. Kelley
Commission Advisor