

**TRANSPORTATION COMMISSION MEETING MINUTES  
JULY 23, 2015 – 9:30 A.M.  
BECKER-HANSEN BUILDING – 700 EAST BROADWAY  
PIERRE, SD**

**COMMISSIONERS PRESENT:** Donald Roby, Chairman  
Ralph Marquardt, Member (via conference call)  
Larry Thompson, Member  
Kathy Zander, Member  
Ron Rosenboom, Member  
Tim Dougherty, Member  
Rod Fouberg, Member  
Kyle White, Member (via conference call)

**COMMISSIONERS ABSENT:** Kim Vanneman, Member

**DOT STAFF PRESENT:** Darin Bergquist, Katie Thompson, Joel Jundt, Julie Bolding, Kristi Sandal, Jason Humphrey, Laurie Schultz, Greg Fuller, Kelly VanDeWiele, Mike Behm, Sam Weisgram, Brace Prouty, Christina Bennett, Doug Kinniburgh, Ryan Johnson, Kevin Goeden, Neil Schochenmaier, Karla Engle, and Patricia Saukel

**OTHERS PRESENT:** Mark Clausen – FHWA; Toby Crow – AGC; Captain John Broers – SD Department of Public Safety; Kelly and Patty Fortune – Interior City Council; Larry Engbrecht – SD ACPA; Rep. Mary Duvall – District 34; Stacy Revels – SDDA; David Ortbahn – LRC; Dick Howard – SDATAT; Wayne Gustafson – Heavy Constructors; Ed Carpenter – Costello, Porter, Hill, Heisterkamp, Bushnell & Carpenter, LLP; and Jesse Bruns – Reede Construction (via conference call)

The meeting was called to order at 9:31 a.m. by Chairman Don Roby. Roll call was taken and a quorum was determined.

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Chairman Roby asked for a motion to approve the minutes presented before the Commission.

A MOTION WAS MADE to approve the minutes from the June 25, 2015 regular meeting by Rosenboom and seconded by Fouberg. All voted aye and motion carried.

A MOTION WAS MADE to approve the minutes from the July 9, 2015 conference call meeting by Commissioner Thompson and seconded by Zander. All voted aye and motion carried.

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Darin Bergquist, Secretary of the Department of Transportation began the Secretary's Report with two items. Bergquist updated the Commission that Congress is moving very rapidly and changes are occurring on a day-to-day basis. The House earlier had passed an extension of MAP 21 which included around \$8B in funding through mid-December to keep the federal trust fund and highway federal fund going. Once the House passed that, the Senate has shown no indication to consider the extension. They are going ahead with their plans to pass a six year bill, which they call the Drive Act. This has been moving forward in a herky jerky fashion and was completed at 1,000 pages long. On Tuesday, it was distributed to members of the Senate. It is subject to extensive debate. They are using a procedure called cloture which limits debate on the motion to consider the bill. Bergquist said that overnight there were some behind the scenes negotiations and the motion passed. They now have 30 hours to debate the actual motion to proceed to the bill. This period of time will run and they will introduce a substitute version of the 1,000 page bill which will include an amendment to the bill that will cover a variety of non-transportation related items tagged on.

The DOT is happy with the bill as it stands providing around a 6% bump in federal funding. It is a six year bill which is funded the first three years. They will have to return to fund for the second three years. The House goes on recess next week and he believes that at some time the House and Senate will agree on a shorter extension until the six year bill becomes a law.

There were no questions from the Commission. The second item Bergquist presented was an idea that was presented in the last Commission meeting of a state-funded program. Bergquist said they will discuss it further at the August 27, 2015 meeting and Yankton County will be on the agenda. Department staff began working an outline on the criteria for the loan program keeping in mind Commissioner Dougherty's ideas for guidance from the June meeting. Bergquist reiterated that Chairman Roby had indicated at the last meeting his concern about creating another new loan program at the department. Bergquist said they tried to address both of those issues and he wanted to update the Commission on what was put together at this point. These are some of the criteria considerations that will be presented to the Commission in formal form next month:

- Only allow loans for projects under the grant program and a minimum of \$200,000.

- Only loans to class I cities or counties that get STP funding because they have the collateral of STP funding as a repayment. This would allow flexible proposed additional revenue stream to help support loan repayment.
- The state loans would only be done for projects that are not federal-aid eligible. The SIB should be the first source. This program would be the last resort.
- Interest on loans around 2% which would replace funds from the state highway fund if it were there.

Another requirement would be that the proposed project creates new jobs and that they would be committed to complete the project within two years, and what kind of planning went into determining the need for the project. Bergquist said they must personally appear before the Transportation Commission to explain the loan.

Chairman Roby asked what the Department's mission is. Bergquist said that it is not a broad program and will be used minimally. There are instances such as Yankton County where the opportunity for significant ag-related development that would have a regional impact for producers not available in that area. It has a need for infrastructure but is a type of road not eligible for STP funds. The Yankton County proposal is not a federal aid route so accessing a SIB loan is not an option. Bergquist said Toby Morris of Dougherty & Co. will speak in more detail next month.

Bergquist said the Department is working on logistics to be able to get the proposal on the Commission agenda for next month.

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Katie Thompson of the Office of Legal Counsel offered to the Commission the public hearing of Jackson County speed zone rule – 70:01:02:39. The proposal was to amend the speed zone rule on State Trunk Highway 44 beginning at its junction with State Trunk Highway 73, then southwesterly 7.7 miles, 55 miles per hour; then south 0.6 mile, 30 miles per hour; then west to the junction of State Trunk Highway 44 and State Trunk Highway 377, 55 miles per hour; then westerly 0.43 mile, 40 miles per hour, then westerly 0.2 mile, 55 miles per hour. On State Trunk Highway 377 beginning at the south Badlands National Park boundary, then south for 0.2 mile, 45 miles per hour; then southwesterly 1.03 miles, 55 miles per hour; then southwesterly to its junction with State Trunk Highway 44, 40 miles per hour. No written comments were received from the public. Kelly Fortune of the Interior City Council testified in person at the meeting in favor of lowering the speed limit because of the dangerous intersection of Hwy 44 and Hwy 377 and a lot of pedestrian traffic in the City of Interior.

A MOTION WAS MADE by Fouberg and seconded by Commissioner Thompson. Roll call was taken and all voted aye. Motion carried.

Katie Thompson offered to the Commission the public hearing of Campbell County speed zone rule – 70:01:02:16. The proposal was to amend the speed zone rule on State Trunk Highway 10 in Pollock beginning at the junction of State Trunk Highway 1804, then east for 0.13 mile, 20 miles per hour; then east for 0.26 mile, 30 miles per hour; then east for 0.25 mile, 45 miles per hour. No written comments or testimony was offered.

A MOTION WAS MADE by Rosenboom and seconded by Marquardt. Roll call was taken and all voted aye. Motion carried.

Katie Thompson offered to the Commission the public hearing of the new rule 70:03:01:113 and 70:03:01:114 – Extended period emergency permits. The proposal was to create the new rule to issue an extended period permit under the Governor's declaration of an emergency that allows movement on state trunk highways of a vehicle that consists of one or more units and exceeds the size limits set in SDCL chapter 32-33 and an extended period permit authorized under 70:03:01:113 for the movement of any state trunk highway of a fleet of oversize vehicles operated by a single carrier. The permit is assigned to the carrier.

Captain John Broers, Commander for the Motor Carrier Division of the South Dakota Highway Patrol, testified in favor of the new rule and explained that it was "necessary to facilitate relief of existing or potential disasters in the state." Some natural disasters have occurred in the state where relief needs to be provided to that affected area immediately as possible.

After discussion among Commission members regarding permit procedures and emergency declarations for understanding purposes, A MOTION WAS MADE to approve on rules 70:03:01:113 and 70:03:01:114 by Fouberg and seconded by Zander. After a bit more discussion, Roby, Dougherty, Fouberg, Rosenboom, Thompson, White, and Zander voted aye. Marquardt voted nay. Voting tallied as 7-1 through roll call for approval and motion carried.

RESOLUTION #2015-07.01 was adopted.

Katie Thompson then stated that the Department was requesting a public hearing date at the request of the Department of Transportation, Office of Local Government for new rules 70:12 – County Highway and Bridge Improvement Plan and 70:13 – Local Bridge Improvement Grant Fund.

A MOTION WAS MADE to set the public hearing at the next regular Commission meeting of August 27, 2015 at 9:30 a.m. in the Becker Hansen Building, Pierre, SD by

Rosenboom and seconded by Commissioner Thompson. A roll call vote was taken. All voted aye and motion carried.

RESOLUTION #2015-07.02 was adopted.

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Greg Fuller, Director of Operations presented the following Construction Change Orders to the Transportation Commission:

Construction change orders approved in June contain an increase of approximately \$459,403.

Over the past 12 months, the overall contract increase is 1.94%.

The following projects have a Construction Change Order (CCO) amounting to a contract change in excess of \$50,000.

#### **ABERDEEN REGION**

There are no CCOs amounting to a change of \$50,000 to report this period.

#### **MITCHELL REGION**

- I. Project: P 0019(36)73, Lake County, PCN 026D  
Location: SD 19 from Humboldt to Madison  
Contractor: McLaughlin & Schulz, Inc.  
Type of Work: Cold Milling Asphalt Concrete, Asphalt Concrete Surfacing, and Asphalt Concrete Resurfacing

Original Contract Amount:	\$	6,587,979.03
Change on CCO No. 1:	\$	60,696.92
Net Change to Date:	\$	60,696.92

Explanation of Change on CCO No. 1: This increase was the result additional asphalt for prime applied at the request of the area office. The prime was applied to the granular material on the shoulder to help bond the asphalt concrete overlay and to provide additional stability to the shoulder area adjacent to the driving lanes.

#### **PIERRE REGION**

There are no CCOs amounting to a change of \$50,000 to report this period.

## RAPID CITY REGION

There are no CCOs amounting to a change of \$50,000 to report this period.

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Joel Jundt, Division Director of Planning and Engineering, introduced to the Commission the following STIP revisions:

### **FOR COMMISSION APPROVAL**

**15-058** This revision will add a new 2015 project for repairing a slide area on Radar Hill Road north of Box Elder and south of 228<sup>th</sup> Street in Pennington County. The slide has been monitored but has now progressed to the point of impacting the shoulder.

FY 2015 Plus \$306,000

Jundt explained that in the revision, the description should note that Radar Hill Road is south of Box Elder and not north.

A MOTION WAS MADE to approve revision **#15-058** by Fouberg and seconded by Zander. Roll call was taken. All voted aye and motion carried.

Jundt explained to the Commission members a chart that was distributed during the meeting showing the progression of revision approval. The guidelines for the chart were approved by the Commission in 2008. Jundt suggested if the Commission recommended any revisions to the guidelines, that it could be added as an agenda item at a future Commission meeting.

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Secretary Bergquist addressed the Commission regarding a bid protest where the Department received a letter from attorney Edward C. Carpenter of Costello, Porter, Hill, Heisterkamp, Bushnell & Carpenter, LLP and from Wayne Gustafson, Treasurer of Heavy Constructors, Inc. The bid protest was in reference to Bids #1 and #2 of Pennington County, Silver Street project. Bergquist proceeded to handout copies of both letters to the Commissioners. Bergquist said there may be a number of individuals to testify on behalf of the bid protest.

Wayne Gustafson of Heavy Constructors appeared before the Commission to testify. Gustafson was requesting that the project, #1 IM1902 (61) 0 PCN 1162 I-190 Exit 1 in

Rapid City and #2 12 2053( ) PCN X03T Water Main and Sanitary Sewer combined bid be rejected from award. Gustafson cited four reasons for the request.

- a specification change to some of the reinforcing steel that was received at 12:45 p.m. MST the afternoon before the 10:00 a.m. letting;
- the original DOT estimate was approximately \$20M of which the amount was adjusted to increase to \$28.6M. The final low bid amount was \$34.3M, \$5.7M over the adjusted engineer's estimate;
- the prequalification process made them unable to enter into a joint venture in time for them to meet the deadline; and
- Heavy Constructors questions that the specified 30% of self-performance by the prime contractor could be met by the low bidder.

Gustafson took questions from various Commissioners regarding his bid protest. There was discussion among Commissioners and employees of the bid letting office.

Chairman Roby asked the representative from Reede Construction to identify himself (on the conference call) and go ahead with his comments. Jesse Bruns and Shawn Gross of Reede Construction testified on the conference call that they had no concerns on getting prices for Grade 60 or Grade 75 steel or on meeting their 30% as required for the specification.

Ed Carpenter, attorney for Gustafson, commented (on conference call) said that his position is that some of the procedures were not followed and that reasonable time was not met. He explained his letter to the Commissioners.

After discussion with DOT staff and Commissioners, Karla Engle, Chief Legal Counsel, stood before the Commission with her opinion.

A MOTION WAS MADE by Zander to reject the bid protest. Commissioner Thompson seconded the motion. A roll call vote was taken. Fouberg, Rosenboom, Thompson, White, Zander, and Roby voted aye. Dougherty voted nay. Marquardt (on conference call) appeared to have left the meeting and did not vote. Vote tallied 6-1 to reject the bid protest. Motion carried.

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Sam Weisgram of Project Development presented the following bid letting results from the June letting:

## July 15, 2015 Letting

### Interchange Replacement - Grading, PCCP & Str, Remove & Replace PCCP, AC Surfacing

1 1162 IM 1902(61)0 Pennington County  
Reede Construction, Inc. \$32,588,511.91  
I190 - Exit 1 in Rapid City (Silver Street) & from the Jct of US16/SD44 (Omaha Street) North 1.1 mile

### Water Main and Sanitary Sewer Improvements

2 X03T 12 2053( ) Pennington County  
Reede Construction, Inc. \$1,720,517.99  
I190 - Exit 1 in Rapid City (Silver Street) & from the Jct of US16/SD44 (Omaha Street) North 1.1 mile

### Scour Protection

3 022B P 0324(04)358 Brookings County  
K&L Construction \$1,749,494.10  
SD324 – 0.8 E of I29 Over Medary Creek; I29 Over N Deer Creek, 0.6 N of SD 30 Interchange Over a Creek 2.3 N of the Moody County Line. Over Medary Creek, & Over Six Mile Creek 1.1 N of the US14 Bypass

***DEFERRED BY THE TRANSPORTATION COMMISSION BY DEPARTMENT RECOMMENDATION***

A MOTION WAS MADE by Fouberg to approve Bid #1 and #2 and seconded by Zander. Roll call vote was taken. All voted aye and motion carried.

Bid #3 was deferred until the August 27, 2015 meeting due to ongoing coordination efforts.

## July 16, 2015 Aberdeen Region Letting

### Safe Routes to School

1 04NX P SRTS(39) Hamlin County  
Dakota Contracting Corporation \$276,779.19

A MOTION WAS MADE by Fouberg to approve Bid #1 and seconded by Zander. After brief discussion, a roll call vote was made. All voted aye and motion carried.

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Jundt added comments to the Commission members that four STP meetings were held throughout the state and that there was a webinar scheduled for 1:30 p.m. that day. Jundt encouraged everyone interested to participate.

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With no other business to come before the Commission, A MOTION WAS MADE by Thompson to adjourn the meeting and seconded by Rosenboom. The meeting was adjourned at 12:15 p.m.

Submitted by:

Patricia A. Saukel  
Recording Secretary

Approved by:

Darin P. Bergquist  
Secretary of Transportation