

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

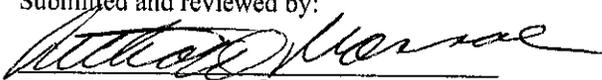
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §1.1, §1.2, and §1.5, relating to organization and responsibilities, and the public hearing process to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A, B, and C are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §1.1, §1.2, and §1.5 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

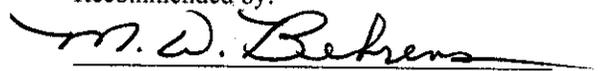
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



General Counsel

Recommended by:



Executive Director

110176 AUG 25 05

Minute
Number

Date
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §1.1, §1.2, and §1.5, concerning the Texas
4 Transportation Commission (commission), the Texas Department of
5 Transportation (department), and public hearings.

6
7 EXPLANATION OF PROPOSED AMENDMENTS

8 Transportation Code, §201.102, requires the commission to
9 develop and implement policies that clearly separate the policy-
10 making responsibilities of the commission and the management
11 responsibilities of the executive director and staff of the
12 department. Sections 1.1 and 1.2 were adopted to implement
13 §201.102.

14
15 Transportation Code, §201.802, requires the commission to
16 develop and implement policies that provide the public with a
17 reasonable opportunity to appear before the commission and speak
18 on any issue under the jurisdiction of the commission. Sections
19 1.3, 1.4, and 1.5 were adopted to implement §201.802.

20
21 Section 1.1(b) lists the duties of the commission. The section
22 is amended to add the regulation of the distribution and sale of
23 motor vehicles and for the protection of consumers who purchase
24 new motor vehicles. House Bill 2702, 79th Legislature, Regular
25 Session, 2005, abolished the Motor Vehicle Board and transferred

1 its rulemaking powers to the commission. Section 1.1(b) is also
2 amended to delete the provision concerning commission
3 authorization to charge a toll for the use of one or more lanes
4 on a segment of the state highway system for the purpose of
5 congestion mitigation. The statute granting this power was re-
6 codified and consolidated with the commission's other toll
7 powers so that this item no longer merits a separate listing.

8
9 Section 1.2(e) describes the duties of the Motor Vehicle Board.
10 This subsection is deleted due to the provisions of House Bill
11 2702 that abolish the board.

12
13 Section 1.5(a) lists the subjects of public hearings to be held
14 by the commission or its designee. The item describing public
15 input regarding the design and environmental impact of
16 transportation projects is revised to correct a cross-reference
17 to the department's environmental review and public involvement
18 rules. The item concerning converting a non-tolled highway to a
19 toll project is revised to reflect re-codification of the
20 department's toll statutes. The item concerning transferring a
21 state highway to various entities is deleted due to statutory
22 changes made by House Bill 2702.

23
24 FISCAL NOTE

25 James Bass, Chief Financial Officer, has determined that for

1 each of the first five years the amendments as proposed are in
2 effect, there will be no fiscal implications for state or local
3 governments as a result of enforcing or administering the
4 amendments. There are no anticipated economic costs for persons
5 required to comply with the sections as proposed.

6
7 Richard Monroe, General Counsel, Texas Department of
8 Transportation, has certified that there will be no significant
9 impact on local economies or overall employment as a result of
10 enforcing or administering the amendments.

11
12 PUBLIC BENEFIT

13 Mr. Monroe has also determined that for each year of the first
14 five years the sections are in effect, the public benefit
15 anticipated as a result of enforcing or administering the
16 amendments will be the availability to the public of information
17 describing the duties and responsibilities of the department and
18 the commission. There will be no adverse economic effect on
19 small businesses.

20
21 SUBMITTAL OF COMMENTS

22 Written comments on the proposed amendments may be submitted to
23 Richard Monroe, General Counsel, Texas Department of
24 Transportation, 125 East 11th Street, Austin, Texas 78701-2483.
25 The deadline for receipt of comments is 5:00 p.m. on October 10,

1 2005.

2

3 STATUTORY AUTHORITY

4 The amendments are proposed under Transportation Code, §201.101,
5 which provides the commission with the authority to establish
6 rules for the conduct of the work of the department.

7

8 CROSS REFERENCE TO STATUTE: Transportation Code, §201.102 and
9 §201.802.

1 SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

2 §1.1. Texas Transportation Commission.

3 (a) Commission.

4 (1) The Texas Department of Transportation is governed by
5 the Texas Transportation Commission, consisting of five
6 commissioners appointed by the governor with the advice and
7 consent of the senate.

8 (2) The governor designates one commissioner as the chair
9 of the commission.

10 (b) Commission responsibilities.

11 (1) The Texas Transportation Commission, with the advice
12 and recommendations of the executive director, will:

13 (A) plan and make policies for the location,
14 construction, and maintenance of a comprehensive system of state
15 highways and public roads;

16 (B) lay out, construct, maintain, and operate a modern
17 state highway system;

18 (C) develop a statewide transportation plan that
19 contains all modes of transportation, including highways and
20 turnpikes, aviation, mass transportation, railroads and high-
21 speed railroads, and water traffic;

22 (D) award contracts necessary for the improvement of
23 the state highway system, as provided by Transportation Code,

1 Chapter 223, and §§9.10-9.21 [~~§§9.10-9.20~~] of this title

2 (relating to Highway Improvement Contracts);

3 (E) encourage, foster, and assist in the development of
4 public and mass transportation in the state;

5 (F) encourage, foster, and assist in the development of
6 aeronautics in the state and encourage, aid, and assist in the
7 establishment of airports, airstrips, and air navigational
8 facilities in the state;

9 (G) fulfill the local sponsorship requirements of the
10 Gulf Intracoastal Waterway as agent for the state;

11 (H) provide for the registration and titling of
12 vehicles operating on the public roads;

13 (I) provide for the development and operation of toll
14 [~~turnpike~~] projects on the state highway system;

15 (J) approve a toll project constructed by a private
16 entity or corporation if the project connects to the state
17 highway system;

18 (K) approve the construction of a toll project by a
19 governmental or private entity other than a county with a
20 population of more than 1.5 million people, if it is to become a
21 part of the state highway system;

22 (L) appoint an internal auditor for the department who
23 shall report directly to the commission on the conduct of

1 departmental affairs;

2 (M) adopt rules for the operation of the department;

3 (N) divide the department into districts to accomplish
4 the department's functions and the duties assigned to it;

5 (O) provide for the regulation of motor carriers;

6 (P) carry out such transportation functions as may be
7 delegated by the governor pursuant to applicable federal law;

8 (Q) establish policy necessary to carry out the duties
9 and functions of the department and the commission;

10 (R) administer the state infrastructure bank;

11 (S) provide for the regulation of the distribution and
12 sale of motor vehicles and for the protection of consumers who
13 purchase new motor vehicles; [~~authorize the department to charge~~
14 ~~a toll for the use of one or more lanes on a segment of the~~
15 ~~state highway system for the purposes of congestion mitigation~~
16 +]

17 (T) organize the department into divisions to
18 accomplish the department's functions and duties assigned to it;

19 (U) approve recommendations for changes to the
20 department's organizational structure submitted by the chair of
21 the commission under subsection (d)(1)(F) of this section;

22 (V) plan and make policies for the location,
23 construction, maintenance, and operation of rail facilities;

1 (W) administer the Texas Mobility Fund as a revolving
2 fund to provide a method of financing the construction,
3 reconstruction, acquisition, and expansion of state highways,
4 and for the construction of other transportation projects;

5 (X) designate and provide for the development of a
6 statewide system of multi-modal transportation facilities known
7 as the Trans-Texas Corridor;

8 (Y) approve the creation of regional mobility
9 authorities;

10 (Z) consider ways in which the department's operations
11 may be improved and periodically report to the legislature
12 concerning potential statutory changes that would improve the
13 operation of the department; and

14 (AA) perform other duties required by law.

15 (2) The commission may, consistent with applicable law,
16 delegate one or more of the functions listed under paragraph (1)
17 of this subsection to the executive director. The executive
18 director may further delegate such functions to one or more
19 employees of the department.

20 (c) Attendance at meetings. Each commissioner shall:
21 attend at least half of the regularly scheduled meetings that
22 the commissioner is eligible to attend during a calendar year
23 unless the absence is excused by majority vote of the

1 commission.

2 (d) Chair of the commission.

3 (1) The chair of the commission, with the advice and
4 recommendations of the executive director and the executive
5 director's staff, shall:

6 (A) preside over commission meetings, make rulings on
7 motions and points of order, and determine the order of
8 business;

9 (B) represent the department in dealing with the
10 governor;

11 (C) report at least quarterly to the governor on the
12 state of affairs at the department;

13 (D) report suggestions made by the governor for
14 departmental operations to the commission;

15 (E) report to the governor on efforts to maximize the
16 efficiency of departmental operations through the use of private
17 enterprise;

18 (F) periodically review the department's organizational
19 structure and submit recommendations for structural changes to
20 the governor, the commission, and the Legislative Budget Board;

21 (G) designate one or more employees of the department
22 as a civil rights division of the department and receive regular
23 reports from the division on the department's efforts to comply

1 with civil rights legislation and administrative rules;

2 (H) create subcommittees, appoint commissioners to
3 subcommittees, and receive the reports of subcommittees to the
4 commission as a whole;

5 (I) appoint a commissioner to act in the chair's
6 absence;

7 (J) serve as the departmental liaison with the governor
8 and the Office of State-Federal Relations to maximize federal
9 funding for transportation;

10 (K) on behalf of the commission, report to the
11 governor, the lieutenant governor, the speaker of the house of
12 representatives, and the presiding officer of relevant
13 legislative committees on legislative recommendations adopted by
14 the commission and relating to the operation of the department;

15 (L) oversee the preparation of an agenda for each
16 commission meeting and ensure that a copy is provided to each
17 commissioner at least seven days before a regular meeting; and

18 (M) perform any other duties assigned by law.

19 (2) The chair may, consistent with applicable law,
20 delegate one or more of the functions listed under paragraph (1)
21 of this subsection to the executive director, who in turn may
22 further delegate such functions to one or more employees of the
23 department.

1 (3) The chair or a commissioner designated by the chair
2 shall serve as a member of the Coastal Coordination Council.

3

4 §1.2. Texas Department of Transportation.

5 (a) Executive director.

6 (1) The commission will elect an executive director for
7 the department who shall be a registered professional engineer
8 in the State of Texas experienced and skilled in transportation
9 planning, development, construction, and maintenance. The
10 executive director, as the chief executive officer of the
11 department, is authorized to administer the day-to-day
12 operations of the department. The executive director may hold
13 that position until removed by the commission.

14 (2) To assist in discharging the duties and
15 responsibilities of the executive director, the executive
16 director may organize, appoint, and retain such administrative
17 staff as he or she deems appropriate.

18 (3) The executive director shall:

19 (A) serve the commission in an advisory capacity,
20 without vote;

21 (B) submit quarterly, annually, and biennially to the
22 commission detailed reports of the progress of public road
23 construction, public and mass transportation development, and

1 detailed statement of expenditures;

2 (C) hire, promote, assign, re-assign, transfer, and,
3 consistent with applicable law and policy, terminate staff
4 necessary to accomplish the roles and missions of the
5 department;

6 (D) notify the chair of grounds for removal of a
7 commissioner if the executive director knows that a potential
8 ground for removal exists, or, if the potential ground for
9 removal relates to the chair, notify another commissioner;

10 (E) under the direction and with the approval of the
11 commission, prepare a comprehensive plan providing a system of
12 state highways; and

13 (F) perform other responsibilities as required by law
14 or assigned by the commission.

15 (4) The executive director may, consistent with
16 applicable law, delegate one or more of the functions listed
17 under paragraph (3)(B)-(F) of this subsection to the staff of
18 the department.

19 (b) Department staff. The staff of the Texas Department of
20 Transportation, under the direction of the executive director,
21 is responsible for:

22 (1) implementing the policies and programs of the
23 commission by:

1 (A) formulating and applying operating procedures; and

2 (B) prescribing such other operating policies and
3 procedures as may be consistent with and in furtherance of the
4 roles and missions of the department;

5 (2) providing the chair and commissioners administrative
6 support necessary to perform their respective duties and
7 responsibilities, including:

8 (A) assigning staff to assist commissioners;

9 (B) providing necessary office space and equipment;

10 (C) furnishing in-house legal counsel;

11 (D) providing all information and documents necessary
12 for the commission to effectively perform its responsibilities;
13 and

14 (E) preparing an agenda under the direction of the
15 chair, providing notice, and transcribing commission meetings
16 and hearings as required by the Texas Open Meetings Act,
17 Government Code, Chapter 551; and

18 (3) performing all other duties as prescribed by law or
19 as assigned by the commission.

20 (c) Divisions. Consistent with commission direction
21 provided under §1.1(b)(1)(T) and (U) of this subchapter, the
22 executive director shall organize the department into
23 headquarters operating divisions and offices reflecting the

1 various functions and duties assigned to the department, and
2 shall designate a division or office director who shall
3 administer each division or office.

4 (d) Districts.

5 (1) District office. The department is divided into
6 geographical districts, each containing one district office.
7 Each district is administered by a district engineer who is a
8 registered professional engineer and is appointed by the
9 executive director.

10 (2) Area office. A district contains one or more area
11 offices, each of which is responsible for carrying out the
12 department's primary functions at the local level for a
13 designated geographical area. Each area office is normally
14 administered by an area engineer who shall be a registered
15 professional engineer.

16 (3) Project office. A district may contain one or more
17 project offices, which is normally responsible for a specific
18 project within an area.

19 ~~[(c) Motor Vehicle Board. The Motor Vehicle Board of the~~
20 ~~Texas Department of Transportation (board) is an independent~~
21 ~~board within the department. The board has broad powers~~
22 ~~relating to the regulation of motor vehicle dealers,~~
23 ~~manufacturers, and others. The board's staff is the~~

1 ~~department's Motor Vehicle Division. The executive director~~
2 ~~will, through the offices of the department, provide equipment,~~
3 ~~facilities, property, and services necessary to carry out the~~
4 ~~division's purposes, powers, and duties. The executive director~~
5 ~~will allocate department resources as the executive director~~
6 ~~determines necessary and appropriate to meet the needs of the~~
7 ~~division and the other offices of the department.]~~

8 (e) [~~(f)~~] Automobile Theft Prevention Authority. The
9 Automobile Theft Prevention Authority (authority) is an
10 independent authority within the department. The authority
11 undertakes a variety of programs designed to reduce thefts of
12 motor vehicles. The authority's staff is included within the
13 department's Vehicle Titles and Registration Division.

1 SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

2 §1.5. Public Hearings.

3 (a) Subject of hearings. The commission may hold public
4 hearings to:

5 (1) consider the adoption of rules, in accordance with
6 the Administrative Procedure Act, Government Code, Chapter 2001;

7 (2) receive evidence and testimony concerning the
8 desirability of acquiring dredge material disposal sites and of
9 any widening, relocation, or alteration of the main channel of
10 the Gulf Intracoastal Waterway, in accordance with

11 Transportation Code, Chapter 51;

12 (3) provide for public input regarding the design,
13 schematic layout, and environmental impact of transportation
14 projects, in accordance with Transportation Code, §203.021, and
15 §2.42 of this title (relating to Federal-Aid Transportation
16 Projects [~~Highway Construction Projects Federal Aid~~]) and §2.43
17 of this title (relating to Non Federal-Aid Transportation
18 Projects [~~Highway Construction Projects State Funds~~]);

19 (4) consider maximum prima facie speed limits on highways
20 in the state highway system that are near public or private
21 elementary or secondary schools or institutions of higher
22 education, in accordance with Transportation Code, §545.357;

23 (5) annually receive public input on the commission's

1 highway project selection process and the relative importance of
2 the various criteria on which the commission bases its project
3 selection decisions, in accordance with Transportation Code,
4 §201.602;

5 (6) receive comments from interested persons prior to
6 converting a segment of the non-tolled state highway system to a
7 toll project [~~facility of the department~~] under Transportation
8 Code, §228.203 [~~§362.0041~~];

9 (7) receive comments from interested parties prior to
10 approving any financial assistance under Transportation Code,
11 §21.111, relating to aviation facilities development; and

12 [~~(8) receive comments from interested parties prior to~~
13 ~~transferring a state highway to a regional mobility authority,~~
14 ~~regional tollway authority, or a county operating under~~
15 ~~Transportation Code, Chapter 284; and]~~

16 (8) [~~(9)~~] provide, when deemed appropriate by the
17 commission or when otherwise required by law, for public input
18 regarding any other issue under the jurisdiction of the
19 commission.

20 (b) Authorized representative. The executive director or
21 an employee of the department designated by the executive
22 director may conduct public hearings held under subsection
23 (a) (1), (3), (7), and (8) [~~(9)~~] of this section.

1 (c) Conduct and decorum. Public hearings will be conducted
2 in a manner that maximizes public access and input while
3 maintaining proper decorum and orderliness, and will be governed
4 by the following guidelines.

5 (1) Questioning of those making presentations will be
6 reserved to commissioners, the executive director, or, if
7 applicable, the presiding officer.

8 (2) Organizations, associations, or groups are encouraged
9 to present their commonly held views and same or similar
10 comments through a representative member where possible.

11 (3) Presentations shall remain pertinent to the issue
12 being discussed.

13 (4) A person who disrupts a public hearing must leave the
14 hearing room if ordered to do so by the chair or the presiding
15 officer.

16 (5) Time allotted to one speaker may not be reassigned to
17 another speaker.

18 (d) Disability accommodation. Persons with disabilities
19 who have special communication or accommodation needs and who
20 plan to attend a hearing to be held by the commission may
21 contact the office of the secretary to the commission in Austin.
22 In the case of a hearing to be conducted by the department,
23 those persons may contact the public affairs officer whose

1 address and telephone number appear in the public notice for
2 that hearing. Requests should be made at least two days before
3 the hearing. The department will make every reasonable effort
4 to accommodate these needs.

5 (e) Language accommodation. For a hearing held in an area
6 with a substantial Spanish speaking population, the department
7 will provide:

8 (1) notice of the hearing in both English and Spanish;

9 and

10 (2) upon request, Spanish translation.