

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

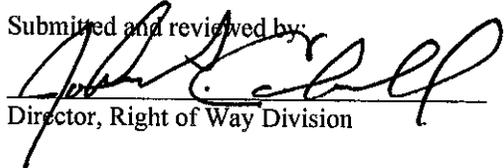
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §21.16, relating to use of options to purchase for advance acquisition of real property, to be codified under Title 43, Texas Administrative Code, Part 1.

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

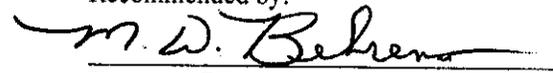
IT IS THEREFORE ORDERED by the commission that the amendments to §21.16 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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:

  
Director, Right of Way Division

Recommended by:

  
Executive Director

**110224 SEP 29 05**

Minute  
Number

Date  
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes an  
3 amendment to §21.16, concerning use of options to purchase for  
4 advance acquisition of real property.

5

6 EXPLANATION OF PROPOSED AMENDMENT

7 Transportation Code, Chapter 202, Subchapter F, and Chapter 227,  
8 Subchapter D, authorize the Texas Transportation Commission  
9 (commission) to purchase options to acquire property for  
10 possible use in or in connection with any transportation  
11 facility, including, but not limited to, the Trans-Texas  
12 Corridor. Transportation Code, §202.112, was amended by House  
13 Bill 2702, 79<sup>th</sup> Legislative Session, Regular Session, 2005. The  
14 commission is amending this rule to be consistent with that  
15 legislation.

16

17 The proposed amendment to §21.16 will change the maximum length  
18 of the primary option period, as well as each subsequent  
19 extension, from 7 to 5 years. Each renewal period will be by  
20 agreement of the original grantor of the option or the grantor's  
21 heirs or assigns.

22

23 FISCAL NOTE

24 James Bass, Chief Financial Officer, has determined that for  
25 each of the first five years the amendment as proposed are in

1 effect, there will be no fiscal implications for state or local  
2 governments as a result of enforcing or administering the  
3 amendment. There are no anticipated economic costs for persons  
4 required to comply with the section as proposed.

5  
6 John P. Campbell, P.E., Director, Right of Way Division, has  
7 certified that there will be no significant impact on local  
8 economies or overall employment as a result of enforcing or  
9 administering the amendment.

10

11 PUBLIC BENEFIT

12 Mr. Campbell has also determined that for each year of the first  
13 five years the section is in effect, the public benefit  
14 anticipated as a result of enforcing or administering the  
15 amendment will be to further the department's mission to provide  
16 an efficient, timely, cost effective and fair process of  
17 acquiring real property needed for development of transportation  
18 facilities. There will be no adverse economic effect on small  
19 businesses.

20

21 SUBMITTAL OF COMMENTS

22 Written comments on the proposed amendment may be submitted to  
23 John P. Campbell, P.E., Director, Right of Way Division, Texas  
24 Department of Transportation, 125 East 11th Street, Austin,  
25 Texas 78701-2483. The deadline for receipt of comments is 5:00

1 p.m. on November 14, 2005.

2

3 STATUTORY AUTHORITY

4 The amendment is 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

9 Transportation Code, §202.112.

1                   SUBCHAPTER A. LAND ACQUISITION PROCEDURES

2 §21.16. Use of Options To Purchase for Advance Acquisition of  
3 Real Property.

4           (a) The department may execute an option contract for the  
5 acquisition of right of way and control of development rights if  
6 the Texas Transportation Commission has authorized the  
7 expenditure of option fees for a transportation facility project  
8 or corridor and the district engineer determines that:

9           (1) the property to be optioned is or may possibly be  
10 used in or in connection with the transportation facility;

11           (2) the size and location of the property to be optioned  
12 is reasonably related to the possible future design and  
13 alignment of the transportation facility; and

14           (3) the terms of the option contract may be economically  
15 beneficial to the department by:

16           (A) establishing the purchase price at current market  
17 value as of the date of the option contract;

18           (B) establishing a methodology for determining a  
19 purchase price at the time the option is exercised to avoid the  
20 necessity for condemnation;

21           (C) restricting development or improvements that would  
22 substantially increase the purchase price; or

23           (D) reducing the time required for the acquisition of

1 the property.

2 (b) An option contract shall be for a primary period of not  
3 more than 5 [~~7~~] years, but may be subject to one or more  
4 extensions beyond the primary term, each extension period not to  
5 exceed 5 years.

6 (c) An option fee to be paid to the property owner may be:

7 (1) a one-time fee paid at the time the option contract  
8 is executed;

9 (2) in the form of periodic payments; or

10 (3) a combination of paragraphs (1) and (2) of this  
11 subsection.