

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

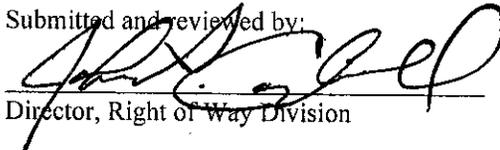
The Texas Transportation Commission (commission) finds it necessary to adopt new §21.23, relating to state participation in toll-related relocations, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new section, 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.

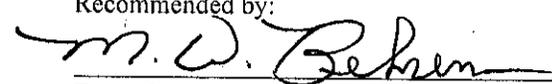
IT IS THEREFORE ORDERED by the commission that new §21.23 is adopted and is authorized for filing with the Office of the Secretary of State.

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

110507 APR 27 06

Minute Number Date Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts new
3 §21.23 concerning state participation for utility adjustments,
4 relocations, or removals made on toll-related facilities. New
5 §21.23 is adopted without changes to the proposed text as
6 published in the February 10, 2006 issue of the *Texas Register*
7 (31 TexReg 839) and will not be republished.

8

9 EXPLANATION OF ADOPTED NEW SECTION

10 House Bill 2702, 79th Legislature, Regular Session, 2005,
11 amended Transportation Code, §203.092. The amendments to
12 Transportation Code, §203.092, require the department and
13 utilities to share equally the costs of utility adjustments,
14 relocations, or removals made prior to September 1, 2007 on
15 toll-related state highway improvements.

16

17 The new section is necessary to implement this legislation and
18 to establish procedures concerning reimbursement of public
19 utilities for facility adjustments, relocations, or removals
20 undertaken on toll-related facilities.

21

22 In order to ensure that eligible costs are properly incurred and
23 tracked, new §21.23 requires a utility that is relocating
24 facilities on a toll-related facility to enter into an agreement
25 with the department or, under certain circumstances, a
26 department contractor, prior to commencing work. Eligibility to

1 enter an agreement is determined by the department or its
2 contractor based on the existence of a conflict between a
3 utility's facility and the proposed toll facility. If a dispute
4 arises as to a utility's eligibility, a utility may appeal to
5 the Director of the Right of Way Division. The section also
6 establishes eligible relocation costs in accordance with
7 Transportation Code, §203.092(d). To be consistent with the
8 September 1, 2007 expiration of the reimbursement authorization
9 in Transportation Code, §203.092, §21.23, paragraph (2) of
10 subsection (d), limits reimbursement eligibility to those costs
11 actually incurred prior to September 1, 2007.

12

13 COMMENTS

14 No comments on the proposed new section were received.

15

16 STATUTORY AUTHORITY

17 The new section is adopted under Transportation Code, §201.101,
18 which provides the Texas Transportation Commission (commission)
19 with the authority to establish rules for the conduct of the
20 work of the department, and more specifically, Transportation
21 Code, Chapter 203, which authorizes the commission to construct
22 a modern state highway system.

23

24 CROSS REFERENCE TO STATUTE

25 Transportation Code, §203.092.

1 SUBCHAPTER B. UTILITY ADJUSTMENT, RELOCATION, OR REMOVAL

2 §21.23. State Participation in Toll-Related Relocations.

3 (a) This section applies to the relocation of utility
4 facilities made necessary by:

5 (1) an improvement of a nontolled state highway facility
6 to add one or more tolled lanes;

7 (2) an improvement of a nontolled state highway that has
8 been converted to a toll project on the state highway system; or

9 (3) the construction on a new location of a toll project
10 on the state highway system or the expansion of such a toll
11 project.

12 (b) As a condition for reimbursement under this section:

13 (1) the Texas Transportation Commission must designate
14 the highway facility to be constructed or improved as a toll
15 project; and

16 (2) the utility owner must enter into an agreement
17 concerning the terms of the relocation under subsection (c) of
18 this section.

19 (c) Agreement.

20 (1) The utility owner, prior to incurring relocation
21 costs, shall enter into an agreement concerning the terms of the
22 relocation with the department, or with a department contractor
23 under a comprehensive development agreement whose scope of work

1 includes responsibility for utility relocations made necessary
2 by the project.

3 (2) Execution of an agreement shall be based on a
4 determination by the department, or a department contractor if
5 authorized under a comprehensive development agreement, that a
6 conflict exists between a proposed project and a utility
7 facility.

8 (3) If a dispute arises concerning the existence of a
9 conflict, the Right of Way Director may authorize the execution
10 of a toll road utility agreement based on evidence presented by
11 the affected utility.

12 (d) Eligible relocation costs.

13 (1) Eligible relocation costs include necessary material
14 acquisition, engineering and planning costs, and the physical
15 installation of materials.

16 (2) The department will reimburse 50% of eligible
17 relocation costs that are actually incurred prior to September
18 1, 2007. Relocation costs incurred on or after September 1,
19 2007 will not be reimbursed.