

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

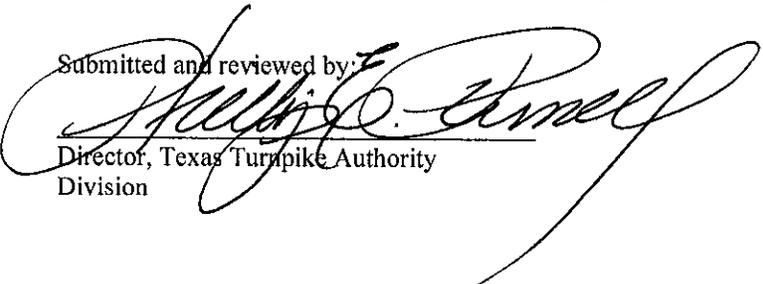
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §5.44, relating to the payment of fees for department goods and services, and amendments to §27.80 and new §27.82 and §27.83, relating to the operation of department turnpike projects, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and the adopted amendments and new sections, attached to this minute order as Exhibits A - D, 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 §5.44 and §27.80 and new §27.82 and §27.83 are adopted and are 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, Texas Turnpike Authority
Division

Recommended by:


Executive Director

110430 FEB 23 06

Minute
Number

Date
Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts
3 amendments to §5.44, concerning exceptions to the payment of
4 fees for department goods and services. The amendments to §5.44
5 are adopted without changes to the proposed text as published in
6 the December 30, 2005 issue of the *Texas Register* (30 TexReg
7 8836) and will not be republished.

8

9 EXPLANATION OF ADOPTED AMENDMENTS

10 Transportation Code, §201.208 authorizes the Texas
11 Transportation Commission (commission) to adopt rules regarding
12 the method of payment of a fee for any goods sold or services
13 provided by the department or for the administration of any
14 department program. Pursuant to that authority, the commission
15 has adopted §§5.41-5.44 to include a minimum and maximum amount
16 that could be charged using a credit card, as well as a
17 requirement that a person paying a fee by credit card also pay a
18 \$1.00 convenience fee.

19

20 New §27.82, adopted as part of this rulemaking, authorizes the
21 department to adopt policies relating to toll collection and
22 enforcement and the operation of customer service centers that,
23 among other provisions, will authorize all fees imposed under

1 that section to be paid by credit card, debit card not requiring
2 the entry of a personal identification number (PIN), money
3 order, personal or cashier's check, or cash. New \$27.82
4 authorizes the commission to establish toll rates for the use of
5 a toll project, and authorizes the department to charge fees to
6 customers for purposes of establishing and administering
7 electronic toll collection customer accounts.

8
9 New \$27.82 does not include a minimum or maximum charge amount
10 or require the payment of a convenience fee for a credit card
11 payment. The toll rates and customer account fees will be
12 publicized to potential customers through various methods, and
13 will be considered when a motorist is determining whether to use
14 a toll project, and by the public when determining whether to
15 establish a customer account. Charging an additional fee to
16 customers that will increase the publicized fees for the use of
17 a toll project, or requiring a minimum or maximum charge amount,
18 may result in an adverse impact on toll related sales and
19 revenues and the number of persons using the toll project,
20 thereby resulting in a higher than anticipated level of
21 congestion on nontoll facilities.

22
23 Section 5.44 is amended to specify that the requirements of

1 Chapter 5, Subchapter D. (§§5.41-5.44) do not apply to the
2 payment of tolls and customer account fees under §27.82 of this
3 title (relating to Toll Operations).

4

5 COMMENTS

6 No comments on the proposed amendments were received.

7

8 STATUTORY AUTHORITY

9 The amendments are adopted under Transportation Code, §201.101,
10 which provides the commission with the authority to establish
11 rules for the conduct of the work of the department, and more
12 specifically, Transportation Code, §201.208, which authorizes
13 the commission to adopt rules regarding the method of payment of
14 a fee for any goods sold or services provided by the department.

15

16 CROSS REFERENCE TO STATUTE

17 Transportation Code, §201.208.

1 SUBCHAPTER D. PAYMENT OF FEES FOR DEPARTMENT

2 GOODS AND SERVICES

3 §5.44. Exceptions. This subchapter does not apply to the
4 payment of:

5 (1) motor carrier registration fees under \$18.15 of this
6 title (relating to Payment of Fees);

7 (2) motor transportation broker fees under \$18.42 of this
8 title (relating to Fees);

9 (3) oversize and overweight permit fees under \$28.11 of
10 this title (relating to General Oversize/Overweight Permit
11 [~~Issuance~~] Requirements and Procedures);

12 (4) fees required for Internet motor vehicle registration
13 under Chapter 17 of this title (relating to Vehicle Titles and
14 Registration); [~~and~~]

15 (5) fees for products sold through *Texas Highways* under
16 \$23.27 of this title (relating to Magazine Ancillary Products);
17 and

18 (6) tolls and customer account fees under \$27.82 of this
19 title (relating to Toll Operations).

1 electronic toll collection customer accounts.

2

3 Section 27.80 is amended to define terms used in new §27.82 and
4 §27.83, including comprehensive development agreement,
5 operational concession, and tag.

6

7 In order to implement the authority granted in Transportation
8 Code, Chapter 228, Subchapter B, new §27.82, authorizes the
9 department to adopt policies relating to toll collection and
10 enforcement and the operation of customer service centers. New
11 §27.82 prescribes criteria to be considered by the department in
12 adopting those policies that are intended to facilitate mobility
13 on department facilities, the auditing of customer service
14 center operations, and the marketing of toll projects, as well
15 as providing a high level of customer service. Transportation
16 Code, Chapter 228, Subchapter B, prescribes the process that may
17 be used by the department to enforce toll collections, including
18 issuing notices of nonpayment and assessing administrative fees,
19 and contracting with a private person or entity to collect the
20 unpaid toll and administrative fee before referring the matter
21 to a court with jurisdiction over the offense. Accordingly, new
22 §27.82 provides that toll collection and enforcement policies
23 adopted by the department are not subject to the requirements of

1 \$5.10 (relating to Collection of Debts).
2
3 New §27.82 also prescribes the amount of fees charged to
4 customers for purposes of establishing and administering
5 electronic toll collection customer accounts, and for enforcing
6 the collection of unpaid tolls. Those amounts have been set to
7 allow the department to recover its costs. New §27.82
8 authorizes the department to temporarily waive tag fees for the
9 purposes of introducing motorists to toll projects and
10 attracting new customers. New §27.82 also prescribes criteria
11 for the setting of toll rates by the commission and conditions
12 for authorizing a private entity to set toll rates and establish
13 administrative fees under an agreement with the department to
14 operate a toll project. New §27.82 authorizes the department to
15 suspend the imposition of an administrative fee if a violator
16 agrees to open a funded account and to maintain that account in
17 good standing, and to waive the fee if the account is maintained
18 in good standing for the period of time determined by the
19 department. In order to ensure sufficient department oversight
20 over the setting of toll rates and fees, the private entity is
21 required to submit to the department for approval its
22 methodology for setting and increasing toll rates and
23 establishing administrative fees.

1
2 In order to implement the authority granted in Transportation
3 Code, §228.052, new §27.83 prescribes requirements for
4 soliciting proposals to operate a department toll project or
5 system. Transportation Code, §227.083, differentiates between
6 operating agreements under which the private entity operates a
7 toll project for a fee, and an operational concession under
8 which the private entity purchases the right to conduct a
9 business involving a toll project for a specified number of
10 years in return for a fee paid to the department and the
11 assumption of operation and maintenance responsibilities. An
12 operational concession must be procured using a two step
13 procurement process in which proposals are first evaluated to
14 determine a short list of the most qualified and experienced
15 proposers, with detailed proposals then requested from the
16 shortlisted proposers. Other types of operating agreements may
17 be procured using a one step procurement process that requests
18 detailed proposals.

19
20 New §27.83 prescribes requirements for a procurement, including
21 the contents of a request for qualifications or request for
22 proposals, evaluation criteria to be used during the evaluation
23 of a request for qualifications or request for proposals, and

1 conditions to negotiations with the apparent best value proposer
2 and award of a contract.

3

4 COMMENTS

5 No comments on the proposed amendments and new sections were
6 received.

7

8 STATUTORY AUTHORITY

9 The amendments and new sections are adopted under Transportation
10 Code, §201.101, which provides the commission with the authority
11 to establish rules for the conduct of the work of the
12 department.

13

14 CROSS REFERENCE TO STATUTE

15 Transportation Code, Chapter 228, Subchapter B.

1 SUBCHAPTER G. OPERATION OF DEPARTMENT TOLL [~~TURNPIKE~~] PROJECTS

2 §27.80. Definitions. The following words and terms, when used
3 in this subchapter, shall have the following meanings, unless
4 the context clearly indicates otherwise.

5 (1) Commission--The Texas Transportation Commission.

6 (2) Comprehensive development agreement--An agreement as
7 defined in §27.2 of this chapter (relating to Definitions).

8 (3) Department--The Texas Department of Transportation.

9 (4) [~~3~~] Military vehicle--A vehicle owned by a branch
10 of the armed forces of the United States or national or state
11 guard of the United States, properly marked according to the
12 rules of the owning military branch, and not registered with a
13 state motor vehicle registry to an individual, corporation, or
14 entity other than the owning military branch or organization.

15 (5) Operational concession--An agreement under which a
16 private operator purchases a right to conduct a business
17 involving a toll project for a specified number of years in
18 return for a fee paid to the department and the assumption of
19 operation and maintenance responsibilities.

20 (6) Tag--A transponder placed on or within a vehicle that
21 is capable of transmitting information used to assess or collect
22 tolls.

23 (7) [~~4~~] Toll [~~Turnpike~~] project--A project of the Texas

1 Department of Transportation as defined by Transportation Code,
2 §201.001 [~~Chapter 361~~].

3

4 §27.82. Toll Operations.

5 (a) Toll policies. The department shall adopt policies
6 relating to toll collection and enforcement and the operation of
7 customer service centers. The policies will authorize all fees
8 imposed under this section to be paid by credit card, debit card
9 not requiring the entry of a personal identification number
10 (PIN), money order, personal or cashier's check, or cash. In
11 adopting those policies, the department shall consider:

12 (1) whether those policies will provide ease of use by
13 travelers and maximize mobility on toll projects;

14 (2) whether those policies will provide a high level of
15 customer service;

16 (3) the requirements of project bond covenants;

17 (4) cost of operations;

18 (5) whether those policies will facilitate the auditing
19 of customer service center operations and the marketing of toll
20 projects; and

21 (6) whether those policies will maximize the preservation
22 of revenue streams.

23 (b) Exception. Toll collection and enforcement policies

1 adopted by the department are not subject to the requirements of
2 \$5.10 of this title (relating to Collection of Debts).

3 (c) Customer account fees. The department may charge fees
4 to customers for purposes of establishing and administering
5 electronic toll collection customer accounts. Fees will be
6 reviewed by the commission annually and adjusted if necessary.
7 Tag fees may be temporarily waived by the department for the
8 purposes of introducing motorists to toll projects and
9 attracting new customers. Customer account fees may be charged
10 by the department in the following amounts:

- 11 (1) one standard tag: \$9.65;
12 (2) specialty tag: \$20 refundable deposit;
13 (3) mailed or faxed account statement: \$1 for each 5
14 pages or any number of pages less than 5;
15 (4) email or web account statement: no charge; and
16 (5) check returned for insufficient funds: \$25.

17 (d) Toll rates. Except as provided in subsection (f) of
18 this section, the commission by minute order will establish toll
19 rates for the use of a toll project. In setting toll rates, the
20 commission will consider:

- 21 (1) the results of traffic and revenue studies and any
22 schedule of toll rates established in a traffic and revenue
23 report;

1 (2) the requirements of project bond covenants; and

2 (3) vehicle classifications, type and location of the

3 facility, and similar criteria that apply to a specific project.

4 (e) Administrative fees. Except as provided in subsection

5 (f) of this section, the commission by minute order will

6 establish administrative fees charged to owners and lessees of

7 vehicles that use a toll project without paying the proper toll.

8 The total of all administrative fees charged for each

9 uncollected toll may not exceed \$100. Administrative fees may

10 be suspended by the department if a violator agrees to open a

11 funded account and to maintain that account in good standing,

12 and may be waived if the account is maintained in good standing

13 for the period of time determined by the department. In

14 establishing an administrative fee, the commission will consider

15 the estimated cost to the department to collect unpaid tolls on

16 toll projects, which will be determined by:

17 (1) the existing or estimated violation rate on toll

18 projects; and

19 (2) the estimated number of violations that the

20 department will collect.

21 (f) Operating agreements. The commission may authorize a

22 private entity under contract to operate a department toll

23 project to set toll rates for the use of the toll project and to

1 establish an administrative fee charged to owners of vehicles
2 that use the toll project without paying the proper toll, if:

3 (1) the private entity is required under the contract to
4 submit to the department for approval:

5 (A) the methodology for:

6 (i) the setting of tolls;

7 (ii) increasing the amount of the tolls; and

8 (iii) the setting of an administrative fee to be
9 imposed to recover the cost of collecting an unpaid toll; and

10 (B) any proposed change in an approved methodology for
11 the setting of a toll or an administrative fee;

12 (2) the private entity will operate the toll project
13 under a comprehensive development agreement or under a contract
14 resulting from a procurement under §27.83 of this chapter
15 (relating to Contracts to Operate Department Toll Projects) that
16 provides an operational concession to the private entity; and

17 (3) the commission approves the award of the contract to
18 the private entity.

19
20 §27.83. Contracts to Operate Department Toll Projects.

21 (a) Purpose. Transportation Code, §228.052 authorizes the
22 department to enter into an agreement with one or more persons
23 to provide, on terms approved by the department, personnel,

1 equipment, systems, facilities, and services necessary to
2 operate a toll project or system. This section prescribes
3 requirements for soliciting proposals to operate a department
4 toll project or system.

5 (b) Procurement process. A contract that provides an
6 operational concession to the private entity shall be procured
7 using the two-step procurement process set out in subsections
8 (c)-(i) of this section. Any other contract to operate a
9 department toll project may be procured using a one-step process
10 as prescribed by subsections (e)-(i) of this section.

11 (c) Request for qualifications. The department will set
12 forth the basic criteria for professional experience, technical
13 competence, and other information the department considers
14 relevant or necessary in a request for qualifications, and will
15 publish it, at a minimum, in the *Texas Register* and in one or
16 more newspapers of general circulation in this state. The
17 department may elect to furnish fundamental details or technical
18 studies and reports relating to the toll project in the request
19 for qualifications.

20 (d) Request for qualifications - evaluation. The
21 department, after evaluating the submissions received in
22 response to a request for qualifications, will identify those
23 entities that will be considered qualified to submit detailed

1 proposals for the toll project. In evaluating the submissions,
2 the department will consider qualities that the department
3 considers relevant to the project, which may include the private
4 entity's financial condition, management stability, technical
5 capability, experience, staffing, and organizational structure.
6 The request for qualifications will include the criteria used to
7 evaluate the submissions and the relative weight given to the
8 criteria. The department will advise each entity providing a
9 submission whether or not it is on the "short-list" of qualified
10 entities.

11 (e) Request for proposals. The department will issue a
12 request for proposals consisting of the submission of detailed
13 documentation regarding the project. The request for proposals
14 may require the submission of additional information relating
15 to:

16 (1) the proposer's qualifications and demonstrated
17 technical competence;

18 (2) the feasibility of operating the toll project as
19 proposed;

20 (3) the proposer's ability to meet schedules;

21 (4) a detailed financial plan, if applicable, including
22 costing methodology, cost proposals, and project financing
23 approach; or

1 (5) any other information the department considers
2 relevant or necessary.

3 (f) Detailed proposal evaluation criteria. The proposals
4 will be evaluated by the department based on those evaluation
5 criteria the department deems appropriate for the toll project,
6 which may include the reasonableness of any financial plan
7 submitted by a proposer, the reasonableness of the project
8 schedule, reasonableness of assumptions (including those related
9 to legal liability, law enforcement, and operation and
10 maintenance of the project), forecasts, financial exposure and
11 benefit to the department, compatibility with other planned or
12 existing transportation facilities, likelihood of obtaining
13 necessary approvals and other support, cost and pricing, toll
14 rates and projected usage, scheduling, environmental impact,
15 manpower availability, use of technology, governmental liaison,
16 and project coordination, with attention to efficiency, quality
17 of finished product and such other criteria, including
18 conformity with department policies, guidelines and standards,
19 as may be deemed appropriate by the department to maximize the
20 overall performance of the toll project and the resulting
21 benefits to the state. Specific evaluation criteria and
22 requests for pertinent information will be set forth in the
23 request for proposals.

1 (g) Apparent best value proposal. Based on the evaluation
2 and the evaluation criteria described under subsection (f) of
3 this section and set forth in the request for proposals, the
4 department will rank all proposals that are complete, responsive
5 to the request for proposals, and in conformance with the
6 requirements of this section, and may select the private entity
7 whose proposal offers the apparent best value to the department.

8 (h) Selection of entity. The department will submit a
9 recommendation to the commission regarding approval of the
10 proposal determined to provide the apparent best value to the
11 department. The commission may approve or disapprove the
12 recommendation, and if approved, will award the agreement to the
13 apparent best value proposer. Award may be subject to the
14 successful completion of negotiations, any necessary federal
15 action, execution by the executive director of the agreement,
16 and satisfaction of other conditions that are identified in the
17 request for proposals or by the commission. The proposers will
18 be notified in writing of the department's rankings. The
19 department shall also make the rankings available to the public.

20 (i) Negotiations with selected entity. If authorized by
21 the commission, the department will attempt to negotiate an
22 agreement with the apparent best value proposer to operate the
23 project. If an agreement satisfactory to the department cannot

1 be negotiated with that proposer, or if, in the course of
2 negotiations, it appears that the proposal will not provide the
3 department with the overall best value, the department will
4 formally end negotiations with that proposer and, in its sole
5 discretion, either:

6 (1) reject all proposals;

7 (2) modify the request for proposals and begin again the
8 submission of proposals; or

9 (3) proceed to the next most highly ranked proposal and
10 attempt to negotiate an agreement with that entity in accordance
11 with this subsection.

12