

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

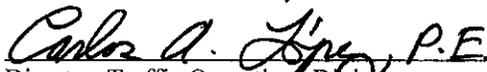
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §1.85, relating to advisory committees, §§25.500 – 25.504, and new §25.505, relating to the safe routes to school program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles, adopted amendments, and new section, attached to this minute order as Exhibits A - D, are incorporated by reference as though set forth at length verbatim in this minute order.

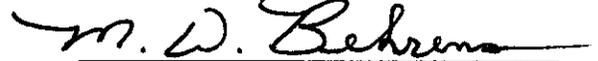
IT IS THEREFORE ORDERED by the commission that the amendments to §1.85, §§25.500–25.504, and new §25.505, are adopted and are authorized for filing with the Office of the Secretary of State.

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, Traffic Operations Division

Recommended by:

  
Executive Director

**110580 JUN 29 06**

Minute  
Number

Date  
Passed



1 An amendment is adopted to provide that the committee will  
2 report its findings and recommendations regarding the SRS  
3 Program to the director of the department division responsible  
4 for administering the SRS program.

5

6 COMMENTS

7 Comments to the proposed amendments were received from the Texas  
8 Bicycle Coalition.

9

10 Comment:

11 The Texas Bicycle Coalition (TBC) requested a change to  
12 §185(a)(4)(A) regarding the composition of the Bicycle Advisory  
13 Committee (BAC). The department proposed a change to the  
14 existing text to allow the BAC to be expanded to include both  
15 bicyclists and other interested parties. The BAC requested that  
16 this language be changed to allow the inclusion of bicyclists  
17 with an interest in various fields such as health, safety,  
18 recreation, tourism, education, fitness, law enforcement and  
19 planning.

20

21 Response:

22 The department declines to adopt this change. The department  
23 believes that it will be important during the evaluation of SRS  
24 projects to have a broad spectrum of individuals with a variety  
25 of experiences and not limited to either bicyclists or the

1 suggested areas noted by the commenter. The department believes  
2 that the proposed language will provide flexibility to include  
3 members with the needed expertise, including those suggested by  
4 the commenter.

5  
6 Comment:  
7 TBC requested that BAC provide recommendations on the SRS  
8 projects directly to the Texas Transportation Commission  
9 (commission) instead of making a report to the department.

10  
11 Response:  
12 Under the provisions of the adopted rule BAC will be providing a  
13 vital role in the selection of SRS projects. In relation to the  
14 SRS Program, BAC will report to the department and their  
15 recommendations will be reviewed and evaluated with other  
16 information gathered from department staff, such as the  
17 feasibility of the project, construction and maintenance issues.  
18 The commission will receive one recommendation based on all  
19 relevant issues. BAC will continue to report directly to the  
20 commission on other pedestrian and bicycle issues.

21  
22 STATUTORY AUTHORITY  
23 The amendments are adopted under Transportation Code, §201.101,  
24 which provides the commission with the authority to establish  
25 rules for the conduct of the work of the department.

- 1
- 2 CROSS REFERENCE TO STATUTE
- 3 None.

1 SUBCHAPTER F. ADVISORY COMMITTEES

2 §1.85. Department Advisory Committees.

3 (a) Creation.

4 (1) Project advisory committees.

5 (A) Purpose. The executive director may authorize a  
6 district engineer to create, by written order, an ad hoc project  
7 advisory committee composed of the following members as may be  
8 deemed appropriate by the district engineer: department staff;  
9 affected property owners and business establishments; technical  
10 experts; professional consultants representing the department;  
11 and representatives of local governmental entities, the general  
12 public, chambers of commerce, and the environmental community. A  
13 project advisory committee shall serve the purpose of  
14 facilitating, evaluating, and achieving support and consensus  
15 from the affected community and governmental entities in the  
16 initial stages of a transportation project. Advice and  
17 recommendations of a committee provide the department with an  
18 enhanced understanding of public, business, and private concerns  
19 about a project from the development phase through the  
20 implementation phase, thus facilitating the department's  
21 communications and traffic management objectives, resulting in a  
22 greater cooperation between the department and all affected  
23 parties during project development and construction.

1 (B) Duties. A project advisory committee shall:

2 (i) maintain community and local government  
3 communication; and

4 (ii) respond in a timely fashion to affected parties'  
5 concerns about project development and construction.

6 (C) Manner of reporting. A project advisory committee  
7 shall report its advice and recommendations to the district  
8 engineer.

9 (D) Duration. A project advisory committee may be  
10 abolished at any stage of project development, but in no event  
11 may a committee continue beyond completion of the project.

12 (2) Rulemaking advisory committees.

13 (A) Purpose. The commission, by order, may create ad  
14 hoc rulemaking advisory committees pursuant to Government Code,  
15 Chapter 2001, §2001.031, for the purpose of receiving advice  
16 from experts, interested persons, or the general public with  
17 respect to contemplated rulemaking.

18 (B) Duties. A rulemaking advisory committee shall  
19 provide advice and recommendations with respect to a specific  
20 contemplated rulemaking.

21 (C) Manner of reporting. A rulemaking advisory  
22 committee shall report its advice and recommendations to the  
23 division responsible for the development of the rules.

1 (D) Duration. A rulemaking committee shall be  
2 abolished upon final adoption of rules by the commission.

3 (3) Intelligent Transportation Systems (ITS) Steering  
4 Committees.

5 (A) Purpose. Federal law encourages the expenditure of  
6 federal transportation funds to achieve improvements in the  
7 efficiency of transportation operations. A portion of these  
8 funds are specifically designated for the planning and testing  
9 of Intelligent Transportation Systems technologies. As part of  
10 the development and implementation of these projects, a district  
11 engineer, in conjunction with local officials, may create a  
12 steering committee to provide support for ITS activities. Advice  
13 and recommendations expressed by a committee will foster the  
14 coordination of state and local benefit in the design,  
15 maintenance, and operation of ITS facilities.

16 (B) Duties. A committee shall provide advice and  
17 recommendations with respect to:

- 18 (i) ITS project priorities;  
19 (ii) the approval of projects;  
20 (iii) seeking project funding;  
21 (iv) coordinating public and private ventures; and  
22 (v) promoting ITS at local, state, and national  
23 levels.

1 (C) Manner of reporting. A committee shall report its  
2 advice and recommendations to the local district engineer, or  
3 the district engineer's designee.

4 (4) Bicycle Advisory Committee.

5 (A) Purpose. The purpose of the Bicycle Advisory  
6 Committee is to advise the commission on bicycle issues and  
7 matters related to the Safe Routes to School Program. By  
8 involving representatives of the public, including bicyclists  
9 and other interested parties, the department helps ensure  
10 effective communication with the bicycle community, and that the  
11 bicyclist's perspective will be considered in the development of  
12 departmental policies affecting bicycle use, including the  
13 design, construction and maintenance of highways. The committee  
14 will also provide recommendations to the department on the Safe  
15 Routes to School Program.

16 (B) Duties. The committee shall:

17 (i) in accordance with Transportation Code,  
18 §201.9025, advise and make recommendations to the commission on  
19 the development of bicycle tourism trails;

20 (ii) provide recommendations on the selection of  
21 projects under Chapter 25, Subchapter I of this title (relating  
22 to Safe Routes to School Program); and

23 (iii) review and make recommendations on items of

1 mutual concern between the department and the bicycling  
2 community.

3 (C) Manner of reporting. The committee shall report its  
4 advice and recommendations to the commission, except for matters  
5 relating to the Safe Routes to School Program. Under the Safe  
6 Routes to School Program the committee shall reports its  
7 recommendations to the director of the division responsible for  
8 administering the program.

9 (5) Trans-Texas Corridor advisory committees.

10 (A) Purpose. The commission by order may create an  
11 advisory committee concerning the Trans-Texas Corridor or a  
12 project that is part of the Trans-Texas Corridor, for the  
13 purpose of facilitating and achieving support and consensus from  
14 affected communities, governmental entities, and other  
15 interested parties in the planning of the Trans-Texas Corridor  
16 and in the establishment of development plans for a project that  
17 is part of the Trans-Texas Corridor. A committee may be  
18 composed of the following members as deemed appropriate by the  
19 commission: department staff; affected property owners and  
20 business establishments; technical experts; professional  
21 consultants representing the department; representatives of  
22 local governmental entities; the general public; chambers of  
23 commerce; and the environmental community. Advice and

1 recommendations of a committee will provide the department with  
2 an enhanced understanding of public, business, and private  
3 concerns about the Trans-Texas Corridor and projects that are  
4 part of the Trans-Texas Corridor, thus facilitating the  
5 department's communications and project development objectives,  
6 resulting in greater cooperation between the department and all  
7 affected parties during project planning and development.

8 (B) Duties. A Trans-Texas Corridor advisory committee  
9 shall provide advice and recommendations to the department  
10 regarding facilities to be included in a development plan for  
11 the Trans-Texas Corridor or a project that is part of the Trans-  
12 Texas Corridor.

13 (C) Manner of reporting. A Trans-Texas Corridor  
14 advisory committee shall report its advice and recommendations  
15 to the executive director or designee.

16 (D) Duration. A Trans-Texas Corridor advisory  
17 committee may be abolished at any time by the commission, but in  
18 no event may a committee continue beyond completion of the  
19 Trans-Texas Corridor or the project for which the committee is  
20 created.

21 (b) Operating procedures.

22 (1) Membership. Except as otherwise specified in this  
23 section, an advisory committee shall be composed of not more

1 than 24 members to be appointed by the office or official to  
2 whom the committee is to report. When applicable to the purpose  
3 and duties of the committee, the membership shall provide a  
4 balanced representation between:

5 (A) industries or occupations regulated or directly  
6 affected by the department; and

7 (B) consumers of services provided either by the  
8 department or by industries or occupations regulated by the  
9 department.

10 (2) Meetings.

11 (A) An advisory committee shall meet once a calendar  
12 year and at such other times as requested by the office to which  
13 it reports.

14 (B) A majority of the membership of an advisory  
15 committee constitutes a quorum. A committee may take formal  
16 action only by majority vote of its membership.

17 (3) Officers. Each committee shall elect a chair and  
18 vice-chair by majority vote of the members of the committee.

19 (c) Duration. Except as otherwise specified in this  
20 section, a committee created under this section is abolished  
21 December 31, 2007, unless the commission amends its rules to  
22 provide for a different date.

23 (d) Reimbursement. The department may, if authorized by

1 law and the executive director, reimburse a member of a  
2 committee for reasonable and necessary travel expenses. Current  
3 rules and laws governing reimbursement of expenses for state  
4 employees shall govern reimbursement of expenses for advisory  
5 committee members.

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts  
3 amendments to existing §§25.500-25.504 and new §25.505,  
4 concerning the safe routes to school program. The amendments to  
5 §25.500, §25.502, §25.504 and new §25.505 are adopted with  
6 changes to the proposed text as published in the April 14, 2006  
7 issue of the Texas Register (31 TexReg 3236). The amendments to  
8 §25.501 and §25.503 are adopted without changes to the proposed  
9 text as published in the April 14, 2006 issue of the Texas  
10 Register (31 TexReg 3236) and will not be republished.

11

12 EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

13 Section 1404 of Public Law 109-59, SAFETEA-LU, created a new  
14 federal Safe Routes to School (SRS) Program. This proposal is  
15 designed to amend the existing state program rules to allow  
16 implementation of the new federal program.

17

18 Section 25.500, Purpose, is amended to replace the reference to  
19 the state Safe Routes to School Program created under  
20 Transportation Code, §201.614 with the new federal program  
21 created under SAFETEA-LU. The section also notes that the SRS  
22 program will be a comprehensive program designed to enable and  
23 encourage all children to bicycle and walk to school, promote  
24 safety, reduce traffic, reduce fuel consumption, encourage a  
25 healthy and active lifestyle from an early age, and improve air

1 quality in the vicinity of schools.

2

3 This section is also amended to remove the reference to local  
4 contributions since these are not required under the new federal  
5 program.

6

7 Section 25.501, Definitions, changes the existing definition of  
8 "school" to "eligible school" to include those schools comprised  
9 of any grades from kindergarten to eighth grade. This change is  
10 consistent with the requirements of federal law and program  
11 guidance.

12

13 Section 25.501(8), public property, is also modified to include  
14 property owned by any public entity or school district. This  
15 change broadens the location for an SRS project and is  
16 consistent with federal law.

17

18 Various changes are adopted for §25.502, Project Eligibility, to  
19 bring the Texas SRS program into compliance with federal law and  
20 program guidance as issued by the Federal Highway  
21 Administration.

22

23 Language regarding eligible applicants is deleted from §25.502  
24 since it is repeated in §25.503 regarding project applications.

25

1 The amendments make various changes to allow both infrastructure  
2 and non-infrastructure applications to be submitted under the  
3 SRS program.

4  
5 Language allowing improvements for vehicle drop-off and pick-up  
6 areas as an eligible infrastructure project is deleted since  
7 this is specifically prohibited under the new federal program  
8 guidance. The provision for secure bicycle parking facilities  
9 is added as an eligible project since the federal guidance  
10 specifically allows this.

11  
12 Language is added outlining the types of non-infrastructure  
13 projects that may be submitted for funding consideration. This  
14 is not a comprehensive list, but provides general categories.

15  
16 Section 25.502 is also amended to allow an SRS infrastructure  
17 project to be built on any public right of way within a two-mile  
18 radius of an eligible school. The section is also amended to  
19 allow projects to be located on private property under certain  
20 circumstances that guarantee public access to the project.  
21 Again, these changes are consistent with federal guidance.

22  
23 The word "department" is deleted from §25.502(e) regarding  
24 funding sources since SRS projects will now be funded primarily  
25 with federal funds earmarked specifically for the SRS program.

1

2 Existing language on local contributions is deleted since this  
3 is not required under the new federal program. The new SRS  
4 program allows for 100% federal funding for the selected  
5 projects.

6

7 Section 25.502(f), regarding project boundaries, is amended to  
8 be consistent with federal guidelines. Language is also added  
9 to subsection (f) describing eligible project boundaries for  
10 non-infrastructure projects.

11

12 Section 25.503, Project Application, discusses the requirements  
13 for SRS project applications. The section is amended to note  
14 that the department will issue separate applications for  
15 infrastructure and non-infrastructure projects.

16

17 Language is adopted to allow infrastructure projects to be  
18 submitted by political subdivisions as defined in §25.501 or a  
19 state agency. The department believes that state agencies will  
20 have valuable insight into projects that may benefit the safety  
21 of school age children and should also be allowed to develop and  
22 submit project proposals.

23

24 Language is also adopted to allow non-infrastructure projects to  
25 be submitted by political subdivisions as defined in §25.501,

1 schools and school districts, non-profit organizations, for-  
2 profit organizations, the state of Texas or any combination of  
3 these entities. The department believes that many  
4 organizations, including those that have not traditionally  
5 partnered with the department, will have insight into projects  
6 that may prove beneficial to the development of a successful SRS  
7 program.

8  
9 Language is clarified to detail how both infrastructure and non-  
10 infrastructure project proposals are submitted. Infrastructure  
11 projects must be submitted to the department district in which  
12 the project is located. This new language notes that should a  
13 project extend to beyond more than one district, the applicant  
14 should contact the department division responsible for the  
15 program to identify the appropriate department district for  
16 project submission.

17  
18 This new language also requires non-infrastructure projects to  
19 be submitted to the department division administering the SRS  
20 program.

21  
22 Amendments to §25.504, regarding project evaluation and  
23 selection, broaden the expertise of the existing evaluation  
24 committee of department staff. The section is also amended to  
25 allow this committee to be appointed by the executive director

1 or his or her designee.

2

3 Section 25.504 is also amended to include the department's  
4 Bicycle Advisory Committee, created under §1.85, as part of the  
5 project evaluation process. Section 1.85 is amended under a  
6 separate, simultaneous rule action adopted in connection with  
7 these amendments.

8

9 Section 25.504 is amended to note that both evaluation  
10 committees will report their findings to the director of the  
11 division responsible for administering the program. The  
12 committees are required to use the evaluation methodology  
13 developed by the division administering the program to ensure  
14 uniformity and consistency in project evaluation. The  
15 appropriate division director will review all recommendations  
16 and will prepare the final proposal for the Texas Transportation  
17 Commission (commission).

18

19 The adopted language creates separate evaluation criteria for  
20 infrastructure and non-infrastructure projects.

21

22 Language is adopted to add the potential for a project to create  
23 a safer walking and bicycling built environment within two miles  
24 of a school as an evaluation selection criterion. This item is  
25 taken directly from the federal program guidance and the

1 department believes it represents a significant benchmark to be  
2 considered when evaluating these types of projects.

3  
4 This proposal also reformats two criteria (link to a  
5 comprehensive traffic safety plan and other relevant factors)  
6 that were previously noted as providing additional consideration  
7 when submitted by applicants. These items are now simply  
8 included as parts of the evaluation criteria.

9  
10 Selection criteria for non-infrastructure projects are included  
11 in the adopted language.

12  
13 The adopted language creates an approval process in which the  
14 director of the division responsible for administration of the  
15 Safe Routes to School Program provides a recommendation to the  
16 commission. The commission will select the final projects from  
17 those recommended by the division director.

18  
19 Language relating to project overruns in §25.504(f) is deleted  
20 and added as new language to the adopted new §25.505(d).

21  
22 New §25.505, Project Funding and Monitoring, is added to provide  
23 guidance on various aspects of project funding. This section  
24 notes that the Safe Routes to School Program is a reimbursement  
25 program, denotes the minimum allocation percentages between

1 infrastructure and non-infrastructure projects, notes that there  
2 are no required local contributions, notes that project overruns  
3 will be considered by the department on a case-by-case basis,  
4 and that the commission may allocate funding to the department  
5 for state initiated projects. These provisions provide  
6 consistency with the federal Safe Routes to School Program  
7 guidelines.

8  
9 New §25.505(f), regarding project monitoring and evaluation, is  
10 consistent with the federal program guidelines and also  
11 represents prudent and responsible stewardship of public funds.

12  
13 COMMENTS  
14 Comments on the proposed amendments and new section were  
15 received from the Texas Bicycle Coalition (TBC).

16  
17 Comment:  
18 TBC requests that the rules require a 70% allocation for  
19 infrastructure projects with a 30% allocation for non-  
20 infrastructure projects.

21  
22 Response:  
23 The department disagrees with this comment. The proposed rules  
24 require a minimum of 10% and a maximum of 30% of SRS Program  
25 funds be allocated to non-infrastructure projects. This is

1 consistent with both federal law and guidance. The proposed  
2 rules would allow, but do not require, up to 30% of SRS program  
3 funds to be allocated to non-infrastructure projects. The rules  
4 as proposed provide maximum funding flexibility.

5

6 Comment:

7 TBC requests that the department split responsibility for  
8 implementation of the SRS Program between the Traffic Operations  
9 Division and Transportation Planning and Programming Division.

10

11 Response:

12 The department disagrees with this comment. Under the rules as  
13 proposed, implementation of the program is assigned to the  
14 director of a single division of the department. However, there  
15 is nothing in the rules that would preclude involving other  
16 divisions as suggested by TBC should the department believe this  
17 is necessary. Currently, the department's Traffic Operations  
18 Division is assigned responsibility for overall development and  
19 implementation of the program. The Traffic Operations Division  
20 has extensive experience in managing both infrastructure and  
21 non-infrastructure safety programs and requests guidance and  
22 counsel from other divisions as necessary.

23

24 Comment:

25 TBC requests that the proposed rules be changed to require a

1 full-time program coordinator that is 100% dedicated to the SRS  
2 Program.

3

4 Response:

5 The department declines to adopt this suggestion. Hiring of  
6 staff is outside the scope of the rule process. The Federal  
7 Highway Administration has approved the naming of an interim  
8 coordinator and it is the department's intent to hire a full-  
9 time coordinator once the workload justifies this position.

10

11 Comment:

12 TBC requested that incentives for early completion be included  
13 for recipients of SRS infrastructure awards.

14

15 Response:

16 The department declines to adopt this comment. Successful SRS  
17 projects will be 100% funded and require no local matching  
18 funds. The department believes that when combined with internal  
19 requirements to use these funds within certain time periods that  
20 this will ensure that these projects are completed in a timely  
21 manner.

22

23 Comment:

24 TBC requests that BAC provide their recommendations on project  
25 selection to the commission.

1

2 Response:

3 The department declines to accept this change requested by TBC.  
4 Under the proposed rules, SRS projects will be evaluated by BAC  
5 and a technical committee made up of department staff. The  
6 division director will review both sets of recommendations  
7 before delivering a final project list to the commission. The  
8 administrative and engineering tasks are more appropriately  
9 handled at the staff level and a combined final recommendation  
10 should provide the commission the information needed to reach a  
11 final determination. This approach is consistent with that  
12 taken during the initial SRS Program.

13

14 Comment:

15 TBC noted that BAC could serve as a multi-disciplinary task  
16 force on the SRS Program if the committee were expanded.

17

18 Response:

19 The rules as proposed will allow for BAC to serve as a multi-  
20 disciplinary committee to provide recommendations on SRS Program  
21 applications.

22

23 Comment:

24 TBC requests retaining language in §25.500 referencing the  
25 existing state SRS Program.

1

2 Response:

3 The department disagrees with this comment. The new program  
4 created by federal law will incorporate the existing state SRS  
5 Program. This new program will incorporate both state and  
6 federal dedicated funds into a single program consistent with  
7 federal law. The department believes there is no need to retain  
8 reference to the state program as the state program does not  
9 provide for the disbursement of funds from the new federal  
10 program.

11

12 Comment:

13 TBC requests the inclusion of language in §25.500 regarding the  
14 purpose of the program to "encourage a healthy and active  
15 lifestyle from an early age".

16

17 Response:

18 The department concurs and has incorporated the suggested  
19 language into the rule.

20

21 Comment:

22 TBC requests that the department strike the word "competitive"  
23 in §25.500 and replace with "comprehensive".

24

25 Response:

1 The department disagrees with this comment as the SRS Program is  
2 competitive in nature. The department acknowledges in this  
3 section that the SRS Program is a comprehensive program, but  
4 also wishes to inform the public and potential applicants that  
5 the program is competitive in nature with regard to funding.

6

7 Comment:

8 TBC requests that the words "for off-system roads" be removed  
9 from §25.502(b)(6).

10

11 Response:

12 The department disagrees with this comment. Removing this  
13 language would allow the use of traffic calming devices on  
14 portions of the state highway system. The department believes  
15 the use of these devices (such as speed bumps and speed humps)  
16 is inappropriate for use on the higher speed roads of the state  
17 highway system.

18

19 Comment:

20 TBC requests that the phrase "thereby encouraging a healthy and  
21 active lifestyle from an early age" be added to proposed  
22 §25.502(c)(4) regarding the eligible non-infrastructure  
23 projects.

24

25 Response:

1 The suggested language has been incorporated into §25.500  
2 regarding the purpose of the program.

3

4 Comment:

5 TBC requests that the language of §25.502(e) be changed to  
6 require the commission, rather than the executive director, to  
7 limit maximum funding for an individual project.

8

9 Response:

10 The department believes that setting the maximum funding amount  
11 allowed per project is more appropriately established at the  
12 level of the executive director. However, the commission has  
13 ultimate authority over all department programs.

14

15 Comment:

16 TBC requested that proposed §25.502(f)(2) be modified to strike  
17 language requiring projects involving multiple school sites to  
18 have similar improvements.

19

20 Response:

21 The department concurs with this comment and will incorporate  
22 this change by eliminating proposed paragraph (2) and  
23 renumbering accordingly. This change will allow multiple  
24 schools to work together on proposals without requiring that  
25 they request similar improvement projects.

1

2 Comment:

3 TBC requested that §25.502(f)(3) be modified to remove the  
4 phrase "schools in a region or district" and add language to  
5 denote that the scope of non-infrastructure projects may be  
6 extremely broad.

7

8 Response:

9 The department concurs with this comment and has incorporated  
10 this change. The department did not intend to limit the area  
11 encompassed in non-infrastructure projects. The language has  
12 been changed so that it is clear that projects can be presented  
13 by a broad combination of organizations.

14

15 Comment:

16 TBC requested that proposed §25.502(g) be modified to deny the  
17 department the authority to disqualify a proposed SRS project on  
18 the state highway system if that project interferes or disrupts  
19 planned improvements or existing infrastructure.

20

21 Response:

22 The department disagrees with this comment and believes it is  
23 important to integrate any potential SRS project into the  
24 existing state highway system and for such projects not to  
25 conflict with planned improvements or existing highway

1 infrastructure.

2

3 Comment:

4 The commenter requested that §25.503(b) be modified to require  
5 the department to issue separate program calls for  
6 infrastructure and non-infrastructure projects.

7

8 Response:

9 The department declines to adopt this change requiring separate  
10 applications and program calls. As adopted, the rule allows the  
11 department the flexibility to allow for separate or combined  
12 calls.

13

14 Comment:

15 The commenter requested that for-profit organizations be  
16 eliminated from §25.503(c)(2) noting that this was not  
17 consistent with the federal program guidance.

18

19 Response:

20 The department disagrees with this suggested change and notes  
21 that federal guidance encourages states to promote a broad  
22 spectrum of participation and does not state that for-profit  
23 organizations are restricted from participating in the program.

24

25 Comment:

1 TBC requests that language also be added to §25.503 that would  
2 allow non-infrastructure projects to be let to a single entity  
3 under certain circumstances.

4

5 Response:

6 The department disagrees with this suggested change. SRS  
7 projects are not "let," which implies a bidding process. These  
8 projects are awarded to applicants through a competitive  
9 evaluation. The department believes the suggested language is  
10 unnecessary since the proposed rules specifically allow for the  
11 consideration of statewide projects. The department believes  
12 that under the proposed rules the non-infrastructure portion of  
13 the program could be awarded to a single applicant.

14

15 Comment:

16 TBC requests addition of new §25.503(d)(3) noting that non-  
17 infrastructure projects will be solicited by a separate project  
18 call and that these projects may be considered in a multi-year  
19 proposal for up to five years.

20

21 Response:

22 The department declines to add this new language. There is  
23 nothing in the proposed rules that would preclude implementing  
24 the suggested addition should the department choose to do so.

25

1 Comment:

2 TBC requests that the department take into consideration the  
3 overall Texas school calendar in issuing program calls.

4

5 Response:

6 The department disagrees with this comment. The department will  
7 consider the Texas school calendar and school district planning  
8 cycles in issuing program calls. However, the department does  
9 not see the necessity of incorporating this limitation into the  
10 program rules.

11

12 Comment:

13 TBC requests that language be added to §25.503 that specifically  
14 requires the department to include the BAC in the ongoing  
15 development and operation of the SRS Program.

16

17 Response:

18 Although the department intends to utilize BAC in the evaluation  
19 of SRS projects, it declines to adopt this recommendation.  
20 However, the department intends to solicit input from interested  
21 parties (including BAC) to make improvements in all future  
22 program calls.

23

24 Comment:

25 TBC requests the rules require the SRS program be managed by the

1 State Bicycle Coordinator in the Transportation Planning and  
2 Programming Division.

3

4 Response:

5 The department disagrees with this comment. The assignment of  
6 job functions and duties is outside the scope of these rules.

7

8 Comment:

9 TBC requests changes in §25.504(b)(3) to require the department  
10 to include TBC in the development of the methodology that will  
11 be used to evaluate SRS project.

12

13 Response:

14 The department disagrees with this comment. The department  
15 staff will develop the methodology used to evaluate SRS  
16 proposals. The staff understands the proposal process and will  
17 be able to determine all necessary issues including those  
18 involving construction. However, the department intends to  
19 solicit input from interested parties (including the BAC) to  
20 make improvements in all future program calls as needed.

21

22 Comment:

23 TBC requests that language be added to §25.504 to require SRS  
24 project applications and evaluations be made available for  
25 public inspection.

1

2 Response:

3 The department disagrees with this comment. The release of  
4 documents collected under the SRS program is subject to the  
5 state's public information act and additional language is  
6 unnecessary.

7

8 Comment:

9 TBC requested that §25.504(c) be amended to note that  
10 infrastructure projects would be evaluated based on the ability  
11 of the project to benefit the largest number of children.

12

13 Response:

14 The department declines to adopt this change as it could create  
15 a disadvantage for less populous areas.

16

17 Comment:

18 TBC requested that §25.504(c)(3) be amended to note that  
19 projects will be evaluated based on the demonstrated need of the  
20 "community and children served."

21

22 Response:

23 The department concurs and will incorporate the suggested  
24 language into the final rule. The department finds the  
25 suggested language clarifies the criteria objective to provide

1 funds to those projects that can show a need for the funds.

2

3 Comment:

4 TBC requests that §25.504(c)(9) be modified to note that SRS  
5 infrastructure applications will be evaluated based on  
6 compliance with state and federal design criteria as opposed to  
7 design criteria established by the division director responsible  
8 for administration of the program.

9

10 Response:

11 The department disagrees with this comment. Although all design  
12 criteria for the program will be compliant with state and  
13 federal standards, it is possible that there may be unique  
14 design issues specific to the SRS program. There may be  
15 instances where Texas chooses to use design criteria based on  
16 local conditions that, while approved by the Federal Highway  
17 Administration, may not yet be incorporated into existing  
18 federal standards.

19

20 Comment:

21 TBC requests that the criteria for evaluation of non-  
22 infrastructure projects contained in §25.504(d)(1) related to  
23 the identification of the proposed project to encourage and  
24 promote walking and bicycling be eliminated.

25

1 Response:

2 The department disagrees with this comment as it believes this  
3 is one of the key goals of the SRS Program.

4  
5 Comment:

6 TBC requests that language be added to §25.504(d)(3)  
7 specifically referencing criteria developed by the Texas  
8 Education Agency related to health and physical activity.

9  
10 Response:

11 The department disagrees with this comment. The department  
12 prefers not to reference any specific outside criteria that do  
13 not relate directly to SRS issues.

14  
15 Comment:

16 TBC requests that language in §25.504(d)(6) that requires non-  
17 infrastructure applications demonstrate a link to an existing  
18 planned comprehensive traffic safety plan be eliminated and that  
19 §25.504(d) contain a plan for evaluating the success of non-  
20 infrastructure projects.

21  
22 Response:

23 The department concurs and has changed language accordingly.  
24 Non-infrastructure projects, such as education and outreach  
25 programs, do not need to demonstrate a link to a traffic safety

1 plan. The department also agrees that requiring a plan to  
2 evaluate the success of the project will be useful in awarding  
3 SRS funds.

4

5 Comment:

6 TBC requests that the evaluation criteria in §25.504(d) be  
7 modified to include the applicant's prior experience with SRS  
8 projects and other relevant experience.

9

10 Response:

11 The department disagrees with this suggested change. The state  
12 and federal SRS Programs are new and there will be very few  
13 organizations and individuals with relevant and specific  
14 experience in this area. The department believes that to  
15 include this change would significantly limit opportunities for  
16 program participation.

17

18 Comment:

19 TBC requests that the language in §25.504(e) be amended to  
20 require the commission to approve SRS projects based on the  
21 recommendation of BAC rather than from the recommendation of the  
22 department official administering the SRS Program.

23

24 Response:

25 The department declines to adopt this suggested change. The

1 proposed evaluation process will use a simultaneous review of  
2 SRS project applications by an internal committee of department  
3 staff and BAC. The department believes that merging those two  
4 sets of recommendations into a final project list represents an  
5 engineering and administrative task more appropriate for  
6 department staff.

7

8 Comment:

9 TBC requests that recipients of non-infrastructure projects  
10 under §25.505 be provided with a "working capital advance" as  
11 allowed under federal regulations 49 CFR Part 19.22(2)(e) and 49  
12 CFR Part 18.21(e).

13

14 Response:

15 The department disagrees with this comment. The department  
16 adheres to all federal law and regulations in its administration  
17 of programs, including those recommended.

18

19 Comment:

20 TBC requests changes in §25.505 that would require the  
21 department to contract for an outside evaluation of the program,  
22 to report to the commission, and to provide an annual status  
23 report to the commission, elected officials, and the general  
24 public.

25

1 Response:

2 The department disagrees with these comments. These issues  
3 pertain to internal department operations. Nothing in the  
4 proposed rules precludes the department from incorporating these  
5 tasks into the SRS Program should it believe that they are  
6 necessary.

7

8 Comment:

9 TBC requests changes to the rule to include reporting to the  
10 commission other funding opportunities for the SRS program.

11

12 Response:

13 The department disagrees with this comment. The commission is  
14 well informed of available funds, therefore a specific rule  
15 requiring reporting available funds is unnecessary. The  
16 department will utilize all funds as they become available.

17

18 STATUTORY AUTHORITY

19 The amendments and new section are adopted under Transportation  
20 Code, §201.101, which provides the commission with the authority  
21 to establish rules for the conduct of the work of the  
22 department.

23

24 CROSS REFERENCE TO STATUTE

25 None.

1 SUBCHAPTER I. SAFE ROUTES TO SCHOOL PROGRAM

2 §25.500. Purpose. Section 1404 of Public Law 109-59 created a  
3 federal Safe Routes to School Program. This subchapter  
4 implements this program [~~Transportation Code, §201.614 directs~~  
5 ~~the Texas Department of Transportation to establish the Safe~~  
6 ~~Routes to School Program~~]. The overall purpose of this program  
7 is to enhance safety in and around school areas through a  
8 comprehensive [~~construction~~] program designed to improve the  
9 bicycle and pedestrian safety of school age children; encourage  
10 a healthy and active lifestyle from an early age; enable and  
11 encourage children, including those with disabilities, to walk  
12 and bicycle to school; and to facilitate projects and activities  
13 that will improve safety and reduce traffic, fuel consumption,  
14 and air pollution in the vicinity of schools. The Safe Routes  
15 to School Program is a competitive [~~construction~~] program funded  
16 through state and federal funds [~~and local contributions~~]. The  
17 sections under this subchapter prescribe the policies and  
18 procedures for the implementation of the program.

19  
20 §25.501. Definitions. The following words and terms, when used  
21 in this subchapter, shall have the following meanings, unless  
22 the context clearly indicates otherwise.

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

1 (2) Department--The Texas Department of Transportation.

2 (3) District--One of 25 geographical areas, managed by a  
3 district engineer, in which the department conducts its primary  
4 work activities.

5 (4) Division--An organizational unit in the department's  
6 Austin headquarters.

7 (5) Eligible school--A public or private school that  
8 contains any of the grades from kindergarten to eighth grade.

9 (6) Executive director--The executive director of the  
10 Texas Department of Transportation or his or her designee.

11 (7) [~~+6~~] On-system road--A road or highway that is a  
12 portion of the designated state highway system.

13 (8) [~~+7~~] Off-system road--A road or highway open to the  
14 public that is not part of the designated state highway system,  
15 such as a county road or city street.

16 (9) [~~+8~~] Public property--Property owned by a state,  
17 city, [~~or~~] county, other public entity, or school district.

18 (10) [~~+9~~] Political subdivision--A municipality or  
19 county within the State of Texas.

20 (11) [~~+10~~] Program--The Safe Routes to School Program.

21 [~~+11~~] ~~School--A public or private elementary,~~  
22 ~~intermediate, middle, junior high, or high school.]~~

23 (12) State highway system--The system of highways in the

1 state included in a comprehensive plan prepared by the executive  
2 director with the approval of the commission, in accordance with  
3 Transportation Code, §201.103.

4  
5 §25.502. Project Eligibility.

6 ~~[(a) Eligible applicants. Projects may be submitted by~~  
7 ~~political subdivisions.]~~

8 (a) [(b)] Types of projects. Projects eligible to receive  
9 funding under this program include those involving both  
10 infrastructure related and non-infrastructure related  
11 activities. ~~[the following:]~~

12 (b) Infrastructure projects. Eligible infrastructure based  
13 projects include:

14 (1) sidewalk improvements such as new sidewalks, widened  
15 sidewalks, sidewalk gap closures, sidewalk repairs, curb cuts  
16 for ramps, and the construction of curbs and gutters;

17 (2) pedestrian/bicycle crossing improvements such as new  
18 or upgraded traffic signals, crosswalks, median refuges,  
19 pavement markings, traffic signs, pedestrian or bicycle over-  
20 crossings and under-crossings, flashing beacons, traffic signal  
21 phasing extensions, bicycle sensitive actuation devices,  
22 pedestrian activated signal upgrades, and sight distance  
23 improvements;

1 (3) on-street bicycle facilities such as new or upgraded  
2 bicycle lanes, widened outside lanes or roadway shoulders,  
3 geometric improvements, turning lanes, channelization and  
4 roadway realignment, traffic signs, and pavement markings;

5 (4) traffic diversion improvements including [~~improved~~  
6 ~~pick-up/drop-off areas,~~] separation of pedestrians and bicycles  
7 from vehicular traffic adjacent to school facilities, and  
8 traffic diversion away from school zones or designated routes to  
9 a school;

10 (5) off-street bicycle and pedestrian facilities  
11 including exclusive multi-use bicycle or pedestrian trails and  
12 pathways; [and]

13 (6) traffic calming measures for off-system roads such as  
14 roundabouts, traffic circles, curb extensions at intersections  
15 that reduce curb-to-curb roadway travel widths, center islands,  
16 full and half-street closures, and other speed reduction  
17 techniques;

18 (7) secure bicycle parking facilities; and

19 (8) other projects that promote pedestrian and bicycle  
20 safety of children in and around school areas.

21 (c) Non-infrastructure projects. Non-infrastructure  
22 projects are those activities designed to encourage walking and  
23 bicycling to school. Eligible projects include: [Project

1 ~~location.]~~

2           (1) public awareness campaigns and outreach efforts to  
3 the news media and community leaders; [~~Eligible projects may be~~  
4 ~~located on or off the designated state highway system; however,~~  
5 ~~candidate projects must be located on public property.]~~

6           (2) traffic education and enforcement in the vicinity of  
7 schools; [~~Eligible projects must be located within a two-mile~~  
8 ~~radius of a school.]~~

9           (3) providing student education on bicycle and pedestrian  
10 safety, health, and the environment; and

11           (4) other projects that promote pedestrian and bicycle  
12 safety of children in and around school areas.

13           (d) Location for infrastructure projects. Infrastructure  
14 projects must be located within public right of way within a  
15 two-mile radius of an eligible school. The proposal may include  
16 projects that are located:

17                   (1) on or off the dedicated state highway system; or

18                   (2) on private lands that have a public easement if there  
19 is a written legal easement or other written legally binding  
20 agreement that ensures public access to the project.

21           (e) Project cost limitations. The executive director may  
22 limit the maximum amount of [~~department~~] funding participation  
23 per project for each year of the program. This limitation will

1 be based on the availability of and demand for program funding  
2 and may be established with each call for projects issued under  
3 this subchapter. The project cost limitation will apply to all  
4 projects submitted for consideration.

5 ~~[(c) Required local contribution. Political subdivisions~~  
6 ~~awarded funding under this program must provide a local~~  
7 ~~contribution toward the total cost of the project when the~~  
8 ~~project is located on municipal or county right of way. This~~  
9 ~~requirement is consistent with regulations governing federal~~  
10 ~~funds.]~~

11 (f) Eligible project boundaries.

12 (1) Infrastructure project applications may ~~[Except as~~  
13 ~~provided in paragraph (2) of this subsection, each project~~  
14 ~~application must]~~ be in connection with a single school campus,  
15 multiple schools, a region, or a school district.

16 ~~[(2) Applications for infrastructure improvements~~  
17 ~~covering multiple school sites, a region, or school district~~  
18 ~~will be accepted for projects in which similar improvements are~~  
19 ~~being made at each school site.]~~

20 (2) [(3)] Non-infrastructure projects may cover a single  
21 school, multiple schools, school district, multiple school  
22 districts, multiple regions, or be statewide in nature.

23 (g) Projects proposed on the state highway system. Any

1 proposed infrastructure project under this program on the state  
2 highway system will not be eligible if the district finds that  
3 the project interferes or disrupts any planned improvements or  
4 existing infrastructure.

5

6 §25.503. Project Application.

7 (a) Call for applications. The department will call for  
8 applications for Safe Routes to School projects by publication  
9 in the Texas Register. This notice will contain information on  
10 the application, application content, and submission deadlines.  
11 The department will also consider alternative means of  
12 publication of the program announcement as necessary to reach  
13 interested local jurisdictions and interested parties.

14 (b) The department will issue separate applications for  
15 infrastructure and non-infrastructure projects.

16 (c) Who may apply.

17 (1) For infrastructure projects the [The] department will  
18 accept and consider candidate projects from state agencies and  
19 political subdivisions.

20 (2) For non-infrastructure projects the department will  
21 accept and consider candidate projects from state agencies,  
22 political subdivisions, schools, school districts, non-profit  
23 organizations, and for-profit organizations, or any combination

1 of these entities.

2 (d) [~~e~~] How to submit a project.

3 (1) Applications for infrastructure projects must be  
4 submitted [~~In order to submit a proposed project, an eligible~~  
5 ~~political subdivision must submit its application~~] to the  
6 district engineer of the district responsible for the area in  
7 which the proposed project [~~improvement~~] will be constructed.

8 (2) If the limits of the project extend to more than one  
9 district, the applicant should contact the responsible division  
10 for the appropriate district office to submit the application  
11 prior to the due date.

12 (3) Project applications for non-infrastructure projects  
13 must be submitted to the responsible division administering the  
14 program as identified in the department's call for projects.

15 (4) The application must be completed and returned to the  
16 appropriate office [~~district~~] within the required deadlines as  
17 described in the project call for applications notification.

18 (5) [~~3~~] The candidate project must utilize the  
19 application forms [~~form~~] prescribed by the department for this  
20 purpose.

21 (6) [~~4~~] Copies of the application forms [~~form~~] and the  
22 Safe Routes to School Program Guidelines will be available at  
23 each department district as well as from the responsible

1 division in Austin. The documents will also be published on the  
2 department web site.

3  
4 §25.504. Application [~~Project~~] Evaluation and Selection.

5 (a) Application [~~Project~~] evaluation. The responsible  
6 division will review each program application for completeness  
7 and compliance with project eligibility requirements described  
8 in §25.502 of this subchapter. Applications that do not comply  
9 with these requirements or that are not received by the  
10 published deadline will not be evaluated.

11 (b) Project evaluation process [~~panel~~].

12 (1) The executive director or designee will appoint a  
13 project evaluation committee [~~panel~~] of department staff with  
14 expertise in bicycle safety, pedestrian safety, roadway safety,  
15 roadway design, [~~or~~] traffic engineering, or other related  
16 fields to review, evaluate, and make recommendations on the  
17 proposals submitted for the program [~~statewide~~].

18 (2) The department's Bicycle Advisory Committee, as  
19 created under §1.85 of this title (relating to department  
20 advisory committees), will also serve as a project evaluation  
21 committee to review, evaluate, and make recommendations on the  
22 proposals submitted for the program.

23 (3) The project advisory committees will evaluate the

1 proposals using the evaluation methodology developed by the  
2 responsible division administering the program.

3 (4) The project advisory committees will provide their  
4 project selection recommendations and supporting documentation  
5 to the director of the responsible division administering the  
6 program.

7 (5) The director of the responsible division  
8 administering the program will recommend a program of candidate  
9 projects for consideration by the commission.

10 (c) Selection criteria for infrastructure projects.

11 [~~1~~] Safe Routes to School applications for  
12 infrastructure projects meeting all requirements included in  
13 §25.502 will be evaluated based on the following selection  
14 criteria:

15 (1) [~~A~~] identification of current and potential safe  
16 walking and bicycling routes to school;

17 (2) the potential of the proposal to create a safer  
18 walking and bicycling built environment within two miles of a  
19 school;

20 (3) [~~B~~] the demonstrated need of the the community and  
21 the children served applicant;

22 (4) [~~C~~] identification of safety hazards;

23 (5) [~~D~~] the potential of the proposal to reduce child

1 injuries and fatalities;

2 (6) [~~(E)~~] the potential of the proposal to encourage  
3 walking and bicycling among students;

4 (7) [~~(F)~~] support for the project by the community and  
5 interested parties;

6 (8) [~~(G)~~] identification of detailed construction costs;  
7 [and]

8 (9) [~~(H)~~] compliance with design criteria established by  
9 the responsible division; [~~(I)~~]

10 [~~(2) Additional consideration will be given to]~~

11 (10) applications that demonstrate a link to an existing  
12 or planned [a] comprehensive traffic safety plan; and [have  
13 ~~secured additional funding or other resources to extend the~~  
14 ~~beneficial effect of the proposed project.~~]

15 [~~(3) Additional consideration will also be given to]~~

16 (11) other factors relating to the proposed project  
17 deemed necessary to promote pedestrian and bicycle safety of  
18 children in and around school areas.

19 (d) Selection criteria for non-infrastructure projects.

20 Safe Routes to School applications for non-infrastructure  
21 projects meeting all requirements included in §25.502 of this  
22 subchapter will be evaluated on the following selection  
23 criteria:

1           (1) identification of the current and potential overall  
2 need for programs to encourage and promote walking and bicycling  
3 to the proposed project location;

4           (2) identification of existing safety hazards and the  
5 need for a behavioral program to increase awareness of those  
6 issues;

7           (3) the potential of the proposal to reduce child  
8 injuries and fatalities through education, enforcement, or other  
9 activities;

10           (4) the potential of the proposal to encourage walking  
11 and bicycling among students;

12           (5) support for the project by the community and  
13 interested parties;

14           (6) a plan for evaluating the success of the project; and

15           (7) other factors deemed necessary to promote pedestrian  
16 and bicycle safety of children in and around school areas.

17           (e) Commission approval. Approval by the commission will  
18 be based on the recommendations from the director of the  
19 responsible division administering the program [panel  
20 evaluations], funding availability, the safety of the traveling  
21 public, the overall goals of the program, and safety in and  
22 around school areas.

23           (f) [-(e)] Approved projects. After approval by the

1 commission, the department will notify applicants of the project  
2 selection status.

3 (1) Approved infrastructure projects must comply with  
4 design, plan preparation, [and] letting requirements, and other  
5 requirements established by the director of the responsible  
6 division.

7 (2) Approved non-infrastructure projects must comply with  
8 the requirements established by the director of the responsible  
9 division included in the call for project proposals.

10 ~~[(f) Project overruns. Approved program funds are a fixed~~  
11 ~~amount. Project applicants will be responsible for all cost~~  
12 ~~overruns.]~~

13  
14 \$25.505. Project Funding and Monitoring.

15 (a) Reimbursement. The Safe Routes to School Program is a  
16 reimbursement program for costs incurred. Any costs incurred by  
17 applicants prior to project approval, final contract execution,  
18 and federal project authorization are not eligible for  
19 reimbursement under the program.

20 (b) Funding allocations between project types. Non-  
21 infrastructure based projects will make up at least 10% and no  
22 more than 30% of the overall program funding. The exact  
23 proportion of infrastructure to non-infrastructure funding will

1 be determined by the department.

2 (c) Local contribution. No local contribution is required  
3 for projects submitted for funding under the Safe Routes to  
4 School Program.

5 (d) Project overruns. Project overruns will be evaluated  
6 by the responsible division administering the program on a case-  
7 by-case basis to determine if the project will continue and how  
8 the additional costs will be covered.

9 (e) Commission allocation for state initiated projects.  
10 The commission may allocate funds to the department for use on  
11 the state highway system for Safe Routes to School projects  
12 initiated by the department.

13 (f) Project monitoring and evaluation. The department will  
14 monitor and evaluate the effectiveness of each project funded on  
15 this subchapter to ensure compliance with state and federal law  
16 and regulation. Each recipient of funding is required to  
17 cooperate fully with the department in this process.