

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

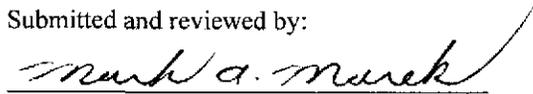
The Texas Transportation Commission (commission) finds it necessary to propose new §2.67, relating to the landscape partnership program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed 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.

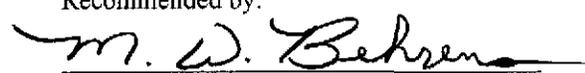
IT IS THEREFORE ORDERED by the commission that the new §2.67 is proposed for adoption and is authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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, Design Division

Recommended by:

  
Executive Director

**110775 DEC 14 06**

Minute Number      Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes the  
3 adoption of new §2.67, concerning the Landscape Partnership  
4 Program.

5  
6 EXPLANATION OF PROPOSED NEW SECTION

7 New §2.67, Landscape Partnership Program, allows local  
8 governments or private entities to support the aesthetic  
9 improvement of the state highway system by donating 100% of the  
10 development, establishment, and maintenance of a landscape  
11 project on the right of way. The section also specifies the  
12 eligibility and signage requirements for the program.

13  
14 The language in subsection (a) explains the purpose of the  
15 Landscape Partnership Program. The program improves the  
16 aesthetics on state highway right of way by allowing other  
17 entities to participate in landscaping projects on state owned  
18 right of ways.

19  
20 Subsection (b) maximizes the use of taxpayer revenue by  
21 providing that a local government, a private business, or a  
22 civic organization may participate in the program. Private  
23 businesses or civic organizations can participate by providing  
24 donations to a local government participating in the program or  
25 by donations directly to the department. All donations will be

1 processed under Title 43 Chapter 1, Subchapter G, Texas  
2 Administrative Code including the acceptance process and the  
3 donation agreement. As an incentive to participate in the  
4 program, the rule allows a sign to be erected at the project  
5 site announcing the entity's participation in the program. The  
6 sign must be erected and maintained by the donor for the  
7 duration of the project agreement.

8

9 Subsection (c) provides the application requirements.

10 Applications must be submitted to the local district engineer  
11 and shall include the date, donor contact information, the  
12 location of the proposed site, and a project concept plan  
13 containing sketches, drawings, specifications, and descriptive  
14 text as necessary for the department to consider the  
15 application.

16

17 Subsection (d) provides the general conditions each project must  
18 meet for consideration in the program. The language provides  
19 that if the project is approved, the work will be performed by  
20 the local government or donor. This exception to allow other  
21 entities access and authority to perform work on state right of  
22 way maximizes the effectiveness of the program.

23

24 In order to protect the safety of the traveling public and the  
25 integrity of the state highway system, the language provides

1 that the department will only consider sites that are not  
2 scheduled for future construction, contain sufficient space to  
3 permit the project without raising safety concerns, that do not  
4 have drainage issues and that do not contain utilities,  
5 driveways, pavement, sidewalks, highway signs or other highway  
6 system fixtures. The design project must be acceptable to the  
7 department and must not contain flagpoles, pennant poles,  
8 fountains, water features, statuary, sculptures, or other art  
9 objects. In addition, the plant material or fixtures cannot  
10 require an intense level of continued establishment or  
11 maintenance nor can the design elements incorporate a logo or  
12 other advertisement.

13  
14 For public safety purposes, subsection (e) provides the  
15 department the authority to consider additional factors such as  
16 width of the right of way, congestion, sight distance, and  
17 maintenance requirements in approving a proposed project. This  
18 subsection also states that the sign used to recognize the local  
19 government or donor entity shall be four feet by four feet and  
20 shall conform to all requirements of the Texas Manual on  
21 Uniform Traffic Control Devices. It also provides that the  
22 donor or local government shall pay all costs associated with  
23 the sign. In addition, this subsection also states that the  
24 program is independent and cannot be combined with any other  
25 landscape-related programs sponsored by the department.

1  
2 In order for the department to maintain adequate control over  
3 its right of way, subsection (f) provides that a written  
4 agreement must be signed prior to the initiating of any work on  
5 the project. The agreement shall be in a form prescribed by the  
6 department and shall be for a period not less than two years. A  
7 donation schedule shall be included in the agreement if it is  
8 applicable to the particular project.

9  
10 Subsection (g) outlines the procedure for modifying or  
11 terminating the agreement. The department has sole discretion  
12 on any modifications to the agreement. The language provides  
13 that if the project is not installed within one year, the  
14 agreement is void. It also provides that the department can  
15 remove the project if the local government or donor fails to  
16 maintain the project according to the agreement.

17  
18 FISCAL NOTE  
19 James Bass, Chief Financial Officer, has determined that for  
20 each of the first five years the new section as proposed is in  
21 effect, there will be no fiscal implications for state or local  
22 governments as a result of enforcing or administering the new  
23 section. There are no anticipated economic costs for persons  
24 required to comply with the section as proposed.

25

1 Mark A. Marek, Director, Design Division, has certified that  
2 there will be no significant impact on local economies or  
3 overall employment as a result of enforcing or administering the  
4 new section.

5

6 PUBLIC BENEFIT

7 Mr. Marek has also determined that for each year of the first  
8 five years the new section is in effect, the public benefit  
9 anticipated as a result of enforcing or administering the new  
10 section will be to improve the aesthetics of the state highway  
11 system by allowing local governments and private entities to  
12 provide landscaping on the right of way. There will be no  
13 adverse economic effect on small businesses.

14

15 SUBMITTAL OF COMMENTS

16 Written comments on the proposed new §2.67 may be submitted to  
17 Mark A. Marek, Director, Design Division, Texas Department of  
18 Transportation, 125 East 11th Street, Austin, Texas 78701-2483.  
19 The deadline for receipt of comments is 5:00 p.m. on January 29,  
20 2007.

21

22 STATUTORY AUTHORITY

23 The new section is proposed under Transportation Code, §201.101,  
24 which provides the Texas Transportation Commission with the  
25 authority to establish rules for the conduct of the work of the

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

1 SUBCHAPTER D. PUBLIC PARTICIPATION PROGRAMS

2 §2.67. Landscape Partnership Program

3 (a) Purpose. The Landscape Partnership Program (program)  
4 allows private businesses, civic organizations, and local  
5 governments an opportunity to support the aesthetic improvement  
6 of the state highway system by donating the project development,  
7 establishment, and maintenance of a landscaped section of the  
8 state highway system. This section sets forth policies and  
9 procedures governing the program.

10 (b) Participation.

11 (1) Eligible entities. A local government or a private  
12 business or civic organization may develop, establish, and  
13 maintain the landscape of a section of the state highway system  
14 upon approval of the district engineer. A private business or  
15 civic organization is eligible to participate:

16 (A) as a donor through the local government by  
17 providing donations to the local government; or

18 (B) as a nongovernmental donor by providing donations  
19 directly to the department.

20 (2) Compliance with other rules. The department will  
21 process a donation under paragraph (1)(B) of this subsection in  
22 accordance with the requirements of Chapter 1, Subchapter G of  
23 this title (relating to Donations). If a provision of this

1 section conflicts with a provision of Chapter 1, Subchapter G of  
2 this title, this section will prevail.

3 (3) Sign. A sign may be erected at the project site,  
4 announcing participation in the program. The sign will be  
5 erected by the donor and will be maintained for the duration of  
6 the project agreement.

7 (c) Application.

8 (1) A local government or donor that desires to  
9 participate or to continue to participate in the program shall  
10 submit an application to the district engineer of the district  
11 in which the project site is located.

12 (2) The application shall be in the form prescribed by  
13 the department and shall at a minimum include:

14 (A) the date of application;

15 (B) the name, telephone number, and complete mailing  
16 address of the local government or donor;

17 (C) the highway section the local government or donor  
18 is interested in developing, establishing, and maintaining; and

19 (D) the project concept plan containing sketches,  
20 drawings, specifications, and descriptive text as may be  
21 required by the department to evaluate the project under  
22 required general, site, and design consideration, to determine  
23 the proposed design intent.

1 (d) Conditions. In order to participate in the program,  
2 each project must meet the department's approval under general,  
3 site, and design considerations.

4 (1) General considerations. Normally, work on state  
5 highway right of way will be performed by state forces or under  
6 contracts awarded and administered by the department. Under  
7 this program, an exception will be granted to allow a local  
8 government or donor to perform work on state highway right of  
9 way if the project is approved by the district engineer.

10 (2) Site considerations. For sites to be approved by the  
11 department, the following site conditions must be met. The site  
12 must:

13 (A) not be scheduled for future construction, as  
14 defined within the department's current unified transportation  
15 plan, that would conflict with the activities proposed on the  
16 project;

17 (B) contain sufficient right of way to reasonably  
18 permit planting and landscaping operations without conflicting  
19 with safety, geometric, and maintenance considerations;

20 (C) not contain overhead or underground utilities,  
21 driveways, pavement, sidewalks, or highway system fixtures  
22 including traffic signage or signalization that would conflict  
23 with the planting or landscaping operations proposed under the

1 project; and

2 (D) not contain existing drainage conditions that will  
3 be obstructed or otherwise interfered with by the project.

4 (3) Design considerations. For sites to be approved by  
5 the department, the following design considerations must be met.

6 (A) The project design, as shown on the project concept  
7 plan, must be acceptable to the department.

8 (B) Unless otherwise approved by the department, the  
9 project design may not include the following design elements:

10 (i) plant material or fixtures that, in the opinion  
11 of the department, require an intense level of continued  
12 establishment and maintenance in order to assure the  
13 effectiveness and function within the design;

14 (ii) flagpoles or pennant poles;

15 (iii) fountains or water features;

16 (iv) statuary, sculpture, or other art objects; and

17 (v) logos or other advertising.

18 (e) General limiting conditions and eligibility. Because  
19 of administrative, legislative, and financial constraints, the  
20 program shall be subject to the following terms.

21 (1) The department will consider such factors as width of  
22 right of way, geometrics, congestion, sight distance, and  
23 maintenance requirements in determining the acceptability of any

1 proposed project.

2 (2) Signage for the program shall be four feet by four  
3 feet and shall conform to the current Texas Manual on Uniform  
4 Traffic Control Devices. All costs associated with signage  
5 shall be paid by the local government or donor.

6 (3) Work under the program shall not be combined with any  
7 other landscape-related programs sponsored by the department.

8 (f) Agreement.

9 (1) If the proposed project as submitted under subsection  
10 (c) of this section is approved by the department, the local  
11 government or donor shall enter into a written agreement with  
12 the department providing participation in the program. Work on  
13 any phase of the project may not begin until the agreement is  
14 fully executed by both parties.

15 (2) The agreement shall be in the form prescribed by the  
16 department and shall at a minimum include the following terms.

17 (A) The project design plan shall consist of plans,  
18 sketches, drawings, notes, estimates, maintenance work  
19 schedules, and specifications as required by the department.

20 (B) Any changes to the agreement shall be enacted by  
21 written amendment.

22 (C) The parties shall not assign or otherwise transfer  
23 their obligations under this agreement, except with prior

1 written consent of the other party.

2 (D) The project design plan shall be subject to the  
3 review and satisfactory approval by the department prior to  
4 installation.

5 (E) Violation or breach of contract terms shall be  
6 grounds for termination of the agreement by the department. In  
7 the event of disputes as to obligations under the agreement, the  
8 department's decision shall be final and binding.

9 (F) The local government or donor and its contractors,  
10 if any, shall to the extent provided by law, furnish  
11 certificates of insurance, guarantees of self insurance if  
12 appropriate, and indemnification as may be prescribed by the  
13 department.

14 (G) The local government or donor shall provide, erect,  
15 and maintain to the satisfaction of the department any  
16 barricades, signs, and traffic handling devices necessary to  
17 protect the safety of the traveling public while performing any  
18 work on the project.

19 (H) The agreement shall be for a period of not less  
20 than two years. If after two years, the local government or  
21 donor desires to continue the project, the agreement shall be  
22 subject to renewal.

23 (3) A donation schedule, if applicable, shall be outlined

1 in the agreement.

2 (g) Modification/termination of agreement. The agreement  
3 as cited in subsection (f) of this section may be modified in  
4 any manner at the sole discretion of the department.

5 (1) If the project is not installed within one year, the  
6 agreement becomes void.

7 (2) If the local government or donor fail to maintain the  
8 project according to the schedule outlined in the agreement, the  
9 project will be subject to removal at the department's  
10 discretion.