

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

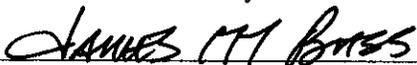
The Texas Transportation Commission (commission) finds it necessary to propose new §§5.70 – 5.74, relating to award of transportation development credits, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that new §§5.70 – 5.74 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:


Chief Financial Officer

Recommended by:


Executive Director

110429 FEB 23 06

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 Title 43, Chapter 5, new Subchapter F, §§5.70 - 5.74, concerning
4 the Transportation Development Credit Program.

5

6 EXPLANATION OF PROPOSED SECTIONS

7 Title 23, USC, §120, as amended by the Safe, Accountable,
8 Flexible, Efficient Transportation Equity Act: A Legacy for
9 Users, SAFETEA-LU (Pub. L. No. 109-59) (2005) (SAFETEA-LU),
10 permits a state to use certain toll revenue expenditures,
11 transportation development credits, formerly called toll
12 credits, as a credit toward the non-Federal share of all
13 programs authorized by Title 23, with the exception of emergency
14 relief programs and for transit programs authorized by Title 49,
15 Chapter 53. Transportation development credits are designed to
16 encourage states to increase capital investment in
17 infrastructure; to increase the flexibility of state
18 transportation finance programs; and to enable states to more
19 effectively utilize existing resources. The Texas
20 Transportation Commission (commission) has a statutory
21 obligation to enhance existing sources of revenue and to create
22 alternate sources of revenue. The department proposes the
23 adoption of rules concerning transportation development credits
24 to implement the applicable laws.

25

1 New §5.70, Purpose, identifies the applicable federal law and
2 states its purpose and also states that the proposed rules are
3 intended to specify the procedures and conditions by which an
4 entity may be eligible for award of transportation development
5 credits and how the commission may award credits.

6
7 New §5.71, Definitions, defines "commission," "department,"
8 "eligible entity," "eligible project," "executive director,"
9 "locally earned credits," and "transportation development
10 credits."

11
12 The term "eligible entity" is defined as any entity that is
13 eligible for funding under Title 23, USC or Title 49, Chapter
14 53, USC and is in good standing with the department and has no
15 deficiencies or findings of noncompliance. It is defined in the
16 manner that conforms to the applicable federal law and states
17 the basic requirement of good standing for any entity wishing to
18 do business with the department. The requirement that an entity
19 be in good standing with the department will ensure that the
20 department enhances existing sources of revenue; that it
21 maximizes the generation of revenue from existing assets of the
22 department; and, that it increases the role of local and
23 regional leaders in solving the state's transportation problems
24 by rewarding those entities in good standing.

25

1 The term "eligible project" is defined as highway, rail,
2 transit, bicycle or pedestrian projects, as authorized by Title
3 23, USC, other than the emergency relief programs authorized by
4 §125, and Title 49, Chapter 53, USC, as amended by SAFETEA-LU.
5 This is consistent with the department's plan to encourage
6 development of new mobility opportunities and transportation
7 solutions that will enhance transportation by roads and highways
8 or serve as an alternate to traditional modes of transportation.

9
10 The term "locally earned credits" is defined as transportation
11 development credits earned from a project of a regional tollway
12 authority; a project of a county acting under Transportation
13 Code, Chapter 284; a project of a regional mobility authority;
14 an international bridge not owned by the state; and a department
15 project located within the geographic area of a regional
16 mobility authority that has developed one or more toll projects.
17 This reflects the department's goal to empower local and
18 regional leaders to solve local and regional transportation
19 problems, and to reward local and regional efforts to solve
20 transportation problems.

21
22 The term "transportation development credits" is defined as a
23 financing tool approved by the Federal Highway Administration
24 (FHWA) that allows states to use their federal obligation
25 authority without the requirement of non-federal matching

1 dollars. Credits are earned when the state, a toll authority,
2 or a private entity funds a capital transportation investment
3 with toll revenues earned on existing toll facilities, excluding
4 revenues needed for debt service, returns to investors or the
5 operation and maintenance of toll facilities. The term
6 describes a revenue tool, formerly called toll credits, that
7 allows states to use their federal obligation authority without
8 the requirement of non-federal matching dollars, thus expanding
9 the resources available to the department as well as the
10 department's local and regional partners.

11
12 New §5.72, describes the competitive process by which the
13 commission will award 75% of the state's locally earned
14 transportation development credits. The commission has
15 expressed its intention to empower local and regional leaders to
16 solve local and regional transportation problems. The
17 commission award of 75% of the available transportation
18 development credits by a competitive process will encourage
19 local and regional entities to compete with one another to
20 define and solve local and regional transportation problems,
21 develop and implement transportation projects, create regional
22 mobility authorities, and provide local and regional leadership
23 to help the department solve statewide transportation problems.

24
25 Subsection 5.72(d), Program call, describes the manner in which

1 the department will solicit proposals for the competitive award
2 of credits by periodically publishing a solicitation notice in
3 the *Texas Register*.

4
5 Subsection 5.72(e), Proposal, describes the requirements of a
6 proposal submitted in response to a solicitation published by
7 the department. The commission has expressed its commitment to
8 a plan for faster completion of transportation projects with
9 additional money to get the job done right. The plan has five
10 goals: 1) reduce congestion; 2) enhance safety; 3) expand
11 economic opportunity; 4) improve air quality; and, 5) increase
12 the value of transportation assets. The plan is based on four
13 strategies: 1) use new financial options to build transportation
14 projects; 2) empower local and regional leaders to solve local
15 and regional transportation problems; 3) increase competitive
16 pressure to drive down the cost of transportation projects; and,
17 4) demand consumer driven decisions that respond to traditional
18 market forces. The proposal must provide a detailed description
19 of the need for the project and how the award of transportation
20 development credits for the project will meet the requirements
21 of the commission's plan for statewide transportation.

22
23 Subsection 5.72(f), Award, describes the manner in which the
24 commission will consider proposals and projects submitted in
25 response to a published notice soliciting proposals. The

1 subsection enumerates the criteria that the commission will use
2 in awarding transportation development credits in a manner that
3 expands the availability of funding for transportation projects,
4 reduces congestion, expands economic opportunity, enhances
5 safety, improves air quality and increases the value of
6 transportation assets. The subsection reflects how the
7 commission will reward local and regional efforts to help the
8 department complete transportation projects faster and to help
9 the department's efforts to reduce congestion, enhance safety,
10 expand economic opportunity, improve air quality, and increase
11 the value of transportation assets. Subsection 5.72(f) also
12 adds the requirement that the local and regional leaders must
13 coordinate proposals and proposed projects with the local
14 metropolitan planning organization if the project falls within
15 the boundaries of the metropolitan planning organization for the
16 purpose of obtaining the organization's concurrence on the
17 proposal or proposed project. The requirement for metropolitan
18 planning organization concurrence will demonstrate to the
19 commission that the project has regional support.

20
21 Subsection 5.72(g), Unused credits, describes how the commission
22 will determine if credits are being utilized in a manner that
23 maximizes the value of the credits for the benefit of the
24 department's statewide transportation plan. Any transportation
25 development credits that cannot be awarded to a region due to a

1 lack of eligible projects or credits that have been previously
2 awarded, but after one year remain unused, shall be available
3 for discretionary award by the commission. This requirement is
4 consistent with the commission's statutory obligation to enhance
5 existing sources of revenue and to create alternate sources of
6 revenue that can be applied to transportation projects.

7

8 New §5.73, Discretionary award, describes the process by which
9 the commission will make discretionary awards of transportation
10 development credits. By maintaining discretionary control over
11 25% of the available transportation development credits, the
12 commission will be able to exercise its role as the state's
13 leader in the plan to resolve the state's transportation problem
14 and to maintain its responsibility to plan and approve
15 transportation projects that will benefit the entire state.

16

17 Subsection 5.73(b), Award, describes the commission's
18 discretionary award of credits and is consistent with the same
19 criteria used to make transportation development credit award
20 determinations for the competitive process. The subsection also
21 adds the requirement that the local and regional leaders must
22 coordinate proposals and proposed projects with the local
23 metropolitan planning organization if the project falls within
24 the boundaries of the metropolitan planning organization for the
25 purpose of obtaining the organization's expressed opinion on the

1 proposal or proposed project.

2

3 Subsection 5.73(c), Unused credits, states that if an entity
4 awarded credits does not sign the required agreement within one
5 year of award, the commission may award those credits to another
6 entity.

7

8 New §5.74, Administration, states that an entity awarded
9 transportation development credits shall enter into a project
10 agreement with the department and shall comply with other
11 requirements specified by the executive director. These
12 requirements are consistent with the department's other
13 requirements related to doing business with the department.

14

15 FISCAL NOTE

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

22

23 Mr. Bass has certified that there will be no significant impact
24 on local economies or overall employment as a result of
25 enforcing or administering the new sections.

1

2 PUBLIC BENEFIT

3 Mr. Bass has also determined that for each year of the first
4 five years the sections are in effect, the public benefit
5 anticipated as a result of enforcing or administering the new
6 sections will be the potentially increased availability of state
7 or local funds that would otherwise be required to pay the
8 federal government as local match for eligible projects. There
9 will be no adverse economic effect on small businesses.

10

11 PUBLIC HEARING

12 Pursuant to the Administrative Procedure Act, Government Code,
13 Chapter 2001, the Texas Department of Transportation will
14 conduct a public hearing to receive comments concerning the
15 proposed rules. The public hearing will be held at 10:30 a.m.
16 on March 31, 2006 in the first floor hearing room of the Dewitt
17 C. Greer State Highway Building, 125 East 11th Street, Austin,
18 Texas and will be conducted in accordance with the procedures
19 specified in 43 TAC §1.5. Those desiring to make comments or
20 presentations may register starting at 10:00 a.m. Any
21 interested persons may appear and offer comments, either orally
22 or in writing; however, questioning of those making
23 presentations will be reserved exclusively to the presiding
24 officer as may be necessary to ensure a complete record. While
25 any person with pertinent comments will be granted an

1 opportunity to present them during the course of the hearing,
2 the presiding officer reserves the right to restrict testimony
3 in terms of time and repetitive content. Organizations,
4 associations, or groups are encouraged to present their commonly
5 held views and identical or similar comments through a
6 representative member when possible. Comments on the proposed
7 text should include appropriate citations to sections,
8 subsections, paragraphs, etc. for proper reference. Any
9 suggestions or requests for alternative language or other
10 revisions to the proposed text should be submitted in written
11 form. Presentations must remain pertinent to the issues being
12 discussed. A person may not assign a portion of his or her time
13 to another speaker. Persons with disabilities who plan to
14 attend this meeting and who may need auxiliary aids or services
15 such as interpreters for persons who are deaf or hearing
16 impaired, readers, large print or Braille, are requested to
17 contact Randall Dillard, Director, Public Information Office,
18 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at
19 least two working days prior to the hearing so that appropriate
20 services can be provided.

21

22 SUBMITTAL OF COMMENTS

23 Written comments on the proposed new sections may be submitted
24 to James Bass, Chief Financial Officer, Texas Department of
25 Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

1 The deadline for receipt of comments is 5:00 p.m. on April 10,
2 2006.

3

4 STATUTORY AUTHORITY

5 The new sections are proposed under Transportation Code,
6 §201.101, which provides the commission with the authority to
7 establish rules for the conduct of the work of the department.

8

9 CROSS REFERENCE TO STATUTE

10 Transportation Code §201.101.

1 SUBCHAPTER F. TRANSPORTATION DEVELOPMENT CREDIT PROGRAM

2 §5.70. Purpose. Section 120 of Title 23, USC, as amended by
3 the Safe, Accountable, Flexible, Efficient Transportation Equity
4 Act: A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59 (2005),
5 permits a state to use certain toll revenue expenditures, known
6 as transportation development credits, as a credit toward the
7 non-federal share of certain programs. This subchapter
8 specifies the procedures and conditions by which an entity may
9 be eligible for award of transportation development credits and
10 the procedures and conditions by which the commission may
11 otherwise award transportation development credits.

12
13 §5.71. Definitions. The following words and terms, when used
14 in this chapter, shall have the following meanings, unless the
15 context clearly indicates otherwise.

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

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

18 (3) Eligible entity--Any entity that is eligible for
19 funding under Title 23, USC or Chapter 53 of Title 49, USC and
20 is in good standing with the department and has no deficiencies
21 or findings of noncompliance.

22 (4) Eligible project - Highway, rail, transit, bicycle or
23 pedestrian projects, as authorized by Title 23, USC, other than

1 the emergency relief programs authorized by §125 of Title 23,
2 and by Chapter 53 of Title 49, USC, as amended by the Safe,
3 Accountable, Flexible, Efficient Transportation Equity Act: A
4 Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59 (2005).

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

7 (6) Locally earned credits--Transportation development
8 credits earned from:

9 (A) a project of a regional tollway authority;

10 (B) a project of a county acting under Transportation
11 Code, Chapter 284;

12 (C) a project of a regional mobility authority;

13 (D) an international bridge not owned by the state; and

14 (E) a department project located within the geographic
15 area of a regional mobility authority that has developed one or
16 more toll projects.

17 (7) Transportation development credits--A financing tool
18 approved by the Federal Highway Administration (FHWA) that
19 allows states to use their federal obligation authority without
20 the requirement of non-federal matching dollars. Credits are
21 earned when the state, a toll authority, or a private entity
22 funds a capital transportation investment with toll revenues
23 earned on existing toll facilities, excluding revenues needed

1 for debt service, returns to investors or the operation and
2 maintenance of toll facilities.

3

4 §5.72. Competitive Process.

5 (a) Purpose. The commission will award 75% of the state's
6 locally earned credits in accordance with this section.

7 (b) Awarding credits to region. Except as provided in
8 subsection (g) of this section, the commission will award
9 credits under this section to projects within the region from
10 which they were earned. For purposes of this section, "region"
11 means the planning boundaries of the metropolitan planning
12 organization.

13 (c) Eligible project. A highway project is not eligible
14 for award under this section unless the proposer demonstrates
15 that the project provides direct support of a rail, transit,
16 bicycle or pedestrian project.

17 (d) Program call. The department will periodically publish
18 a notice in the *Texas Register* soliciting proposals for the
19 award of transportation development credits under this section.

20 (e) Proposal.

21 (1) An eligible entity may submit a proposal for an
22 eligible project in response to a notice published under
23 subsection (d) of this section. The proposal must include a

1 detailed description of:

2 (A) the project and the need for the project;

3 (B) how the award of transportation development credits
4 will expand the availability of funding for transportation
5 projects;

6 (C) how the project will:

7 (i) reduce congestion;

8 (ii) expand economic opportunity;

9 (iii) enhance safety;

10 (iv) improve air quality; and

11 (v) increase the value of transportation assets.

12 (2) If the project is located within the planning
13 boundaries of a metropolitan planning organization, the eligible
14 entity must obtain the concurrence of the metropolitan planning
15 organization.

16 (3) The executive director may require supplemental
17 information to clarify the issues described in paragraph (1) of
18 this subsection.

19 (f) Award.

20 (1) The commission will not consider a project unless the
21 project has been endorsed by the applicable metropolitan
22 planning organization.

23 (2) The commission will award transportation development

1 credits under this section after considering the potential of
2 the project to:

3 (A) expand the availability of funding for
4 transportation projects;

5 (B) reduce congestion;

6 (C) expand economic opportunity;

7 (D) enhance safety;

8 (E) improve air quality; and

9 (F) increase the value of transportation assets.

10 (g) Unused credits.

11 (1) If an entity awarded credits under this section does
12 not sign an agreement under §5.74 of this subchapter (relating
13 to Administration) within one year of award, unused credits
14 shall be available for discretionary award under §5.73 of this
15 subchapter (relating to Discretionary Award).

16 (2) If, after three program calls, the department has not
17 received enough eligible projects to use credits available to a
18 region under this section, the unused credits shall be available
19 for discretionary award under §5.73 of this subchapter.

20

21 §5.73. Discretionary Award.

22 (a) Purpose. The commission will award non-locally earned
23 credits and 25% of the state's locally earned credits in

1 accordance with this section. The commission may award credits
2 under this section through a competitive process as described in
3 §5.72 of this subchapter (relating to Competitive Process), or
4 on its own motion, at its discretion.

5 (b) Award. The commission will award transportation
6 development credits under this section based on the criteria
7 described in §5.72(e) of this subchapter. If the project is
8 located within the planning boundaries of a metropolitan
9 planning organization, the commission will also consider the
10 expressed opinion, if any, of the metropolitan planning
11 organization.

12 (c) Unused credits. If an entity awarded credits under
13 this section does not sign an agreement under §5.74 of this
14 subchapter (relating to Administration) within one year of
15 award, the commission may award those credits to another entity
16 under this section.

17
18 §5.74. Administration. An entity awarded transportation
19 development credits under this subchapter shall enter into a
20 project agreement with the department and shall comply with all
21 terms and conditions required by the executive director.