

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §1.82 relating to statutory advisory committee operations and procedures to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, 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 amendments to §1.82 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:

Recommended by:

General Counsel

Executive Director

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §1.82, Statutory Advisory Committee Operations and
4 Procedures.

5

6 EXPLANATION OF PROPOSED AMENDMENTS

7 The statutory advisory committees of the department are required
8 by 43 TAC §1.82(c)(1) to post and hold their meetings in
9 accordance with the open meetings law, Government Code, Chapter
10 551. That requirement is not imposed by the open meetings law
11 or any other statute. This rule subjects advisory committees
12 and their members to the enforcement provisions of the open
13 meetings laws and to all of the technical requirements that the
14 courts and the attorney general have determined are a part of
15 the open meetings law. The open meetings law requirements
16 impose a heavy burden on members of advisory committees, who are
17 often members of the general public rather than elected or
18 appointed government officials, whose only duties are to offer
19 considered advice to the department, and who have no policy
20 making powers or management or supervisory authority over any of
21 the department's functions.

22

23 Section 1.82 prescribes rules governing the operations and
24 procedures of department advisory committees that are created
25 specifically by state law.

1
2 Amendments to §1.82(c), Meetings, provide that instead of
3 subjecting the advisory committees to the requirements of the
4 state's open meetings law, the advisory committees would be
5 required to follow the specific requirements set out in the
6 rule. The rule requires publication in the *Texas Register* of a
7 10-day notice of each meeting of an advisory committee, requires
8 each meeting of an advisory committee to be open to the public,
9 and requires an advisory committee to follow the agenda set for
10 the meeting. The changes ensure that the activities of the
11 advisory committees would remain open to the public but remove
12 unnecessary requirements of the present rules.

13
14 FISCAL NOTE

15 James Bass, Chief Financial Officer, has determined that for
16 each of the first five years the amendments as proposed are in
17 effect, there will be no fiscal implications for state or local
18 governments as a result of enforcing or administering the
19 amendments.

20
21 Bob Jackson, General Counsel has certified that there will be no
22 significant impact on local economies or overall employment as a
23 result of enforcing or administering the amendments.

24

1 PUBLIC BENEFIT

2 Mr. Jackson has also determined that for each year of the first
3 five years the sections are in effect, the public benefit
4 anticipated as a result of enforcing or administering the
5 amendments will be enhanced and more efficient communication
6 between the department and the public. There are no anticipated
7 economic costs for persons required to comply with the sections
8 as proposed. There will be no adverse economic effect on small
9 businesses.

10

11 SUBMITTAL OF COMMENTS

12 Written comments on the proposed amendments to §1.82 may be
13 submitted to Bob Jackson, General Counsel, Texas Department of
14 Transportation, 125 East 11th Street, Austin, Texas 78701-2483.
15 The deadline for receipt of comments is 5:00 p.m. on January 28,
16 2008.

17

18 STATUTORY AUTHORITY

19 The amendments are proposed under Transportation Code, §201.101,
20 which provides the Texas Transportation Commission with the
21 authority to establish rules for the conduct of the work of the
22 department, and more specifically, Transportation Code, §21.003,
23 Transportation Code, §55.009, Transportation Code, §201.114, and
24 Transportation Code, §455.004 which authorize the commission to
25 adopt rules to govern the operations of the respective advisory

1 committees.

2

3 CROSS REFERENCE TO STATUTE

4 Government Code, Chapter 2110, and Transportation Code, §21.003,

5 Transportation Code, §21.106-§21.109, Transportation Code,

6 §55.006, Transportation Code, §201.114, Transportation Code,

7 §201.6011, and Transportation Code, §455.004.

1 SUBCHAPTER F. ADVISORY COMMITTEES

2 §1.82. Statutory Advisory Committee Operations and Procedures.

3 (a) Applicability. This section applies to statutory
4 advisory committees and governs the operation of statutory
5 advisory committees unless it is superceded by a specific
6 provision in §1.84 of this subchapter.

7 (b) Election of officers and terms of members.

8 (1) Unless otherwise specified with regard to a
9 particular committee, each committee shall elect a chair and
10 vice-chair by majority vote of the members of the committee.
11 The chair and vice-chair shall each be elected for a term of not
12 less than one year and not more than two years. Once elected,
13 the chair and vice-chair may stand for reelection, without limit
14 on the number of consecutive terms.

15 (2) Members shall serve on an advisory committee until
16 new members are appointed.

17 (c) Meetings.

18 (1) Meeting [~~Open meeting~~] requirements. The office
19 designated for an advisory committee under subsection (f) of
20 this section shall publish notice of a meeting of the advisory
21 committee in the Texas Register at least 10 days before the date
22 of the meeting. The notice must provide the date, time, place,
23 and subject of the meeting. A meeting of an advisory committee

1 must be open to the public. An advisory committee will follow
2 the agenda set for each meeting under paragraph (2) of this
3 subsection. [~~Advisory committees shall post and hold all~~
4 ~~meetings in accordance with the provisions applicable to~~
5 ~~meetings of the commission under the Texas Open Meetings Act,~~
6 ~~Government Code, Chapter 551.] Filing of notice of [open]~~
7 meetings with the Secretary of State shall be coordinated
8 through the department's Office of General Counsel.

9 (2) Scheduling of meetings. Meeting dates, times,
10 places, and agendas will be set by the office designated under
11 subsection (f) of this section. Any committee member may
12 suggest the need for a meeting or an agenda item, provided that
13 the committee may only discuss items that are within the
14 committee's and the department's jurisdiction. The office
15 designated under subsection (f) of this section will provide
16 notice of the time, date, place, and purpose of meetings to the
17 members, by mail, email, telephone or any combination of the
18 three, at least 10 calendar days in advance of each meeting.
19 All meetings must take place in Texas and must be held in a
20 location that is readily accessible to the general public.

21 (3) Quorum. A majority of the membership of an advisory
22 committee, including the chairman, constitutes a quorum. The
23 committee may act only by majority vote of its membership.

1 (4) Removal. A committee member may be removed at any
2 time without cause by the person or entity that appointed the
3 member or by that person's or entity's successor.

4 (5) Parliamentary procedure. Parliamentary procedures
5 for all committee meetings shall be in accordance with the
6 latest edition of Robert's Rules of Order, except that the chair
7 may vote on any action as any other member of the committee, and
8 except to the extent that Robert's Rules of Order are
9 inconsistent with any statute or this subchapter.

10 (6) Record. Minutes of all committee meetings shall be
11 prepared and filed with the commission. The complete
12 proceedings of all committee meetings must also be recorded by
13 electronic means.

14 (7) Public information. All minutes, transcripts, and
15 other records of the advisory committees are records of the
16 commission and as such may be subject to disclosure under the
17 provisions of Government Code, Chapter 552.

18 (d) Reimbursement. The department may, if authorized by
19 law and the executive director, reimburse a member of a
20 committee for reasonable and necessary travel expenses. Current
21 rules and laws governing reimbursement of expenses for state
22 employees shall govern reimbursement of expenses for advisory
23 committee members.

1 (e) Conflict of interest. Advisory committee members are
2 subject to the same laws and policies governing ethical
3 standards of conduct as those for commission members and
4 employees of the department.

5 (f) Administrative support. For each advisory committee,
6 the executive director will designate an office of the
7 department that will be responsible for providing any necessary
8 administrative support essential to the functions of the
9 committee.

10 (g) Advisory committee recommendations. In developing
11 department policies, the commission will consider the
12 recommendations submitted by advisory committees.

13 (h) Manner of reporting.

14 (1) The office designated under subsection (f) of this
15 section shall, in writing, report to the commission an official
16 action of a statutory advisory committee, including any advice
17 and recommendations, prior to commission action on the issue.
18 The chair of the advisory committee or the chair's designee will
19 also be invited by the department to appear before the
20 commission prior to commission action on a posted agenda item to
21 present the committee's advice and recommendations.

22 (2) In the event a written report cannot be furnished to
23 the commission prior to commission action, the report may be

1 given orally, provided that a written report is furnished within
2 10 days of commission action.

3 (i) Duration. Except as otherwise specified in this
4 subchapter, each statutory advisory committee is abolished
5 December 31, 2009, unless the commission amends its rules to
6 provide for a different date.