

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

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

The preamble and the adopted 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 adopted and is 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:

Recommended by:

Director, Design Division

Executive Director

Minute Number Date Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts new
3 §2.67, concerning the Landscape Partnership Program. New §2.67
4 is adopted without changes to the proposed text as published in
5 the December 29, 2006, issue of the *Texas Register* (31 TexReg
6 10750) and will not be republished.

7

8 EXPLANATION OF ADOPTED NEW SECTION

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

15

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

21

22 Subsection (b) maximizes the use of taxpayer revenue by
23 providing that a local government, a private business, or a
24 civic organization may participate in the program. Private
25 businesses or civic organizations can participate by providing

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

10

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

18

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

25

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

15

16 For public safety purposes, subsection (e) provides the
17 department the authority to consider additional factors such as
18 width of the right of way, congestion, sight distance, and
19 maintenance requirements in approving a proposed project. This
20 subsection also states that the sign used to recognize the local
21 government or donor entity shall be four feet by four feet and
22 shall conform to all requirements of the Texas Manual on Uniform
23 Traffic Control Devices. It also provides that the donor or
24 local government shall pay all costs associated with the sign.
25 In addition, this subsection also states that the program is

1 independent and cannot be combined with any other landscape-
2 related programs sponsored by the department.

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

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

19
20 COMMENTS

21 No comments on the proposed new section were received.

22
23 STATUTORY AUTHORITY

24 The new section is adopted under Transportation Code, §201.101,
25 which provides the Texas Transportation Commission with the

1 authority to establish rules for the conduct of the work of the
2 department.

3

4 CROSS REFERENCE TO STATUTE

5 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.