

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

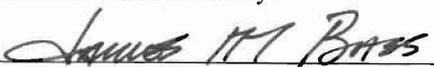
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§15.170, 15.171, 15.172, and 15.173 relating to state highway projects financed through the issuance of bonds and other public securities to be codified under Title 43, Texas Administrative Code, Part 1.

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.

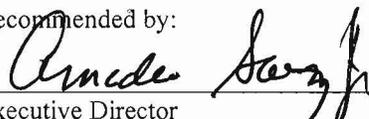
IT IS THEREFORE ORDERED by the commission that the amendments to §§15.170, 15.171, 15.172, and 15.173 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

**111326 APR 24 08**

Minute  
Number

Date  
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes  
3 amendments to §15.170, purpose, §15.171, definitions, §15.172,  
4 applicability, and §15.173, state highway improvement projects,  
5 concerning state highway projects financed through the issuance  
6 of certain bonds and other public securities.

7

8 EXPLANATION OF PROPOSED AMENDMENTS

9 The amendments conform 43 TAC Chapter 15, Subchapter N to the  
10 changes made to Transportation Code, §222.003 by Senate Bill  
11 792, 80th Legislature, 2007. Senate Bill 792 increased the  
12 annual bond issuance limit for bonds and other public securities  
13 secured by the state highway fund from \$1 billion to \$1.5  
14 billion; increased the maximum aggregate issuance limitation  
15 from \$3 billion to \$6 billion; and increased the amount  
16 allocated to highway safety projects from \$600 million to \$1.2  
17 billion. By deleting from the rules the amounts specified by  
18 the statute, the amendments remove the current and potential  
19 future discrepancies between the rules and statute, particularly  
20 with respect to the amount of bonds that the department may  
21 issue under 43 TAC Chapter 15, Subchapter N. Additionally,  
22 minor wording changes have been made to clarify the rules and to  
23 ensure consistency in terminology.

24

25 Amendments to §15.170, Purpose, delete references to the

1 specific dollar amounts of the annual bond issuance limit, and  
2 the maximum aggregate bond issuance limit which are specified in  
3 Transportation Code, §222.003 and subject to change by the  
4 legislature. The specific amounts are replaced with a reference  
5 to the statute, thereby removing current and potential future  
6 discrepancies between the rules and statute.

7

8 Amendments to §15.171, Definitions, delete the definition of  
9 Trans-Texas Corridor because the only use of the term in the  
10 subchapter is being removed from §15.172 for the reasons set out  
11 in the explanation of amendments to that section. The  
12 amendments renumber the remaining definitions accordingly.

13

14 Amendments to §15.172, Applicability, delete references to the  
15 specific project and dollar amount limitations and insert  
16 references to relevant provisions of Transportation Code,  
17 §222.003 to more accurately reflect the prohibited uses of bond  
18 proceeds and describe the bond amount limits prescribed by the  
19 legislature. Senate Bill 792 amended Transportation Code,  
20 §222.003(d) to change the amount of the proceeds that are  
21 required to be used for highway safety projects. As a result  
22 the statute and the rules conflict, and in such a situation, the  
23 statute controls. Transportation Code, §222.003(e) prohibits  
24 the use of bond proceeds for an array of projects, of which  
25 §15.172 lists only facilities on the Trans-Texas Corridor. The

1 amendments delete the reference to the Trans-Texas Corridor and  
2 substitute a reference to the statute thus capturing the  
3 prohibition of the use of the bond proceeds for all current and  
4 future prohibited uses.

5  
6 Amendments to §15.173, State Highway Improvement Projects,  
7 delete language limiting the use of bond proceeds for projects  
8 or programs in the Unified Transportation Program to only those  
9 that would be accelerated, thereby making the funds available  
10 for use on more state highway improvement projects.

11 Additionally, the amendments add as an eligibility criterion  
12 consideration of the potential of a project to be classified as  
13 a safety project.

14

15 FISCAL NOTE

16 James Bass, Chief Financial Officer, has determined that for  
17 each of the first five years the amendments 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  
20 amendments.

21

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

25

1 PUBLIC BENEFIT AND COST

2 Mr. Bass 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 a more efficient administration of the state  
6 highway fund bond funding program. 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 §§15.170, 15.171,  
13 15.172, and 15.173 may be submitted to James Bass, Chief  
14 Financial Officer, Texas Department of Transportation, 125 East  
15 11th Street, Austin, Texas 78701-2483. The deadline for receipt  
16 of comments is 5:00 p.m. on June 9, 2008.

17

18 STATUTORY AUTHORITY

19 The amendments are proposed under Transportation Code, §201.101,  
20 which provides the Texas Transportation Commission (commission)  
21 with the authority to establish rules for the conduct of the  
22 work of the department, and Transportation Code, §222.003, which  
23 requires the commission to by rule prescribe criteria for  
24 selecting projects eligible for funding under the state highway  
25 fund bond program.

- 1
- 2 CROSS REFERENCE TO STATUTE
- 3 Transportation Code, §222.003.

1 SUBCHAPTER N. STATE HIGHWAY PROJECTS FINANCED THROUGH THE  
2 ISSUANCE OF BONDS AND OTHER PUBLIC SECURITIES

3  
4 §15.170. Purpose. Transportation Code, §222.003, allows the  
5 Texas Transportation Commission to issue bonds and other public  
6 securities secured by a pledge of and payable from revenue  
7 deposited to the credit of the state highway fund. Proceeds  
8 from the sale of these bonds and other public securities must be  
9 used to fund state highway improvement projects, subject to the  
10 limitations provided in that section. [~~A maximum of \$1 billion~~  
11 ~~per year in debt may be issued not to exceed an aggregate~~  
12 ~~principal amount of \$3 billion.~~] This subchapter describes  
13 [~~prescribes~~] the criteria and policies [~~and procedures~~] that  
14 will be used to select projects.

15  
16 §15.171. Definitions.

17 The following words and terms, when used in this subchapter,  
18 shall have the following meanings, unless the context clearly  
19 indicates otherwise:

20 (1) Accident data--Information detailing the number of  
21 motor vehicle traffic accidents or casualties at or on a  
22 particular highway location, segment of highway, or type of  
23 highway.

24 (2) Bond--A public security issued by the State of Texas

1 under the authority of Transportation Code, §222.003, for  
2 improvements to the state highway system and secured by a pledge  
3 of and payable from revenue deposited to the credit of the state  
4 highway fund.

5 (3) Commission--The Texas Transportation Commission.

6 (4) Department--The Texas Department of Transportation.

7 (5) Executive Director--The executive director of the  
8 department or the director's designee.

9 (6) Grade crossing--The intersection of a railroad and a  
10 public roadway.

11 (7) Grade separation--A structure that separates two  
12 highways, a highway and a railroad line, a highway and a county  
13 road, or a highway and a city street.

14 (8) Hazard Elimination Program--A federal construction  
15 program mandated under 23 U.S.C. §152 to reduce the number and  
16 severity of traffic accidents.

17 (9) Hazardous location--A location on the state highway  
18 system that requires improvement in order to increase safety at  
19 a location, as determined by the department through accident  
20 data analysis or engineering judgment.

21 (10) Highway--A public road, including right of way and  
22 all appurtenances, that is on the designated state highway  
23 system.

1           (11) Narrow two-lane highway--A two lane road on the  
2 state highway system with a width of less than 24 feet,  
3 including any paved shoulder.

4           (12) Pavement geometry--The vertical, horizontal and  
5 pavement structure design elements of a highway or bridge  
6 feature.

7           (13) Safety appurtenance--Highway safety features such as  
8 breakaway sign supports, breakaway utility poles, traffic  
9 barriers, impact attenuators, traversable terrain, and hardware  
10 features such as drainage inlets, barriers, and other safety  
11 related fixtures.

12           (14) Safety project--A project that reduces accidents or  
13 corrects or improves a hazardous location.

14           (15) State highway system--The system of highways in the  
15 state included in a comprehensive plan prepared by the executive  
16 director with the approval of the commission, in accordance with  
17 Transportation Code, §201.103.

18           (16) State highway improvement project--Improvement  
19 projects designed to improve mobility, reduce congestion, or  
20 make other needed upgrades to the state highway system.

21           ~~[(17) Trans-Texas Corridor--The statewide system of~~  
22 ~~multimodal facilities under the jurisdiction of the department~~  
23 ~~that is designated by the commission under Transportation Code,~~

1 ~~Chapter 227.~~]

2       (17) [~~(18)~~] Texas Highway Trunk System--A planned rural  
3 network of four or more lane divided roadways that will serve as  
4 a principal connector for Texas cities of greater than 20,000  
5 population as well as major ports and points of entry.

6       (18) [~~(19)~~] Unified Transportation Program--The 10-year  
7 financial plan of the Texas Department of Transportation  
8 outlining project development and construction.

9

10 §15.172. Use of Proceeds [~~Applicability~~].

11       (a) Transportation Code, §222.003 (e) establishes certain  
12 prohibitions on the use of proceeds from the sale of the bonds  
13 [~~Proceeds from the sale of these bonds may not be used to~~  
14 ~~construct a state highway or other facility on the Trans Texas~~  
15 ~~Corridor~~].

16       (b) The proceeds of the bonds authorized by Transportation  
17 Code, §222.003 shall be used to fund state highway improvement  
18 projects. Transportation Code, §222.003(d), allocates a  
19 specified portion of those proceeds to safety projects  
20 [~~Transportation Code, §222.003(d), requires at least \$600~~  
21 ~~million of the aggregate debt limit of \$3 billion be used for~~  
22 ~~safety projects. The remainder of the funding may be used for~~  
23 ~~state highway improvement projects, including safety projects~~].

1

2 §15.173. State Highway Improvement Projects.

3 (a) Eligibility. Projects or programs contained in the  
4 department's Unified Transportation Program [~~and which would be~~  
5 ~~accelerated,~~] are eligible for funding.

6 (b) Selection criteria. The department will consider one  
7 or more of the following criteria in selecting projects for  
8 funding under this section:

9 (1) the potential of the project to improve mobility;

10 (2) the potential of the project to maintain and preserve  
11 the existing transportation system;

12 (3) the anticipated time required to complete the  
13 candidate project;

14 (4) adherence to all accepted department design standards  
15 as well as applicable state and federal law and regulation;

16 (5) feasibility of the project; [~~and~~]

17 (6) traffic volume; and [-]

18 (7) the potential of the project to qualify as a safety  
19 project.