

Adoption Preamble

1
2 The Texas Department of Transportation (department) adopts new
3 §§15.180 - 15.197, new Subchapter O, County Transportation
4 Infrastructure Fund Grant Program, concerning the financing and
5 construction of transportation projects. New §§15.180, 15.182,
6 15.183, 15.185, 15.189, 15.190, and 15.192 - 15.196 are adopted
7 without changes to the proposed text as published in the
8 September 13, 2013 issue of the *Texas Register* (38 TexReg 6028)
9 and will not be republished. New §§15.181, 15.184, 15.186,
10 15.187, 15.188, 15.191 and 15.197 are adopted with changes to
11 the proposed text as published in the September 13, 2013 issue
12 of the *Texas Register* (38 TexReg 6028).

13

14 EXPLANATION OF ADOPTED NEW SECTIONS

15 Senate Bill 1747, 83rd Legislature, Regular Session, 2013, added
16 new Transportation Code, Chapter 256, Subchapter C, §§256.101 -
17 256.106 establishing a transportation infrastructure fund and
18 directing the department to administer a grant program from the
19 fund to provide funding to counties for transportation
20 infrastructure projects located in areas of the state affected
21 by increased oil and gas production. In order to participate in
22 the grant program, Senate Bill 1747 requires a county to
23 establish a county energy transportation reinvestment zone and
24 advisory board under new Transportation Code, §§222.1071 and
25 222.1072, and submit a road condition report under new

1 Transportation Code, §251.018, that includes the primary cause
2 of any road, culvert, or bridge degradation.

3
4 New Subchapter O is required to implement the grant program
5 established under Senate Bill 1747, which took effect
6 September 1, 2013.

7
8 New §15.180, Purpose, states that the purpose of the new
9 subchapter is to establish and administer a grant program to
10 provide funding to counties for transportation infrastructure
11 projects located in areas of the state affected by increased oil
12 and gas production. The subchapter sets forth: procedures for
13 submission and review of applications; the allocation of funds
14 to eligible counties; and procedures for reimbursement to
15 counties of allowable costs incurred under the grant program.

16
17 New §15.181, Definitions, defines various terms used within
18 Subchapter O. The terms are defined to provide a clear
19 understanding of their usage and to incorporate statutory
20 language used in definitions contained in Transportation Code,
21 §256.101.

22
23 The definitions of (1) "Commission", (2) "Department", (3)
24 "District", and (4) "Executive director", are consistent with
25 the definitions used in other subchapters of Chapter 15 for

1 describing the governance and organizational structure of the
2 department.

3
4 The definitions of (5) "Fund" and (7) "Weight tolerance permit",
5 are identical to the definitions contained in Transportation
6 Code, §256.101.

7
8 The definition of (6) "Transportation infrastructure project",
9 contains the statutory language included in Transportation Code,
10 §256.101(2), but the language has been expanded to include work
11 intended to prevent or reduce further damage to a road. The
12 change clarifies that the phrase "alleviate degradation" is to
13 be read broadly to include those projects designed to mitigate
14 or prevent further damage or degradation, or meet a public
15 safety need. The additional change to §15.181(6) is addressed
16 in the COMMENTS section of this preamble.

17
18 The definition of (8) "Well completion", contains the statutory
19 language included in Transportation Code, §256.101(4), but
20 further identifies the well operator's initial submission of
21 information to the Railroad Commission as the specific event for
22 purposes of counting a well completion during a fiscal year in
23 the allocation formula under new §15.185(d). The additional
24 clarification was provided by the Railroad Commission.

25

1 New §15.182, Eligibility, describes the requirements for a
2 county to be eligible for a grant from the fund. To be eligible
3 a county must: be entirely or partially in an area affected by
4 increased oil and gas production; create a county energy
5 transportation reinvestment zone; and create an advisory board
6 for the county energy transportation reinvestment zone. The
7 eligibility requirements of this section are mandated by
8 Transportation Code, §§222.1072, 256.103, and 256.104.

9

10 New §15.183(a), Amount, requires a county to provide matching
11 funds of at least 20 percent of the amount of the county's total
12 grant award. However, if the department determines a county is
13 economically disadvantaged as defined by Transportation Code,
14 §222.053, the county is only required to provide matching funds
15 of at least 10 percent of the county's total grant award.

16 Subsection (b), Cash match, requires that the matching funds
17 provided by a county must be in cash and may be from any source
18 other than the department. The percentage of matching funds is
19 mandated by Transportation Code, §256.105, and the cash
20 requirement is consistent with the department's customary
21 matching requirements for other shared funding programs to
22 ensure that the recipient entity has sufficient funding
23 available to develop and complete the designated project or
24 projects.

25

1 New §15.184(a), Mandatory award, states that the department will
2 award a grant to all eligible counties that submit a valid
3 application in accordance with the procedures established by the
4 department under §15.188 of the new subchapter. Subsection (b)
5 Amount, further provides that the department will determine the
6 amount of the award allocated to a recipient county based on the
7 allocation formulas and distribution procedures as determined by
8 §§15.185 and 15.186. This section expresses the mandate of
9 Senate Bill 1747 that a county is entitled to an amount
10 calculable by formula if it meets the statutory eligibility
11 requirements. The department does not have discretion to deny
12 or modify the award if the eligibility requirements are met.

13

14 New §15.185, Allocation to Counties, establishes the formula by
15 which grant funds will be distributed to applicant counties
16 during a state fiscal year, which begins on September 1 and ends
17 on August 31. Allocation involves a two-step process: first,
18 the total pool of money available for grant distribution is
19 divided into four categories; and second, each county that
20 applies for a grant will be allocated funds within each category
21 based on a defined percentage relationship for that category.
22 The allocation formula is mandated by Transportation Code,
23 §256.103.

24

25 New §15.185(a), Allocation formula, sets forth the allocation

1 percentages for each of the four categories for which the total
2 amount of funds awarded from the fund will be distributed during
3 a fiscal year. The allocation of all funds will be distributed
4 as follows: (1) 20 percent will be allocated according to the
5 weight tolerance permits ratio; (2) 20 percent will be allocated
6 according to the oil and gas production taxes ratio; (3) 50
7 percent will be allocated according to the well completion
8 ratio; and (4) 10 percent will be allocated according to the
9 volume of oil and gas waste injected ratio.

10

11 New §15.185(b), Weight tolerance permits ratio, sets forth the
12 allocation formula that the department will use to calculate the
13 amount of grant funds a recipient county will receive based on
14 weight tolerance permits issued in the preceding state fiscal
15 year. To determine the amount, the department will divide the
16 total number of weight tolerance permits issued in the preceding
17 state fiscal year for the recipient county, as determined by the
18 Texas Department of Motor Vehicles, by the sum of all weight
19 tolerance permits for all counties that submit valid
20 applications and will receive grant funds that fiscal year. The
21 resulting percentage ("quotient") will be multiplied by the
22 total dollar amount allocated statewide for the weight tolerance
23 permits category. The comparative ratio is based on the
24 eligible counties that submit a valid application - not on all
25 254 counties.

1
2 New §15.185(c), Oil and gas production taxes ratio, sets forth
3 the allocation formula that the department will use to calculate
4 the amount of grant funds a recipient county will receive based
5 on the total amount of oil and gas production taxes collected in
6 the county the preceding state fiscal year. To determine the
7 amount, the department will divide the total amount of oil and
8 gas production taxes collected in the county the preceding state
9 fiscal year, as determined by the Texas Comptroller of Public
10 Accounts, by the sum of all oil and gas production taxes
11 collected from all counties that submit valid applications and
12 will receive grant funds that fiscal year. The resulting
13 percentage ("quotient") will be multiplied by the total dollar
14 amount allocated statewide for that fiscal year for the oil and
15 gas production taxes category. The comparative ratio is based
16 on the eligible counties that submit a valid application - not
17 on all 254 counties.

18
19 New §15.185(d), Well completion ratio, sets forth the allocation
20 formula that the department will use to calculate the amount of
21 grant funds a recipient county will receive based on the number
22 of well completions in the preceding state fiscal year. To
23 determine the amount, the department will divide the total well
24 completions of the preceding state fiscal year for the recipient
25 county, as determined by the Railroad Commission of Texas, by

1 the sum of all well completions for all counties that submit
2 valid applications and will receive grant funds that fiscal
3 year. The resulting percentage ("quotient") will be multiplied
4 by the total dollar amount allocated statewide for the well
5 completions category. The comparative ratio is based on the
6 eligible counties that submit a valid application - not on all
7 254 counties.

8

9 New §15.185(e), Oil and gas waste injected ratio, sets forth the
10 allocation formula that the department will use to calculate the
11 amount of grant funds a recipient county will receive based on
12 the total volume of oil and gas waste injected in the county the
13 preceding state fiscal year. To determine the amount, the
14 department will divide the total volume of oil and gas waste
15 injected in the county the preceding state fiscal year, as
16 determined by the Railroad Commission of Texas, by the sum of
17 all oil and gas waste injected in all counties that submit valid
18 applications and will receive grant funds that fiscal year. The
19 resulting percentage ("quotient") will be multiplied by the
20 total dollar amount allocated statewide for the oil and gas
21 waste injected category. The comparative ratio is based on the
22 eligible counties that submit a valid application - not on all
23 254 counties.

24

25 New §15.186(a), Allocation of Excess, requires the department to

1 reallocate to other applicants all funds that were allocated to
2 an individual applicant county in excess of that county's
3 original request. The department will, as an additional step in
4 the allocation process for the same designated period, total all
5 excess amounts and will reallocate those funds in compliance
6 with the formulas for the initial allocation, except that a
7 county from which excess funds were taken for reallocation will
8 not receive any additional funds in the reallocation process.
9 This section ensures that a county does not receive an
10 allocation for more funds than were identified as needed in its
11 grant application, and allows those excess grant funds to go to
12 other applicant counties which have submitted estimated costs
13 for listed transportation infrastructure projects that are
14 greater than the amount the county would otherwise receive from
15 the initial calculation.

16
17 New §15.186(b), Award, describes the final steps for calculating
18 a county's grant award. The addition of any excess amounts to a
19 county's initial allocation will constitute the total amount of
20 the grant award to that county for the designated period. This
21 additional step serves to maximize award amounts for those
22 counties that can expedite repair to damaged infrastructure.
23 There is, however, a cap on the amount of a county's grant award
24 for the designated period. The total award may not exceed the
25 amount that a county requested in its application. The

1 additional changes to §15.186 are addressed in the COMMENTS
2 section of this preamble.

3

4 New §15.187(a), Request for applications, allows the commission
5 to designate a specified period of time for which the department
6 will accept grant applications under the program, and prescribe
7 applicable conditions for submission of the applications. This
8 process gives all interested counties the opportunity to submit
9 applications at the same time and receive an award based on the
10 relative statewide percentages of all of the applicant counties.
11 The process will maximize award amounts for the counties that
12 are prepared to move forward with identified transportation
13 infrastructure projects.

14

15 New §15.187(b), Notice, requires the department to publish
16 notice of the request for applications on the department's
17 website and provide written notice to the county judge of each
18 county in the state. The notice must specify the period of time
19 during which a county may submit applications, the estimated
20 total amount of money available in the grant fund that is
21 available for allocation during the designated time period, the
22 estimated allocation for each county in the state based on the
23 allocation formula described in §15.185 with the assumption that
24 all counties will be eligible and apply, and any additional
25 conditions for submission of a grant application. The notice

1 provisions are designed to expedite actual notice to the
2 counties. The additional changes to §15.187(b) are addressed in
3 the COMMENTS section of this preamble.

4

5 New §15.188(a), Application form, requires a county to submit a
6 grant application to the department electronically using the
7 department's automated system designated for the grant program.
8 It is a county's responsibility to obtain computer and Internet
9 access to electronically submit a grant application, but upon
10 request by a county, it will have access to the department's
11 computer system at any district office for purposes of
12 submitting a grant application. The electronic format allows
13 the department to streamline and expedite the application
14 process and create an application form that will generate
15 information in a uniform manner for all applicant counties.
16 This subsection also defines a "valid application" as one that
17 is submitted during the designated time period and satisfies all
18 of §15.188 application requirements.

19

20 New §15.188(b), Plan requirements, requires an application to
21 include a plan that contains the following: (1) a prioritized
22 list of transportation infrastructure projects to be funded by
23 the grant; (2) a description of the scope of each listed
24 transportation infrastructure project which includes: a clear
25 and concise description of the proposed work; a map delineating

1 project location and termini; an implementation plan, including
2 a schedule of proposed activities; an estimate of project costs;
3 the project funding sources; and other information required by
4 the department; (3) the total amount of grant funds requested;
5 (4) identification of matching funds; and (5) identification of
6 other potential sources of funding to maximize resources
7 available for the listed transportation infrastructure projects.
8 These plan requirements are necessary to comply with the
9 application process as mandated by Transportation Code,
10 §256.104. The additional changes to §15.188(b) are addressed in
11 the COMMENTS section of this Preamble for §15.186.

12
13 New §15.188(c) Additional submissions, describes documentation
14 and reports that a county must submit in addition to the
15 application form itself. Additional requirements include: a
16 road condition report described by Transportation Code,
17 §251.018, made by the county for the previous year; a copy of
18 the order establishing a county energy transportation
19 reinvestment zone in the county; and documentation evidencing
20 the creation of an advisory board for the county energy
21 transportation reinvestment zone. The additional submissions
22 required by the subsection are necessary to comply with
23 Transportation Code, §§222.1072 and 256.104.

24
25 New §15.189(a), Preliminary review, requires the department,

1 within 14 days of its receipt of a timely application, to
2 conduct a preliminary review to identify any deficiencies in the
3 application. If the department identifies any deficiencies, the
4 department will notify the county in writing, and allow the
5 county to remedy any deficiencies on or before the later of the
6 deadline for submitting applications or the 14th day after the
7 date of receipt of a deficiency notice. When the department
8 deems the application complete, the department will then so
9 notify the applicant county in writing. This subsection
10 attempts to ensure that a county is not denied access to a grant
11 based on a procedural error, omission, or misunderstanding.

12

13 New §15.189(b), Department review, requires the department to
14 review all valid applications within 31 days of receipt of an
15 application. Upon written notification to an applicant by the
16 department, the department may obtain a one-time extension of 29
17 days if additional time is needed to evaluate the applications.
18 These review time periods are mandated by Transportation Code,
19 §256.104(c).

20

21 New §15.189(c), Additional considerations, requires the
22 department to: seek other additional potential sources of
23 funding for a transportation infrastructure project to be funded
24 with the requested grant; consult related transportation
25 planning documents to improve project efficiency; and work

1 effectively in partnership with the county. This provision
2 complies with requirements of Transportation Code, §256.104(b).
3
4 New §15.190, Notice of Award, requires the department to provide
5 written notice to each applicant describing the amount of grant
6 funds awarded to the county, or provide notice denying the
7 applicant's application for a grant under the program. A
8 decision denying a grant application must include the reasons
9 for the denial. This section is consistent with other grant
10 programs administered by the department and provides each
11 applicant county with a definitive notice concerning the status
12 of its request.
13
14 New §15.191(a), Requirement; content, requires a county, prior
15 to receiving a grant from the fund, to enter into an agreement
16 with the department obligating the county to: place the project
17 on the county road system, if is a county road not already on
18 the system; expend funds received only on allowable costs as
19 provided in §15.192; comply with all applicable federal, state,
20 and local environmental laws and regulations and permitting
21 requirements; maintain the road after completion of the proposed
22 work if it is a county road; and, if a county's listed
23 transportation infrastructure project is located on the state
24 highway system, the county must contribute to the department an
25 amount from the awarded grant and the county's matching funds,

1 equal to the allowable costs incurred by the department for that
2 project. The purpose of an agreement under this section is to
3 clearly establish the rights and responsibilities of both
4 parties with regard to the performance of work and payment of
5 grant funds. Such agreements are customary for similar grant
6 programs administered by the department and ensure grant funds
7 are expended only for the statutory purpose allowed under
8 Transportation Code, Chapter 256, Subchapter C.

9
10 New §15.191(b), Amendment to the agreement, requires any
11 modifications to a grant agreement between the county and the
12 department to be in writing and executed jointly by the
13 executive director and the county. This subsection expressly
14 allows a county to modify a grant application project list by
15 adding transportation infrastructure projects to the list or by
16 changing the order of priority of the projects previously on the
17 list. The county must submit the request to the department and
18 include with the request, the type of information required in
19 the original application. This subsection allows flexibility of
20 project selection for a county, while at the same time ensuring
21 grant funds are expended only for the statutory purpose allowed
22 under Transportation Code, Chapter 256, Subchapter C.

23
24 New §15.192(a), Allowable costs, provides that a county may only
25 be reimbursed from the fund for allowable costs related to the

1 transportation infrastructure projects of the county for which a
2 grant was awarded. Allowable costs are described as the
3 necessary project related expenditures properly attributable to
4 the work performed, and may include a portion or all of the
5 administrative costs of a county energy transportation
6 reinvestment zone not to exceed \$250,000. A request for
7 reimbursement must be submitted by a county using forms and
8 procedures specified by the department and reimbursements will
9 be based on actual direct and related indirect costs incurred
10 after the award of a grant. The department will make
11 intermediate payments upon request of a county, not more often
12 than monthly. This subsection is consistent with the
13 requirements and conditions of other grant programs administered
14 by the department, and allows the department to effectively and
15 efficiently monitor compliance with the proper expenditure of
16 grant funds. The department has a responsibility to preserve
17 the integrity of the grant program and to manage and safeguard
18 the public treasury.

19
20 New §15.192(b), Audit, authorizes representatives of the
21 department and other entities of the State of Texas and, if
22 applicable, the federal government, to audit all county cost
23 records and accounts relating to a project that receives money
24 from a grant for up to three years after the date a final
25 payment is received by the county. This subsection allows the

1 department to monitor compliance and ensure grant funds are
2 expended only for the statutory purpose allowed under
3 Transportation Code, Chapter 256, Subchapter C. The department
4 has a responsibility to preserve the integrity of the grant
5 program and to manage and safeguard the public treasury.

6
7 New §15.193, Certification of Completion, requires a county to
8 submit to the department a written certification within 60 days
9 after completion of a listed project or listed projects for
10 which a grant was awarded. The certification must state that
11 the county has complied with all requirements of the grant,
12 including a certification that the project has been constructed
13 in accordance with all applicable construction requirements.
14 The certification must also describe the allowable costs for the
15 project and the amount reimbursed from the fund. This section
16 ensures grants funds are spent only on transportation
17 infrastructure projects as required by Transportation Code,
18 §256.102, and Transportation Code, Chapter 256, Subchapter C,
19 generally. The department has a responsibility to preserve the
20 integrity of the grant program and to manage and safeguard the
21 public treasury.

22
23 New §15.194, Use of Unexpended Funds, permits a county to use
24 the remaining unexpended balance of a grant for any
25 transportation project in the county, if a county has completed

1 all projects for which the original grant was awarded, and the
2 county has not expended all of its awarded funds. To qualify to
3 use the unexpended grant funds a county must, within one year of
4 filing a certification of completion of the original project or
5 projects, submit to the department a proposed amendment to the
6 original agreement, identifying the additional project or
7 projects along with other applicable project information
8 required in an original application. This section allows a
9 county to fully utilize its allocated grant funds for
10 construction of any other transportation project in the county.
11 The transportation project does not have to be related to
12 degradation caused by the oil and gas industry.

13
14 New §15.195, Enforcement, allows the executive director to
15 prohibit a county from participating in the grant program for
16 non-compliance with one or more material requirements of the
17 grant program, and to continue the prohibition until the
18 executive director determines that the county has complied with
19 all material requirements of the program. This section also
20 allows the executive director to remove a specific project from
21 participation in the program if work on the project is not
22 commenced within three years after the date of the executed
23 agreement between the county and the department or within
24 another reasonable period of time that is agreed to by the
25 department and the county. The enforcement mechanism is

1 necessary to ensure grant funds are expended only for the
2 statutory purpose allowed under Transportation Code, Chapter
3 256, Subchapter C. The department has a responsibility to
4 preserve the integrity of the grant program and to manage and
5 safeguard the public treasury.

6
7 New §15.196, Reimbursement, authorizes the department to seek
8 reimbursement of all grant money received by a county for a
9 specific transportation infrastructure project if the county
10 commences performance but fails to complete the project. Any
11 funds recovered from a county will be deposited to the credit of
12 the grant fund. This subsection is consistent with requirements
13 and conditions of other similar grant programs administered by
14 the department and the federal government. The department has a
15 responsibility to preserve the integrity of the grant program
16 and to manage and safeguard the public treasury.

17
18 New §15.197, Notice of Failure to Comply. Prior to exercising
19 any of the remedies described in §§15.195 or 15.196 for a
20 county's failure to comply with one or more of the requirements
21 of those sections, the department will provide to the county
22 written notice that identifies the applicable requirement and
23 specifies the failure. The county will have 30 days in which to
24 respond in writing with a reasonable schedule for timely
25 compliance with the applicable requirement, or if compliance is

1 not practical, with an alternative proposal that is acceptable
2 to the department. If the county fails to timely respond with
3 an acceptable response, the department may proceed with the
4 applicable remedy. This section attempts to ensure that a
5 county is not denied access to a grant or required to reimburse
6 the department based on a procedural error, omission,
7 unanticipated problems, or misunderstanding. The addition of
8 §15.197 is addressed in the COMMENTS section of this preamble.

9

10 COMMENTS

11 Comments on the proposed new sections were received from the
12 Alamo Area Council of Governments (AACOG), the Texas Conference
13 of Urban Counties (CUC), the County Judges and Commissioners
14 Association of Texas (CJCA), DeWitt County Judge Daryl Fowler
15 (DeWitt County), Frio County Judge Carlos Garcia (Frio County),
16 La Salle County Judge Joel Rodriguez (La Salle County), Texas
17 Oil and Gas Association (TXOGA), Webb County Commissioner Jaime
18 Canales (Webb County), Willacy County Judge Pro-Tem Eliberto
19 Guerra (Willacy County), and the Texas Association of Counties
20 (TAC).

21

22 Comment: Section 15.181(6), Transportation infrastructure
23 project - One of the main points repeated in the Roads for Texas
24 Energy Solutions Task Force meetings was that money expended to

1 armor up a road was five times more effective than money spent
2 to rebuild a road. In order to clarify that the public purpose
3 of the grant program includes public safety, the definition of
4 transportation infrastructure project should be expanded to
5 include those projects designed to "mitigate" or "prevent"
6 further damage or degradation or meet a public safety need.
7 This comment was submitted by DeWitt County.

8

9 Response: Although use of the word "alleviate" to modify the
10 word "degradation" already includes the concept of mitigation
11 and prevention, the express reference to these concepts would
12 acknowledge that the term is to be interpreted broadly.
13 Accordingly, the definition is modified to reflect that
14 "alleviate" includes work intended to prevent or reduce further
15 damage to a road.

16

17 Comment: Section 15.181, Definitions - The phrase
18 "administrative costs" is used in §§15.188(d)(2) and 15.192(a),
19 and is assumed to be included in the phrase "on the basis of
20 direct and indirect costs that are incurred" in §15.192(a)(2),
21 but "administrative costs" are not defined. In order to ensure
22 that counties do not bear the unintended consequence and
23 financial burden of hiring additional staff to effectively
24 implement and monitor the grant program, "administrative costs"
25 should be defined in §15.181 to include "both direct and

1 indirect costs attributable to the administration of the County
2 Energy Transportation Reinvestment Zone(s), including the
3 fulltime, part-time, or pro-rata costs of personnel employed by
4 the county to prepare and review applications for submission,
5 properly allocate grant funds, and audit allowable costs
6 incurred under the grant program." This comment was submitted
7 by DeWitt County.

8
9 Response: The phrase "administrative costs" in proposed rule
10 §15.188(d) is derived from similar use of the phrase in
11 Transportation Code, §256.106(a)(3), and the word "administer"
12 in Transportation Code, §256.106(b). It relates to the county's
13 performance of work on the listed transportation infrastructure
14 projects. The phrase "administrative costs" in proposed rule
15 §15.192(a) is derived from similar use of the word
16 "administration" in Transportation Code, §222.1071(i)(3). It
17 relates to operation of the county energy transportation zone.
18 Those words/phrases are not defined in the statutes.

19 Administrative costs are generally considered to be necessary
20 costs associated with the management, clerical help, and general
21 operation of a service or function. Provided that a county
22 submits reimbursement requests in accordance with generally
23 accepted cost accounting practices for administrative costs
24 related to the appropriate performance of work, those costs will
25 be reimbursed. A definition would only serve to narrow the

1 concept.
2
3 Comment: Section 15.182, Eligibility; and §15.184, Award -
4 Because of the need for (i) state, regional, and local
5 governments to evaluate the condition of existing infrastructure
6 in each of the 29 counties and 91 cities in the Eagle Ford Shale
7 region, (ii) local communities to first understand the
8 conditions of their transportation system and how it will
9 connect to the expanded State road capabilities, and (iii)
10 resolving the potential conflict among various taxing entities
11 relating to infrastructure funding, there should be a
12 standardization in assessments of existing roads, proposed
13 improvements, cost database for improvements construction
14 estimate development, and a regional review of project
15 connectivity. Council of Governments (COG) can provide an
16 invaluable service by performing assessments, developing
17 standardization and providing a higher level of road network
18 coordination, but that requires funding for the COGs. We urge
19 that Senate Bill 1747 rulemaking incorporate language
20 specifically recognizing that COGs are eligible to apply for
21 funds to perform these activities on behalf of their member
22 counties. Alternatively the rule should recognize that counties
23 may apply for grants directly for the purpose of funding a COG
24 regional assessment, standardization and connectivity approach
25 on behalf of their member counties. This comment was submitted

1 by the AACOG.

2

3 Response: Transportation Code, §256.103(a), directs the
4 department to "... make grants to counties (emphasis added) ..."

5 Similarly, Transportation Code, §256.103(b), provides that "...
6 Grants ... must be allocated among counties (emphasis added)..."

7 Section 256.104 only authorizes a county to apply for a grant.

8 There is no authority for the department to accept applications
9 from or pay grant funds to a COG. The definition of a

10 "transportation infrastructure project" in §15.181(6) includes
11 the "planning" for road work. Payments by a county to a COG for
12 services related to the plan requirements in §15.188(b) should
13 be reimbursable under the grant program. No additional rule
14 provisions are needed.

15

16 Comment: Section 15.183(b), Cash match - The legislative intent
17 and statutory construction of the language in Senate Bill 1747

18 (Transportation Code, §256.105) which states "matching funds
19 must be provided, from any source" is consistent with an

20 interpretation that allows a non-cash match such as equipment
21 and construction materials provided by a county. Since the

22 county will need to replace the existing equipment and materials
23 for use on other projects, it is the same as spending cash on

24 new materials for a grant project. The rule provision that

25 limits the match to cash only in the proposed rule should be

1 revised. This comment was submitted by the CUC, TAC, and CJCA.

2

3 Response: Transportation Code, §256.105 provides that "...
4 matching funds must be provided, from any source (emphasis
5 added) ..." The phrase "from any source" modifies "funds" from
6 the aspect of the origin of the funds (local, federal, grants,
7 loans, tax revenue, etc.), not from the aspect of changing the
8 meaning of "funds" as money to instead mean in-kind or other
9 non-monetary contributions. The common meaning of the word
10 "funds" is a sum of money. If the Legislature intended to
11 authorize non-monetary contributions, it would have added that
12 language and provided for a method to value and account for the
13 contributions. By way of example, Transportation Code,
14 §456.001(14)(D) defines "local funds" to include "in-kind
15 contributions."

16

17 Comment: Section 15.185, Allocation formula - Data for weight
18 tolerance permits issued (Texas Department of Motor Vehicles)
19 and oil and gas production taxes collected (Texas Comptroller)
20 should be easily obtained. Unfortunately, the Railroad
21 Commission has data that differs depending on the query you
22 seek. This process and data collection often becomes confusing
23 and insufficient for proper consideration. The specific data
24 bases should be listed in these sections. Furthermore, we would
25 recommend using funding allocation to consider counties with

1 liquid disposal by barrel count would best address disposal
2 activity and accurate qualifying factor ranking. These comments
3 were submitted by Willacy and Frio Counties.

4

5 Response: Transportation Code, §256.103(b) establishes
6 allocation formulas that must be used in the distribution of
7 grants. Each of the four categories listed (weight tolerance
8 permits, oil and gas production taxes collected, well
9 completions, and volume of oil and gas waste injected) provide
10 that the numbers and ratios will be "as determined" in the
11 preceding fiscal year by the applicable state agency. The
12 department cannot dictate the methodology by which the other
13 state agencies will determine that information. The department
14 is in consultation with those three agencies and has requested
15 that each provide a formal letter describing the methodology and
16 providing the resulting calculations. The department will
17 provide copies of those agency letters to the counties and post
18 the information on the department's website for the general
19 public as soon as it becomes available.

20

21 Comment: Section 15.185, Allocation formula - It is imperative
22 for all the counties to work from the same data. We request
23 that the department assemble and distribute the information it
24 will use to establish the allocation formula upon which to make
25 grants under the Program to help ensure across the board

1 uniformity. Because the intent of the allocation formula is to
2 identify through the collection of various data points, where
3 the oil and gas activity is actually located, the amount of oil
4 and gas production taxes paid from each county should reflect
5 actual production. Any rebates, off sets, or other incentives
6 resulting in net collections being different from gross
7 collections should not be taken into consideration; otherwise
8 the data will present a skewed picture of where the activity
9 actually is located. This comment was submitted by the TXOGA.

10

11 Response: Transportation Code, §256.103(b) establishes
12 allocation formulas that must be used in the distribution of
13 grants. Each of the four categories listed (weight tolerance
14 permits, oil and gas production taxes collected, well
15 completions, and volume of oil and gas waste injected) provide
16 that the numbers and ratios will be "as determined" in the
17 preceding fiscal year by the applicable state agency. The
18 department cannot dictate the methodology by which the other
19 state agencies will determine that information. The department
20 is in consultation with those three agencies and has requested
21 that each provide a formal letter describing the methodology and
22 providing the resulting calculations. All agencies were
23 encouraged to adopt a methodology that best reflects actual oil
24 and gas production. The department will provide copies of those
25 agency letters to the counties and post the information on the

1 department's website for the general public as soon as it
2 becomes available.

3
4 Comment: Section 15.186, Allocation of Excess - The Rules state
5 that if the department determines a county requested more than
6 it is eligible to receive under the allocation formula, the
7 department will claim such "excess" and reallocate it to other
8 counties. If the department were to request a "notice of intent
9 to apply," along with "proof of eligibility", TxDOT could pre-
10 screen applicants and eliminate non-eligible requests, saving
11 both the department and counties from unwanted and unnecessary
12 frustration. We believe the notice of intent would narrow the
13 universe of counties, and the proof of eligibility would narrow
14 it further to arrive at a more accurate allocation amount before
15 counties submit actual applications. This could result in
16 mitigating the presence of excess funds, which means quicker
17 deployment of funds. This comment was submitted by the TXOGA.

18
19 Response: While advance notice of participation from counties
20 would be helpful to the department in calculating a more
21 accurate estimate of allocation amounts, a rule requirement that
22 a county must first provide a "notice of intent to apply" and
23 "proof of eligibility" to be followed by a department notice
24 identifying the remaining counties that will likely submit
25 applications would be counter-productive. It would accelerate

1 the decision making process for all counties, impose additional
2 obstacles to undecided counties, and also delay the actual
3 application process by creating more steps which necessitate
4 additional time periods that must be met before the application
5 submission can begin. The department agrees that as much
6 information as possible concerning allocation amounts should be
7 provided to all counties as soon as it becomes available, but
8 preliminary mandatory deadlines for the counties should not be
9 imposed by rule. When data calculations are received from all
10 three reporting agencies, the department will calculate the
11 estimated amount for which each county would qualify if all 254
12 counties apply and provide that information to the counties.
13 This information will also be added to the written notice
14 requesting applications under §15.187.

15
16 There may be some confusion in §15.186 regarding the time frame
17 in which the excess is identified and then reallocated. The
18 allocation of excess amounts is an additional step in the
19 calculation process to be performed during a single application
20 period; rather than a later separate request for applications in
21 another designated notice period. The language in §15.186 is
22 modified to reflect this clarification. The final calculation
23 step is also clarified. Any excess amounts allocated to a
24 county will be added to its initial allocation to constitute the
25 total amount of the county's grant award; provided however, that

1 a county's grant award for the designated period cannot exceed
2 the amount requested in its application. Language is added to
3 §15.188(b)(3) to expressly require a county to state the total
4 amount of grant funds it is requesting.

5
6 Comment: Section 15.187, Acceptance of Applications - As
7 proposed, this rule calls for the Department to both publish
8 notice and mail notice to each county judge advising of the
9 application time and amount of money available for each round of
10 applications. The statute states grants will be made "in a
11 fiscal year". However, for the benefit of the eligible counties
12 we think there should be more structure. TxDOT should send the
13 notices required in the same month of each year, thus opening
14 the Program on a regular schedule which will allow the counties
15 to better plan. This comment was submitted by the TXOGA.

16
17 Response: The department's ability to timely send out notices
18 for applications is ultimately dependent on receipt of data
19 information from each of the three named state agencies. If one
20 or more of the agencies develop a problem that prevents the
21 agency from providing its data in time for meeting a pre-
22 determined month, the department may not be able to comply. In
23 addition, there may be a need to establish more than one notice
24 period under §15.187 for the submission of additional
25 applications in the same fiscal year. This may occur due to

1 many reasons, including receipt of additional funds for the
2 grant program and inability to allocate all available funds in a
3 single designated period. The commission should retain the
4 discretion and flexibility to establish application time periods
5 in the most timely and efficient manner possible under the
6 particular fact circumstances.

7
8 Comment: Section 15.187(b)(2), Notice - The written notice to
9 each county judge should provide an estimated allocation for
10 each county assuming all Texas counties correctly apply for
11 grant funding. Although such estimates may not reflect actual
12 grant awards, providing counties with an estimated allocation
13 would allow them to make much more informed applications and
14 reduce the potential for delays. It will also prevent counties
15 from creating zones that include projects for which counties
16 will not have sufficient funds (either grant funds or TRZ
17 increment funds) to proceed in the near term. This comment was
18 submitted by the CUC, TAC, and CJCA.

19
20 A similar comment was submitted by the TXOGA which stated that
21 when the department sends the notice that the "call" for grant
22 applications is open, the department should also include its
23 calculation of the amount of grant funds each county is eligible
24 to receive, based on the allocation formula.

25

1 Response: Including the estimated allocation for each county as
2 part of the department's published written notice requesting
3 applications under §15.187 would provide valuable information to
4 the counties. Although that information will likely be
5 submitted to the counties in advance of the formal notice, the
6 proposed rule is amended to make it mandatory.

7

8 Comment: Section 15.188, Application Procedure - We do not
9 believe that the department can apply additional criteria on
10 counties to utilize the department's design and build processes
11 for county roads. Webb County will ensure that any grant monies
12 received are utilized for the counties transportation needs and
13 comply with TxDOT's review and coordinator functions as
14 anticipated under Senate Bill 1747. TxDOT should better define
15 the applications procedures for counties under this section,
16 specifically; Webb County believes the department should specify
17 the grant application form, and finalize the grant application
18 format, for the county to be considered for a grant. The
19 proposed rules do not clarify the format of the application. In
20 order to maintain a level competition for limited funds, TxDOT
21 should make the application available to all eligible counties
22 at least 30 days prior to considering grant applications under
23 the program. This comment was submitted by Webb County.

24

25 Response: The application requirements in §15.188 track the

1 requirements imposed by Senate Bill 1747 under Transportation
2 Code, §256.104. None of the provisions in the proposed rule
3 require a county to utilize the department's design and build
4 processes for county roads and the department has no authority
5 to impose such requirements on roads not under its jurisdiction.

6
7 The application form is in the process of being developed, but
8 it should not be incorporated into a rule. To do so would make
9 any necessary or desired revisions impossible without going
10 through the formal rule amendment process. The application form
11 will be made available to all counties as soon as it has been
12 completed, which will be no later than publication of the notice
13 requesting applications under §15.187. A formal rule
14 requirement that the application be provided to counties at
15 least 30 days prior to the published notice would delay the
16 actual application process by creating an additional step.

17
18 Comment: Section 15.188(b), Plan requirements - TxDOT should
19 strongly consider developing regional standardization and
20 promote inter-county connectivity. This can be achieved through
21 standardization in assessments of existing roadways;
22 standardization of proposed improvements to roadways;
23 utilization of a cost database for improvements construction
24 estimate development; and performing a regional review of
25 project connectivity where regional projects may be identified

1 and supported between counties and TxDOT. This comment was
2 submitted by the AACOG.

3

4 Response: The plan requirements in §15.188(b) track the
5 requirements imposed by Senate Bill 1747 under Transportation
6 Code, §256.104. The statute does not require regional
7 standardization or a regional review as part of the planning
8 process. Although such standardization and review may be
9 beneficial, it may not be necessary in all cases and could
10 create additional delay for some counties in meeting the
11 application deadline requirements. Each county should have the
12 discretion to determine its particular planning needs.

13

14 Comment: Section 15.188(c)(1), Additional submissions - This
15 section requires a road condition report as described by
16 Transportation Code, §251.018. It is described in Senate Bill
17 1747 and refers to the Commissioner's Road Report in
18 Transportation Code, 251 Section 005. This section does not
19 require a detailed report, only a "condition" of the roadway.
20 Section 251.018 now will require this report to also include the
21 primary cause of any degradation. Is this written description
22 acceptable? More description may be necessary. This comment
23 was submitted by Willacy and Frio Counties.

24

25 A similar concern was expressed in a comment by La Salle County.

1 The way the proposed rules were drafted leave the impression
2 that Transportation Code, §251.018 supersedes Transportation
3 Code, §251.005. My interpretation of Senate Bill 1747 is that
4 Transportation Code, §251.018 is in addition to the annual
5 Commissioners Road and Bridge Reports as mandated under
6 Transportation Code, §251.005. Please clarify the difference
7 between the legislation and the rules related to the issue of
8 the Road Report.

9
10 Response: The department agrees that Transportation Code,
11 §251.018, does not require an additional report, but instead
12 requires a county to include additional information in its
13 normal road condition report (including the Commissioner's Road
14 Report under Transportation Code, §251.005) identifying the
15 primary cause of any road, culvert or bridge degradation if
16 reasonably ascertained. Transportation Code, §256.104(a)(1), as
17 reflected in the proposed rule §15.188(c), requires that a copy
18 of that report for the preceding year be submitted as part of
19 the county's application for a grant. The department has no
20 authority to approve or disapprove the contents of the county's
21 annual report. The proposed rule accurately reflects the
22 statutory requirement.

23
24 Comment: Section 15.188(c), Additional submissions - Section
25 256.104(a)(2)(A) of Senate Bill 1747 clearly provides TxDOT with

1 an option, upon request of a county, to waive submission of the
2 order or resolution establishing a county reinvestment zone
3 until the time the grant is awarded. The waiver provision
4 should be inserted into §15.188(c). This comment was submitted
5 by the CUC, TAC, and CJCA.

6
7 Response: Under Transportation Code, §256.104(c), as reflected
8 in §15.189(b) of the proposed rules, the department has a
9 limited period of time, not to exceed 60 days, to review grant
10 applications and make allocation awards to all eligible
11 counties. The allocation amounts are set by formula and are
12 based on data comparisons among all of the eligible counties
13 that apply. One of the critical eligibility requirements
14 imposed by statute is actual creation of a county energy
15 reinvestment zone. If the department waives submission of the
16 order or resolution establishing a county energy transportation
17 reinvestment zone until the expiration of its review time to
18 make grant awards, that county's data and request will have been
19 included in the calculations. If, however, the county then
20 fails to timely create the zone within the department's short
21 review period, it is not eligible for an award. Because that
22 county's request was initially included in the allocation
23 calculations, the grant awards for all of the other
24 participating counties will be wrong. The allocation awards for
25 the remaining eligible counties should be larger, but there will

1 be little or no time for the department to make a recalculation.
2 The benefit to an individual county by granting it a waiver that
3 only extends the period for satisfying its eligibility
4 obligation for a relatively short time is offset by the
5 uncertainty and potential for miscalculation imposed on the
6 entire allocation process.

7

8 Comment: Section 15.188(c), Additional submissions -
9 Documentation submitted by counties to TxDOT should be shared
10 with their respective Council of Government. Councils of
11 Government provide a regionally oriented viewpoint and
12 perspective in a way that leads to cooperative and collaborative
13 project development. Sharing of this information with COGs will
14 help promote regional project development and provide a regional
15 framework for future transportation planning, project
16 development, and construction. This comment was submitted by
17 the AACOG.

18

19 Response: Under Transportation Code, §256.104(b), as reflected
20 in §15.188(c) of the proposed rules, the department is required
21 to consult related transportation planning documents to improve
22 project efficiency and work effectively in partnership with
23 counties. To the extent that Councils of Government can provide
24 that type of assistance with an information exchange, the
25 department is willing to participate. It should not, however,

1 be a rule requirement that Councils of Government are mandatory
2 participants in the process.

3

4 Comment: Section 15.189(c), Additional considerations -
5 Councils of Government have a long established function in
6 producing regional plans that support local and state
7 government. The COG leadership consists of elected officials
8 from municipalities and counties within the COG and places a
9 strong emphasis on communication, cooperation and collaboration.
10 The COGs natural regional leadership will create short and long-
11 term opportunities for TxDOT to maximize its partnership with
12 the counties participating in this grant program. This type of
13 maximized partnership would lend itself to accessing other
14 local, state, federal, and private funding sources that could
15 significantly enhance the funding opportunity provided by this
16 grant program. This comment was submitted by the AACOG.

17

18 Response: Under Transportation Code, §256.104(b), as reflected
19 in §15.188(c) of the proposed rules, the department is required
20 to consult related transportation planning documents to improve
21 project efficiency and work effectively in partnership with
22 counties. To the extent that Councils of Government can provide
23 that type of assistance with an information exchange, the
24 department is willing to participate. It should not, however,
25 be a rule requirement that Councils of Government are mandatory

1 participants in the process.

2

3 Comment: Section 15.191(a)(3), Requirement, content - The
4 county has significant concerns about whether it has the
5 capability through organization and staffing to be able to agree
6 that it is complying with all applicable federal, state, and
7 local environmental laws. If it is the demand of the department
8 that all laws are complied with, then additional allowable costs
9 should provide for environmental study and legal counsel
10 necessary to ensure compliance. If so, then indirect costs
11 should be defined to include environmental and regulatory costs
12 and associated legal expense. Additionally, some ability to
13 waive the §15.191(a)(3) requirement should be written into the
14 rules so that vital projects to the oil and gas industry and
15 public safety are not unreasonably delayed. This comment was
16 submitted by DeWitt County.

17

18 Response: A county is in the best position to determine what
19 environmental laws normally apply to one of its transportation
20 infrastructure projects on the county road system. To the
21 extent that only state money is used to fund the grant program,
22 county projects will not be subject to additional environmental
23 or other regulatory requirements just because the projects are
24 part of the program. If, however, a county also obtains federal
25 funds for one or more of its projects that are in addition to a

1 grant award under this program (or if in the future, federal
2 funds are deposited in the grant fund), then it may be subject
3 to additional requirements. Any expenditures for environmental
4 study and legal counsel necessary to ensure compliance that are
5 related to the project would meet the existing definition of an
6 allowable cost under §15.192. The proposed rule only requires a
7 county to comply with its legal obligations - it does not add to
8 those obligations. The department does not have authority to
9 grant counties a waiver from the effect of other laws.

10

11 Comment: Section 15.192(a), Allowable costs - Subsection (a)
12 states "...only as reimbursement of allowable costs ..." Section
13 (a)(3) also allows the Department to "make intermediate payments
14 no more often than monthly." If this program will be a total
15 reimbursement, requiring the County to pay first from their
16 funds, this will place a large financial hardship on the smaller
17 economically distressed counties who do not have a large
18 treasury. This requirement could prevent some counties from
19 participating at all. We request economically distressed
20 counties be allowed to use the monthly payment to submit a
21 construction estimate to be paid by the Department before the
22 County has paid the contractor. This comment was submitted by
23 Willacy and Frio Counties.

24

25 Response: In order to fulfill the department's responsibility

1 to effectively and efficiently monitor compliance with the
2 proper expenditure of grant funds, payment to a county needs to
3 be based on reimbursement of actual costs and not estimates.
4 The department will, however, upon request, coordinate with a
5 county to set up a reimbursement procedure that facilitates
6 preapproval of the contractor invoice and the amount of
7 reimbursement to the county. The department's payment to the
8 county can then occur almost simultaneously with the county's
9 payment to the contractor. An economically disadvantaged county
10 may also use its 10 percent match to cover a temporary shortfall
11 of funds at the time payments to its contractors are made.

12

13 Comment: Section 15.192(a)(2), Allowable costs - It is
14 anticipated in the TxDOT timeline that the proposed rule will be
15 considered by the Commission on October 31, 2013. In order to
16 ensure timely applications in January or February it makes sense
17 to establish the rule adoption date as the bright line
18 implementation date when counties can begin to obtain any
19 engineering, consulting or other work necessary to advance
20 projects for grant consideration without any concern over
21 whether such expenditures would be reimbursable. Delaying the
22 date on and after which project expenditures become reimbursable
23 to the grant award date will only delay early advancement of
24 these critical projects. This comment was submitted by the CUC,
25 TAC, and CJCA.

1
2 Response: Until a county submits its completed application, and
3 the department confirms the county's eligibility to participate
4 in the grant program and calculates the amount of funds to be
5 awarded, there is no basis upon which to identify direct and
6 indirect costs related to the transportation infrastructure
7 projects actually listed in the application. Expenditures
8 incurred prior to the grant award are preparatory and
9 speculative.

10
11 Comment: Section 15.195, Enforcement; and §15.196,
12 Reimbursement - These sections appear to exceed the authority
13 given TxDOT in the statute. The statute does not authorize
14 TxDOT to prohibit a county from participating in the program, or
15 to remove a project if work has not begun within three years of
16 execution of the agreement, nor recoup the funds from a county
17 that does not complete a project. We recognize the department's
18 need to oversee the funds and make sure that they are used in
19 accordance with the law, and would suggest that the department
20 consider structuring a mitigation plan before a county is
21 prohibited from program participation or the department seeks to
22 recoup funds from an incomplete project. The parties can then
23 work in conjunction to find a solution. If no solution is
24 reached during the mitigation period, then TxDOT could proceed
25 with plans to prevent a county's participation and/or recoup

1 funds. This comment was submitted by the TXOGA.

2

3 Response: The department is authorized and directed by Senate
4 Bill 1747 under Transportation Code, §256.103(a), to develop
5 policies and procedures to administer the grant program and to
6 adopt rules to implement the program. The subchapter includes
7 specific requirements in Transportation Code, §§256.104 and
8 256.105 that must be met by the counties. It also imposes on
9 the counties an obligation in Transportation Code, §256.106 to
10 certify that all previous grants are being spent in accordance
11 with the prior submitted plan and to provide an accounting. The
12 department clearly has a duty to ensure that the money is
13 expended for needed transportation infrastructure projects and
14 enforce compliance with the statutory requirements. The
15 enforcement provisions in proposed §§15.195 and 15.196
16 reasonably accomplish the department's oversight responsibility
17 and are consistent with enforcement provisions adopted for the
18 border colonia access program in Chapter 15, Subchapter I, and
19 the transportation enhancement program in Chapter 11, Subchapter
20 E. However, in order to ensure that a county is not denied
21 access to a grant or required to reimburse the department based
22 on a procedural error, omission, unanticipated problems, or
23 misunderstanding, the department agrees that if it identifies
24 any deficiencies or violations, the department will notify the
25 county in writing. The county will then have 30 days to provide

1 a reasonable schedule for timely compliance with the applicable
2 requirement, or if compliance is not practical, with an
3 alternative proposal that is acceptable to the department.
4 Failure by a county to timely respond in accordance with this
5 section will allow the department to exercise its remedies under
6 §§15.195 and 15.196. A new §15.197 is added to provide this
7 notice and opportunity to cure.

8

9 Comment: Clarify the application of State roadway eligibility as
10 a top priority in listed roads. However, there is no mention of
11 this in the rules and this perspective of funding allocations
12 needs to be itemized and clarified. This comment was submitted
13 by Willacy and Frio Counties.

14

15 Response: Under Transportation Code, §256.104(a), as reflected
16 in §15.188(b) of the proposed rules, a county is obligated to
17 submit a plan that provides a prioritized list of transportation
18 infrastructure projects. The statute does not authorize the
19 department to reject or modify a county's list of projects or
20 priorities and the proposed rules do not attempt to grant that
21 authority. The department's role is to verify that the required
22 information is included in the submitted application - not to
23 evaluate the substance of the information or substitute the
24 department's judgment. This limited review is reflected in
25 §15.189(a).

1

2 Comment: We would recommend to use funding allocation to
3 consider counties with joint interest to apply on the basis of
4 road degradation if one authorizes for other a single applicant
5 and designation of County Reinvestment Energy Zone without both
6 having to participate in the procedure process including
7 applicable tax increment or not applicable. This comment was
8 submitted by Willacy County.

9

10 Response: Transportation Code, §256.104(a), requires a county
11 applying for a grant to submit to the department a copy of the
12 order "... establishing a county energy transportation
13 reinvestment zone in the county (emphasis added)" Section
14 256.103 requires the department to allocate grant funds using
15 formulas that are based on ratios of increased oil and gas
16 production in "... the county that designated a county energy
17 transportation reinvestment zone (emphasis added)" Other
18 provisions of the statute in Transportation Code, §§256.104 and
19 256.105 clearly relate to the particular county filing the
20 application. There is no authority that permits the department
21 to consider counties with a joint interest to apply under a
22 single applicant.

23

24 Transportation Code, §222.1071(i)(4), authorizes joint
25 administration of multiple county energy transportation

1 reinvestment zones, but each county must form its own zone.
2 This provision only relates to administration of the multiple
3 zones. It does not authorize counties to submit joint
4 applications to the grant program established under
5 Transportation Code, Chapter 256, Subchapter C.

6

7 STATUTORY AUTHORITY

8 The new sections are adopted under Transportation Code,
9 §201.101, which provides the Texas Transportation Commission
10 with the authority to establish rules for the conduct of the
11 work of the department, and more specifically, Transportation
12 Code, §256.103, which gives the department rule making authority
13 to adopt rules to implement the transportation infrastructure
14 fund grant program.

15

16 CROSS REFERENCE TO STATUTE

17 Transportation Code, Chapter 256, Subchapter C; and
18 Transportation Code, §§222.1071, 222.1072, and 251.018.