

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes new
3 §§15.180 - 15.196, new Subchapter O, County Transportation
4 Infrastructure Fund Grant Program, concerning the financing and
5 construction of transportation projects.

6

7 EXPLANATION OF PROPOSED NEW SECTIONS

8 Senate Bill 1747, 83rd Legislature, Regular Session, 2013, added
9 new Transportation Code, Chapter 256, Subchapter C, §§256.101 -
10 256.106 establishing a transportation infrastructure fund and
11 directing the department to administer a grant program from the
12 fund to provide funding to counties for transportation
13 infrastructure projects located in areas of the state affected
14 by increased oil and gas production. In order to participate in
15 the grant program, Senate Bill 1747 requires a county to
16 establish a county energy transportation reinvestment zone and
17 advisory board under new Transportation Code, §§222.1071 and
18 222.1072, and submit a road condition report under new
19 Transportation Code, §251.018, that includes the primary cause
20 of any road, culvert, or bridge degradation.

21

22 New Subchapter O is required to implement the grant program
23 established under Senate Bill 1747, which takes effect
24 September 1, 2013.

25

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

9

10 New §15.181, Definitions, defines various terms used within
11 Subchapter O. The terms are defined to provide a clear
12 understanding of their usage and to incorporate statutory
13 language used in definitions contained in Transportation Code,
14 §256.101.

15

16 The definitions of (1) "Commission", (2) "Department", (3)
17 "District", and (4) "Executive director", are consistent with
18 the definitions used in other subchapters of Chapter 15 for
19 describing the governance and organizational structure of the
20 department.

21

22 The definitions of (5) "Fund", (6) "Transportation
23 infrastructure project", and (7) "Weight tolerance permit", are
24 identical to the definitions contained in Transportation Code,
25 §256.101.

1
2 The definition of (8) "Well completion", contains the statutory
3 language included in Transportation Code, §256.101(4), but
4 further identifies the well operator's initial submission of
5 information to the Railroad Commission as the specific event for
6 purposes of counting a well completion during a fiscal year in
7 the allocation formula under new §15.185(d). The additional
8 clarification was provided by the Railroad Commission.

9
10 New §15.182, Eligibility, describes the requirements for a
11 county to be eligible for a grant from the fund. To be eligible
12 a county must: be entirely or partially in an area affected by
13 increased oil and gas production; create a county energy
14 transportation reinvestment zone; and create an advisory board
15 for the county energy transportation reinvestment zone. The
16 eligibility requirements of this section are mandated by
17 Transportation Code, §§222.1072, 256.103, and 256.104.

18
19 New §15.183(a), Amount, requires a county to provide matching
20 funds of at least 20 percent of the amount of the county's total
21 grant award. However, if the department determines a county is
22 economically disadvantaged as defined by Transportation Code,
23 §222.053, the county is only required to provide matching funds
24 of at least 10 percent of the county's total grant award.
25 Subsection (b), Cash match, requires that the matching funds

1 provided by a county must be in cash and may be from any source
2 other than the department. The percentage of matching funds is
3 mandated by Transportation Code, §256.105, and the cash
4 requirement is consistent with the department's customary
5 matching requirements for other shared funding programs to
6 ensure that the recipient entity has sufficient funding
7 available to develop and complete the designated project or
8 projects.

9
10 New §15.184(a), Mandatory award, states that the department will
11 award a grant to all eligible counties that submit a valid
12 application in accordance with the procedures established by the
13 department under §15.188 of the new subchapter. Subsection (b)
14 Amount, further provides that the department will determine the
15 amount of the award allocated to a recipient county based on the
16 allocation formulas and distribution procedures as determined by
17 §§15.185 and 15.186. This section expresses the mandate of
18 Senate Bill 1747 that a county is entitled to an amount
19 calculable by formula if it meets the statutory eligibility
20 requirements. The department does not have discretion to deny
21 or modify the award if the eligibility requirements are met.

22
23 New §15.185, Allocation to Counties, establishes the formula by
24 which grant funds will be distributed to applicant counties
25 during a state fiscal year, which begins on September 1 and ends

1 on August 31. Allocation involves a two-step process: first,
2 the total pool of money available for grant distribution is
3 divided into four categories; and second, each county that
4 applies for a grant will be allocated funds within each category
5 based on a defined percentage relationship for that category.
6 The allocation formula is mandated by Transportation Code,
7 §256.103.

8
9 New §15.185(a), Allocation formula, sets forth the allocation
10 percentages for each of the four categories for which the total
11 amount of funds awarded from the fund will be distributed during
12 a fiscal year. The allocation of all funds will be distributed
13 as follows: (1) 20 percent will be allocated according to the
14 weight tolerance permits ratio; (2) 20 percent will be allocated
15 according to the oil and gas production taxes ratio; (3) 50
16 percent will be allocated according to the well completion
17 ratio; and (4) 10 percent will be allocated according to the
18 volume of oil and gas waste injected ratio.

19
20 New §15.185(b), Weight tolerance permits ratio, sets forth the
21 allocation formula that the department will use to calculate the
22 amount of grant funds a recipient county will receive based on
23 weight tolerance permits issued in the preceding state fiscal
24 year. To determine the amount, the department will divide the
25 total number of weight tolerance permits issued in the preceding

1 state fiscal year for the recipient county, as determined by the
2 Texas Department of Motor Vehicles, by the sum of all weight
3 tolerance permits for all counties that submit valid
4 applications and will receive grant funds that fiscal year. The
5 resulting percentage ("quotient") will be multiplied by the
6 total dollar amount allocated statewide for the weight tolerance
7 permits category. The comparative ratio is based on the
8 eligible counties that submit a valid application - not on all
9 254 counties.

10

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

1 on all 254 counties.

2

3 New §15.185(d), Well completion ratio, sets forth the allocation
4 formula that the department will use to calculate the amount of
5 grant funds a recipient county will receive based on the number
6 of well completions in the preceding state fiscal year. To
7 determine the amount, the department will divide the total well
8 completions of the preceding state fiscal year for the recipient
9 county, as determined by the Railroad Commission of Texas, by
10 the sum of all well completions for all counties that submit
11 valid applications and will receive grant funds that fiscal
12 year. The resulting percentage ("quotient") will be multiplied
13 by the total dollar amount allocated statewide for the well
14 completions category. The comparative ratio is based on the
15 eligible counties that submit a valid application - not on all
16 254 counties.

17

18 New §15.185(e), Oil and gas waste injected ratio, sets forth the
19 allocation formula that the department will use to calculate the
20 amount of grant funds a recipient county will receive based on
21 the total volume of oil and gas waste injected in the county the
22 preceding state fiscal year. To determine the amount, the
23 department will divide the total volume of oil and gas waste
24 injected in the county the preceding state fiscal year, as
25 determined by the Railroad Commission of Texas, by the sum of

1 all oil and gas waste injected in all counties that submit valid
2 applications and will receive grant funds that fiscal year. The
3 resulting percentage ("quotient") will be multiplied by the
4 total dollar amount allocated statewide for the oil and gas
5 waste injected 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 §15.186, Allocation of Excess, requires the department to
10 reallocate to other applicants all funds that were allocated to
11 an individual applicant county in excess of that county's
12 original request. The department will total all excess amounts
13 and will reallocate those funds in compliance with the formulas
14 for the initial allocation, except that a county from which
15 excess funds were taken for reallocation will not receive any
16 additional funds in the reallocation process. This section
17 ensures that a county does not receive an allocation for more
18 funds than were identified as needed in its grant application,
19 and allows those excess grant funds to go to other applicant
20 counties which have submitted estimated costs for listed
21 transportation infrastructure projects that are greater than the
22 amount the county would otherwise receive from the initial
23 calculation. This two-step process serves to maximize award
24 amounts for those counties that can expedite repair to damaged
25 infrastructure.

1

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

12

13 New §15.187(b), Notice, requires the department to publish
14 notice of the request for applications on the department's
15 website and provide written notice to the county judge of each
16 county in the state. The notice must specify the period of time
17 during which a county may submit applications, the estimated
18 amount of money available in the grant fund that is available
19 for allocation during the designated time period, and any
20 additional conditions for submission of a grant application.
21 The notice provisions are designed to expedite actual notice to
22 the counties.

23

24 New §15.188(a), Application form, requires a county to submit a
25 grant application to the department electronically using the

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

13
14 New §15.188(b), Plan requirements, requires an application to
15 include a plan that contains the following: (1) a prioritized
16 list of transportation infrastructure projects to be funded by
17 the grant; (2) a description of the scope of each listed
18 transportation infrastructure project which includes: a clear
19 and concise description of the proposed work; a map delineating
20 project location and termini; an implementation plan, including
21 a schedule of proposed activities; an estimate of project costs;
22 the project funding sources; and other information required by
23 the department; (3) identification of matching funds; and (4)
24 identification of other potential sources of funding to maximize
25 resources available for the listed transportation infrastructure

1 projects. These plan requirements are necessary to comply with
2 the application process as mandated by Transportation Code,
3 §256.104.

4
5 New §15.188(c) Additional submissions, describes documentation
6 and reports that a county must submit in addition to the
7 application form itself. Additional requirements include: a
8 road condition report described by Transportation Code,
9 §251.018, made by the county for the previous year; a copy of
10 the order establishing a county energy transportation
11 reinvestment zone in the county; and documentation evidencing
12 the creation of an advisory board for the county energy
13 transportation reinvestment zone. The additional submissions
14 required by the subsection are necessary to comply with
15 Transportation Code, §§222.1072 and 256.104.

16
17 New §15.189(a), Preliminary review, requires the department,
18 within 14 days of its receipt of a timely application, to
19 conduct a preliminary review to identify any deficiencies in the
20 application. If the department identifies any deficiencies, the
21 department will notify the county in writing, and allow the
22 county to remedy any deficiencies on or before the later of the
23 deadline for submitting applications or the 14th day after the
24 date of receipt of a deficiency notice. When the department
25 deems the application complete, the department will then so

1 notify the applicant county in writing. This subsection
2 attempts to ensure that a county is not denied access to a grant
3 based on a procedural error, omission, or misunderstanding.

4
5 New §15.189(b), Department review, requires the department to
6 review all valid applications within 31 days of receipt of an
7 application. Upon written notification to an applicant by the
8 department, the department may obtain a one-time extension of 29
9 days if additional time is needed to evaluate the applications.
10 These review time periods are mandated by Transportation Code,
11 §256.104.

12
13 New §15.189(c), Additional considerations, requires the
14 department to: seek other additional potential sources of
15 funding for a transportation infrastructure project to be funded
16 with the requested grant; consult related transportation
17 planning documents to improve project efficiency; and work
18 effectively in partnership with the county. This provision
19 complies with requirements of Transportation Code, §256.104(b).

20
21 New §15.190, Notice of Award, requires the department to provide
22 written notice to each applicant describing the amount of grant
23 funds awarded to the county, or provide notice denying the
24 applicant's application for a grant under the program. A
25 decision denying a grant application must include the reasons

1 for the denial. This section is consistent with other grant
2 programs administered by the department and provides each
3 applicant county with a definitive notice concerning the status
4 of its request.

5
6 New §15.191(a), Requirement; content, requires a county, prior
7 to receiving a grant from the fund, to enter into an agreement
8 with the department obligating the county to: place the project
9 on the county road system, if is a county road not already on
10 the system; expend funds received only on allowable costs as
11 provided in §15.192; comply with all applicable federal, state,
12 and local environmental laws and regulations and permitting
13 requirements; maintain the road after completion of the proposed
14 work if it is a county road; and, if a county's listed
15 transportation infrastructure project is located on the state
16 highway system, the county must contribute to the department an
17 amount from the awarded grant and the county's matching funds,
18 equal to the allowable costs incurred by the department for that
19 project. The purpose of an agreement under this section is to
20 clearly establish the rights and responsibilities of both
21 parties with regard to the performance of work and payment of
22 grant funds. Such agreements are customary for similar grant
23 programs administered by the department and ensure grant funds
24 are expended only for the statutory purpose allowed under
25 Transportation Code, Chapter 256, Subchapter C.

1
2 New §15.191(b), Amendment to the agreement, requires any
3 modifications to a grant agreement between the county and the
4 department to be in writing and executed jointly by the
5 executive director and the county. This subsection expressly
6 allows a county to modify a grant application project list by
7 adding transportation infrastructure projects to the list or by
8 changing the order of priority of the projects previously on the
9 list. The county must submit the request to the department and
10 include with the request, the type of information required in
11 the original application. This subsection allows flexibility of
12 project selection for a county, while at the same time ensuring
13 grant funds are expended only for the statutory purpose allowed
14 under Transportation Code, Chapter 256, Subchapter C.

15
16 New §15.192(a), Allowable costs, provides that a county may only
17 be reimbursed from the fund for allowable costs related to the
18 transportation infrastructure projects of the county for which a
19 grant was awarded. Allowable costs are described as the
20 necessary project related expenditures properly attributable to
21 the work performed, and may include a portion or all of the
22 administrative costs of a county energy transportation
23 reinvestment zone not to exceed \$250,000. A request for
24 reimbursement must be submitted by a county using forms and
25 procedures specified by the department and reimbursements will

1 be based on actual direct and related indirect costs incurred
2 after the award of a grant. The department will make
3 intermediate payments upon request of a county, not more often
4 than monthly. This subsection is consistent with the
5 requirements and conditions of other grant programs administered
6 by the department, and allows the department to effectively and
7 efficiently monitor compliance with the proper expenditure of
8 grant funds. The department has a responsibility to preserve
9 the integrity of the grant program and to manage and safeguard
10 the public treasury.

11
12 New §15.192(b), Audit, authorizes representatives of the
13 department and other entities of the State of Texas and, if
14 applicable, the federal government, to audit all county cost
15 records and accounts relating to a project that receives money
16 from a grant for up to three years after the date a final
17 payment is received by the county. This subsection allows the
18 department to monitor compliance and ensure grant funds are
19 expended only for the statutory purpose allowed under
20 Transportation Code, Chapter 256, Subchapter C. The department
21 has a responsibility to preserve the integrity of the grant
22 program and to manage and safeguard the public treasury.

23
24 New §15.193, Certification of Completion, requires a county to
25 submit to the department a written certification within 60 days

1 after completion of a listed project or listed projects for
2 which a grant was awarded. The certification must state that
3 the county has complied with all requirements of the grant,
4 including a certification that the project has been constructed
5 in accordance with all applicable construction requirements.
6 The certification must also describe the allowable costs for the
7 project and the amount reimbursed from the fund. This section
8 ensures grants funds are spent only on transportation
9 infrastructure projects as required by Transportation Code,
10 §256.102, and Transportation Code, Chapter 256, Subchapter C,
11 generally. The department has a responsibility to preserve the
12 integrity of the grant program and to manage and safeguard the
13 public treasury.

14

15 New §15.194, Use of Unexpended Funds, permits a county to use
16 the remaining unexpended balance of a grant for any
17 transportation project in the county, if a county has completed
18 all projects for which the original grant was awarded, and the
19 county has not expended all of its awarded funds. To qualify to
20 use the unexpended grant funds a county must, within one year of
21 filing a certification of completion of the original project or
22 projects, submit to the department a proposed amendment to the
23 original agreement, identifying the additional project or
24 projects along with all other project information required in an
25 original application. This section allows a county to fully

1 utilize its allocated grant funds for construction of any other
2 transportation project in the county. The transportation
3 project does not have to be related to degradation caused by the
4 oil and gas industry.

5
6 New §15.195, Enforcement, allows the executive director to
7 prohibit a county from participating in the grant program for
8 non-compliance with one or more material requirements of the
9 grant program, and to continue the prohibition until the
10 executive director determines that the county has complied with
11 all material requirements of the program. This section also
12 allows the executive director to remove a specific project from
13 participation in the program if work on the project is not
14 commenced within three years after the date of the executed
15 agreement between the county and the department or within
16 another reasonable period of time that is agreed to by the
17 department and the county. The enforcement mechanism is
18 necessary to ensure grant funds are expended only for the
19 statutory purpose allowed under Transportation Code, Chapter
20 256, Subchapter C. The department has a responsibility to
21 preserve the integrity of the grant program and to manage and
22 safeguard the public treasury.

23
24 New §15.196, Reimbursement, authorizes the department to seek
25 reimbursement of all grant money received by a county for a

1 specific transportation infrastructure project if the county
2 commences performance but fails to complete the project. Any
3 funds recovered from a county will be deposited to the credit of
4 the grant fund. This subsection is consistent with requirements
5 and conditions of other similar grant programs administered by
6 the department and the federal government. The department has a
7 responsibility to preserve the integrity of the grant program
8 and to manage and safeguard the public treasury.

9

10 FISCAL NOTE

11 James Bass, Chief Financial Officer, has determined that for
12 each of the first five years in which the new sections as
13 proposed are in effect, there will be no fiscal implications for
14 state or local governments as a result of enforcing or
15 administering the sections. The new sections provide for
16 management of a grant program established by Transportation
17 Code, Chapter 256, Subchapter C, to transfer additional funding
18 to counties for transportation infrastructure projects damaged
19 by the exploration, development, or production of oil or gas.
20 The allocated state funds should have a positive fiscal impact
21 on the recipient counties, but the extent of that impact cannot
22 be quantified.

23

24 Mark Marek, Director, Design Division, has certified that there
25 will be no significant impact on local economies or overall

1 employment as a result of enforcing or administering the new
2 sections.

3

4 PUBLIC BENEFIT AND COST

5 Mr. Marek has also determined that for each year of the first
6 five years in which the sections are in effect, the public
7 benefit anticipated as a result of enforcing or administering
8 the new sections will be the construction, reconstruction, and
9 maintenance of roads, bridges, and culverts damaged by increased
10 oil and gas production. There are no anticipated economic costs
11 for persons required to comply with the sections as proposed.
12 There will be no adverse economic effect on small businesses.

13

14 SUBMITTAL OF COMMENTS

15 Written comments on the proposed new §§15.180-15.196 may be
16 submitted to Robin Carter, Office of General Counsel, Texas
17 Department of Transportation, 125 East 11th Street, Austin,
18 Texas 78701-2483 or to RuleComments@txdot.gov with the subject
19 line "15.180-15.196." The deadline for receipt of comments is
20 5:00 p.m. on October 15, 2013. In accordance with
21 Transportation Code, §201.811(a)(5), a person who submits
22 comments must disclose, in writing with the comments, whether
23 the person does business with the department, may benefit
24 monetarily from the proposed new sections, or is an employee of
25 the department.

1

2 STATUTORY AUTHORITY

3 The new sections are proposed under Transportation Code,
4 §201.101, which provides the Texas Transportation Commission
5 with the authority to establish rules for the conduct of the
6 work of the department, and more specifically, Transportation
7 Code, §256.103, which give the department rule making authority
8 to adopt rules to implement the transportation infrastructure
9 fund grant program.

10

11 CROSS REFERENCE TO STATUTE

12 Transportation Code, Chapter 256, Subchapter C; and
13 Transportation Code, §§222.1071, 222.1072, and 251.018.