

TEXAS TRANSPORTATION COMMISSION

MINUTE ORDER

ALL Counties

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §1.8, Internal Ethics and Compliance Program, and §1.9, Effect of Contractor's Internal Ethics and Compliance Program, both relating to other entities' internal ethics and compliance procedures, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed repeals, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

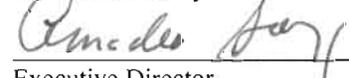
IT IS THEREFORE ORDERED by the commission that the repeal of §1.8 and §1.9 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:


Deputy Executive Director

Recommended by:


Executive Director

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Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes the
3 repeal of §1.8, Internal Ethics and Compliance Program, and
4 §1.9, Effect of Contractor's Internal Ethics and Compliance
5 Program, concerning other entities' internal ethics and
6 compliance procedures. The repeal of §1.8 and §1.9 are proposed
7 in association with the adoption of 43 TAC Chapter 9, new
8 Subchapter G and 43 TAC new Chapter 10.

9
10 EXPLANATION OF PROPOSED REPEALS

11 Title 43, Texas Administrative Code (43 TAC), §1.8, Internal
12 Ethics and Compliance Program, and §1.9, Effect of Contractor's
13 Internal Ethics and Compliance Program, became effective
14 February 19, 2009. Section 1.8 establishes, for an entity that
15 is required by Texas Transportation Commission (commission) rule
16 to have an internal ethics and compliance program, the minimum
17 requirements of such a program, and requires the entity to
18 certify that it has adopted and enforces compliance with the
19 program. Section 1.9 provides that a contractor's adoption and
20 enforcement of compliance with an internal ethics and compliance
21 program that meets the requirements of §1.8 may be considered in
22 determining a sanction that may be imposed on the contractor.

23
24 The substance of §1.8 is transferred to 43 TAC §9.106, which is
25 applicable to entities participating in highway improvement

1 contracts and new 43 TAC §10.51, which is applicable to other
2 entities doing business with the department, in separate rules
3 that are being adopted by the commission.

4
5 The substance of §1.9 is integrated into 43 TAC Chapter 9,
6 Contract and Grant Management, and new Chapter 10, Ethical
7 Conduct by Entities Doing Business with the Department. Under
8 §9.110, before imposing a sanction against a contractor, the
9 executive director will consider whether the contractor has
10 adopted a compliance program that satisfies §9.106, and if so,
11 whether the program is being enforced. Under new §10.154,
12 before imposing a score reduction on an individual or entity
13 that provides engineering, architectural, or surveying services,
14 the executive director will consider, as a mitigating factor,
15 the adoption and enforcement of an internal ethics and
16 compliance program that satisfies the requirements of new
17 §10.51. Finally, under §10.254 the executive director will
18 consider the adoption and enforcement of an internal ethics and
19 compliance program that satisfies the requirements of §10.51 as
20 a mitigating factor before imposing a sanction on a person doing
21 business with the department other than a person that provides
22 engineering, architectural, or surveying services.

23

24 FISCAL NOTE

25 James Bass, Chief Financial Officer, has determined that for

1 each of the first five years the repeals as proposed are in
2 effect, there will be no fiscal implications for state or local
3 governments as a result of enforcing or administering the
4 repeals.

5
6 Steve Simmons, Deputy Executive Director, has certified that
7 there will be no significant impact on local economies or
8 overall employment as a result of enforcing or administering the
9 repeals.

10

11 PUBLIC BENEFIT AND COST

12 Mr. Simmons has also determined that for each year of the first
13 five years the sections are in effect, the public benefit
14 anticipated as a result of enforcing or administering the
15 repeals will be increased understanding of the application of a
16 framework used to discourage fraudulent and illegal activity by
17 persons with whom the department has financial interactions.

18 There are no anticipated economic costs for persons required to
19 comply with the sections as proposed. There will be no adverse
20 economic effect on small businesses.

21

22 SUBMITTAL OF COMMENTS

23 Written comments on the proposed repeal of §1.8 and §1.9 may be
24 submitted to Bob Jackson, General Counsel, Texas Department of
25 Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

1 The deadline for receipt of comments is 5:00 p.m. on October 12,
2 2010.

3

4 STATUTORY AUTHORITY

5 The repeals are proposed under Transportation Code, §201.101,
6 which provides the commission with the authority to establish
7 rules for the conduct of the work of the department.

8

9 CROSS REFERENCE TO STATUTE

10 None.

1 SUBCHAPTER C. OTHER ENTITIES' INTERNAL ETHICS AND COMPLIANCE
2 PROCEDURES

3 §1.8. Internal Ethics and Compliance Program.

4 (a) Various sections of this title require an entity to
5 adopt and enforce an internal ethics and compliance program. To
6 comply with that requirement, the entity must provide the
7 department with written evidence of the internal ethics and
8 compliance program and must certify to the department that the
9 entity:

10 (1) has adopted an internal ethics and compliance program
11 that:

12 (A) is designed to detect and prevent violations of the
13 law, including regulations, and ethical standards applicable to
14 the entity or its officers or employees; and

15 (B) satisfies the requirements of this section; and

16 (2) enforces compliance with its internal ethics and
17 compliance program.

18 (b) An entity's internal ethics and compliance program must
19 be in writing and must provide compliance standards and
20 procedures that the entity's employees and agents are expected
21 to follow. The program must be recognized by the department as
22 a qualifying compliance program. At a minimum, the program must
23 provide that:

1 (1) high-level personnel are responsible for oversight of
2 compliance with the standards and procedures;

3 (2) appropriate care is being taken to avoid the
4 delegation of substantial discretionary authority to individuals
5 whom the organization knows, or should know, have a propensity
6 to engage in illegal activities;

7 (3) compliance standards and procedures are effectively
8 communicated to all of the organization's employees by requiring
9 them to participate in training and disseminating to them
10 information that explains, in understandable language, the
11 requirements of the program;

12 (4) the governing body or individuals of the organization
13 have periodic training in ethics and in the compliance program;

14 (5) compliance standards and procedures are effectively
15 communicated to all of the organization's agents;

16 (6) reasonable steps are being taken to achieve
17 compliance with the compliance standards and procedures by:

18 (A) using monitoring and auditing systems that are
19 designed to reasonably detect noncompliance; and

20 (B) providing and publicizing a system for the
21 organization's employees and agents to report suspected
22 noncompliance without fear of retaliation;

23 (7) consistent enforcement of compliance standards and

1 procedures is administered through appropriate disciplinary
2 mechanisms;

3 (8) reasonable steps are being taken to respond
4 appropriately to detected offenses and to prevent future similar
5 offenses; and

6 (9) the organization has a written employee code of
7 conduct that, at a minimum, addresses:

8 (A) record retention;

9 (B) fraud;

10 (C) equal opportunity employment;

11 (D) sexual harassment and sexual misconduct;

12 (E) conflicts of interest;

13 (F) personal use of the organization's property; and

14 (G) gifts and honoraria.

15

16 §1.9. Effect of Contractor's Internal Ethics and Compliance
17 Program. The adoption by a contractor, as defined by §9.101 of
18 this title, of an internal ethics and compliance program that
19 satisfies the requirements of §1.8 of this subchapter applicable
20 to an internal ethics and compliance program and the
21 contractor's enforcement of compliance with that program may
22 mitigate the imposition of a sanction on the contractor or the
23 level of a sanction that is imposed.