

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

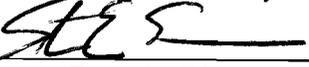
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §15.92, Miscellaneous Powers and Duties of Corporations, §26.56, Required Internal Ethics and Compliance Program, §27.53, Request, and §31.39, Required Internal Ethics and Compliance Program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and the adopted amendments, attached to this minute order as Exhibits A - H, 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*.

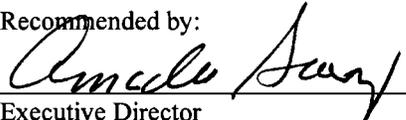
IT IS THEREFORE ORDERED by the commission that the amendments to §15.92, §26.56, §27.53, and §31.39 are adopted and are authorized for filing with the Office of the Secretary of State.

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

Submitted and reviewed by:

  
\_\_\_\_\_  
Deputy Executive Director

Recommended by:

  
\_\_\_\_\_  
Executive Director

**112519 DEC 16 10**

Minute Date  
Number Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts an  
3 amendment to §15.92, Miscellaneous Powers and Duties of  
4 Corporations. The amendment to §15.92 is adopted without  
5 changes to the proposed text as published in the September 10,  
6 2010 issue of the *Texas Register* (35 TexReg 8322) and will not  
7 be republished.

8

9 EXPLANATION OF ADOPTED AMENDMENTS

10 Title 43 Texas Administrative Code (43 TAC), §1.8, Internal  
11 Ethics and Compliance Program, which became effective February  
12 19, 2009 establishes, for an entity that is required by Texas  
13 Transportation Commission (commission) rule to have an internal  
14 ethics and compliance program, the minimum requirements of such  
15 a program and requires the entity to certify that it has adopted  
16 and enforces compliance with the program.

17

18 In separate rules adopted by the commission concurrently with  
19 this rule, §1.8 is repealed and the substance of that rule is  
20 transferred to new §10.51. The amendment to §15.92(c) merely  
21 changes the reference from §1.8 to the new §10.51 to reflect  
22 that change.

23

24 COMMENTS

25 No comments on the proposed amendment were received.

1

2 STATUTORY AUTHORITY

3 The amendment is adopted under Transportation Code, §201.101,  
4 which provides the commission with the authority to establish  
5 rules for the conduct of the work of the department.

6

7 CROSS REFERENCE TO STATUTE

8 None.

1 SUBCHAPTER H. TRANSPORTATION CORPORATIONS

2 §15.92. Miscellaneous Powers and Duties of Corporations.

3 (a) Open Meetings and Public Information.

4 (1) A corporation is subject to the Open Meetings Act,  
5 Government Code, Chapter 551.

6 (A) Except as provided in subparagraph (B) of this  
7 paragraph, the Board shall file notice of each meeting of the  
8 board in the same manner and in the same location as is required  
9 of a state governmental body under Chapter 551, Government Code.

10 (B) If the commission designates an area of the state  
11 in which a corporation may act on behalf of the commission, the  
12 board shall file notice of each meeting of the board in the same  
13 manner and the same location as is required of a governmental  
14 body under Government Code, §551.053.

15 (2) The Board is subject to the Public Information Act,  
16 Government Code, Chapter 552.

17 (b) Texas Non-Profit Corporation Act. The Texas Non-Profit  
18 Corporation Act applies to a transportation corporation to the  
19 extent that the provisions of that Act are not inconsistent with  
20 provisions of the Transportation Corporation Act, Transportation  
21 Code, Chapter 431, and this subchapter.

22 (c) Internal ethics and compliance program. A corporation  
23 shall adopt an internal compliance and ethics program that

1 satisfies the requirements of §10.51 [~~§1.8~~] of this title  
2 (relating to Internal Ethics and Compliance Program) before the  
3 later of:

4 (1) January 1, 2010; or

5 (2) the first anniversary of the date on which the  
6 corporation is created.

7 (d) Enforcement of compliance program. A corporation shall  
8 enforce compliance with the internal compliance and ethics  
9 program adopted under subsection (c) of this section.

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts an  
3 amendment to §26.56, Required Internal Ethics and Compliance  
4 Program. The amendment to §26.56 is adopted without changes to  
5 the proposed text as published in the September 10, 2010 issue  
6 of the *Texas Register* (35 TexReg 8322) and will not be  
7 republished.

8

9 EXPLANATION OF ADOPTED AMENDMENTS

10 Title 43 Texas Administrative Code (43 TAC), §1.8, Internal  
11 Ethics and Compliance Program, which became effective February  
12 19, 2009 establishes, for an entity that is required by Texas  
13 Transportation Commission (commission) rule to have an internal  
14 ethics and compliance program, the minimum requirements of such  
15 a program and requires the entity to certify that it has adopted  
16 and enforces compliance with the program.

17

18 In separate rules adopted by the commission concurrently with  
19 this rule, §1.8 is repealed and the substance of that rule is  
20 transferred to new §10.51. The amendment to §26.56(a) merely  
21 changes the reference from §1.8 to the new §10.51 to reflect  
22 that change.

23

24 COMMENTS

25 No comments on the proposed amendment were received.

1

2 STATUTORY AUTHORITY

3 The amendment is adopted under Transportation Code, §201.101,  
4 which provides the commission with the authority to establish  
5 rules for the conduct of the work of the department.

6

7 CROSS REFERENCE TO STATUTE

8 None.

1                   SUBCHAPTER F. MISCELLANEOUS OPERATION PROVISIONS

2   §26.56. Required Internal Ethics and Compliance Program.

3           (a) An RMA shall adopt an internal compliance and ethics  
4 program that satisfies the requirements of §10.51 [~~§1.8~~] of this  
5 title (relating to Internal Ethics and Compliance Program).

6           (b) An RMA must finally adopt a program described by  
7 subsection (a) of this section before the later of:

8           (1) April 1, 2011; or

9           (2) the first anniversary of the date on which the RMA is  
10 created.

11           (c) An RMA shall enforce compliance with its internal  
12 compliance and ethics program.



1 STATUTORY AUTHORITY

2 The amendment is adopted under Transportation Code, §201.101,  
3 which provides the commission with the authority to establish  
4 rules for the conduct of the work of the department.

5

6 CROSS REFERENCE TO STATUTE

7 None.

1 SUBCHAPTER E. FINANCIAL ASSISTANCE FOR TOLL FACILITIES

2 §27.53. Request.

3 (a) Eligibility.

4 (1) A public or private entity that is authorized by  
5 state law to construct or maintain a toll facility is eligible  
6 to submit a request for financing under this subchapter.

7 (2) A private entity is not eligible to submit a request  
8 for a grant.

9 (3) For requests submitted after January 1, 2010, to be  
10 eligible to receive funds under this subchapter, an entity must  
11 have adopted an internal ethics and compliance program that  
12 satisfies the requirements of §10.51 [~~§1.8~~] of this title  
13 (relating to Internal Ethics and Compliance Program) and must  
14 enforce compliance with that program.

15 (b) Basic request. Except as otherwise noted below with  
16 respect to a request for funding of development costs only, a  
17 request must be accompanied by:

18 (1) an overview of the project, which shall include a  
19 description of the project, the estimated total cost of the  
20 project or the preliminary cost estimate of development costs if  
21 the request is to fund only development costs, and the proposed  
22 use of the requested financial assistance;

23 (2) a list of all proposed funding sources, including,

1 but not limited to, bond revenue, any equity contribution from  
2 the requestor, and grants or loans requested under this  
3 subchapter, and the proposed use of the funding;

4 (3) the requested financing terms if loan financing is  
5 requested;

6 (4) a description of the need, or potential need in the  
7 case of a request for financing of development costs, for the  
8 project and potential impact on traffic congestion and mobility;

9 (5) a statement of the amount of unencumbered (or  
10 unreserved) cash on hand or the requestor's latest audited  
11 financial statement;

12 (6) the latest bond rating obtained by the requestor when  
13 using similar sources of revenue to be pledged, if applicable;

14 (7) a preliminary design study which includes:

15 (A) an initial route and potential alignments;

16 (B) the project's logical termini and independent  
17 utility, if applicable; and

18 (C) potential revisions or changes to state highway  
19 system facilities necessitated by the project;

20 (8) a description of the extent to which the requestor's  
21 toll collection system or plan for a toll collection system  
22 provides interoperability;

23 (9) unless the request is to fund development costs only,

1 official written approval of the project by the governing body  
2 of each entity that may become liable for repayment of any  
3 financial assistance;

4 (10) a binding commitment that the environmental  
5 consequences of the proposed project will be fully considered in  
6 accordance with, and that the proposed project will comply with,  
7 all applicable local, state, and federal environmental laws,  
8 regulations, and requirements;

9 (11) a binding commitment to implement all EPIC; and

10 (12) documentary evidence, to the extent then available,  
11 of community involvement in development of the proposed project  
12 and public opinion about it.

13 (c) Supplemental information and data. Except as provided  
14 in subsection (d) of this section, the requestor shall submit  
15 the following supplemental information and data.

16 (1) Financial feasibility study. Unless the request is  
17 to fund development costs only, the requestor shall submit a  
18 financial feasibility study that includes:

19 (A) a project construction or asset acquisition  
20 schedule identifying the timing, amount, and source of all funds  
21 required;

22 (B) an analysis of the expected financing period of the  
23 project;

1 (C) a pro forma annual cash flow analysis for the  
2 expected financing period of the project showing:

3 (i) if applicable, anticipated revenues to be used in  
4 repayment by source;

5 (ii) anticipated disbursements for preliminary  
6 studies and engineering, construction, EPIC, right of way  
7 acquisition, utility adjustments, operations, and maintenance;

8 (iii) anticipated debt service coverage ratios for  
9 each debt obligation; and

10 (iv) funds expected to be used to meet the  
11 requirements of any sinking funds, reserve funds, and loan  
12 amortization payments;

13 (D) a description of the methods used in preparing the  
14 financial feasibility study, the assumptions contained in the  
15 study, and persons and entities responsible for the preparation  
16 of the study;

17 (E) if loan financing is requested under this  
18 subchapter, the length of time the financial assistance will be  
19 outstanding or obligated;

20 (F) the anticipated interest rates for any and all debt  
21 outstanding during the term of the financial assistance;

22 (G) the anticipated benefits to the state and to the  
23 requestor resulting from the assistance; and

1 (H) based upon then available information and analyses,  
2 a description of how the requested assistance will, to the  
3 extent applicable, accomplish the following (it being understood  
4 that failure to accomplish all of these items will not  
5 necessarily cause a request to be ineligible for financial  
6 assistance):

7 (i) expand the availability of funding for  
8 transportation projects;

9 (ii) reduce direct state costs;

10 (iii) maximize private and local participation in  
11 financing projects; and

12 (iv) improve the efficiency of the state's  
13 transportation systems.

14 (2) Project impacts. The requestor shall provide the  
15 following information concerning the impact of the project:

16 (A) how the project will be consistent with the  
17 Statewide Transportation Plan and, if appropriate, with the  
18 metropolitan transportation plan developed by an MPO;

19 (B) if the project is in a nonattainment area, how the  
20 project will be consistent with the Statewide Transportation  
21 Improvement Program, with the conforming plan and Transportation  
22 Improvement Program for the MPO in which the project is located  
23 (if necessary), and with the State Implementation Plan; and

1           (C) a preliminary description of any known  
2 environmental, social, economic, or cultural resource issues,  
3 such as hazardous material sites, impacts on wetlands and other  
4 water resources, endangered species, parks, neighborhoods,  
5 businesses, historic buildings or bridges, and archeological  
6 sites.

7           (d) Waiver of required information or data. The executive  
8 director may waive submission of individual items of information  
9 or data required by subsection (c) of this section if:

10           (1) the information or data required by this section is  
11 not relevant to the project or the financial assistance  
12 requested;

13           (2) the department already possesses information or data  
14 in a format that may be substituted for the required information  
15 or data; or

16           (3) the past performance of the requestor on previous  
17 projects developed in collaboration with the department  
18 indicates that the requestor will adequately and prudently  
19 address the issues and impacts described in the requested  
20 information or data.

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts an  
3 amendment to §31.39, Required Internal Ethics and Compliance  
4 Program. The amendment to §31.39 is adopted without changes to  
5 the proposed text as published in the September 10, 2010 issue  
6 of the *Texas Register* (35 TexReg 8324) and will not be  
7 republished.

8

9 EXPLANATION OF ADOPTED AMENDMENTS

10 Title 43 Texas Administrative Code (43 TAC), §1.8, Internal  
11 Ethics and Compliance Program, which became effective February  
12 19, 2009 establishes, for an entity that is required by Texas  
13 Transportation Commission (commission) rule to have an internal  
14 ethics and compliance program, the minimum requirements of such  
15 a program and requires the entity to certify that it has adopted  
16 and enforces compliance with the program.

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18 In separate rules adopted by the commission concurrently with  
19 this rule, §1.8 is repealed and the substance of that rule is  
20 transferred to new §10.51. The amendment to §31.39 merely  
21 changes the reference from §1.8 to the new §10.51 to reflect  
22 that change.

23

24 COMMENTS

25 No comments on the proposed amendment were received.

1

2 STATUTORY AUTHORITY

3 The amendment is adopted under Transportation Code, §201.101,  
4 which provides the commission with the authority to establish  
5 rules for the conduct of the work of the department.

6

7 CROSS REFERENCE TO STATUTE

8 None.

1                                   SUBCHAPTER D.   PROGRAM ADMINISTRATION  
2   §31.39.   Required Internal Ethics and Compliance Program.   To be  
3   eligible to receive state or federal public transportation funds  
4   awarded by the commission after January 1, 2011, an entity must  
5   have adopted an internal ethics and compliance program that  
6   satisfies the requirements of §10.51 [~~§1.8~~] of this title  
7   (relating to Internal Ethics and Compliance Program) and must  
8   enforce compliance with that program.