

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §1.1, Texas Transportation Commission, §1.2, Texas Department of Transportation, §1.21, Scope and Purpose, §1.22, Definitions, and §1.26, Initiation of Contested Cases, Service of Notice of Hearing, Standard of Review, and Burden of Proof, relating to management to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - C, 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 §1.1, §1.2, §1.21, §1.22, and §1.26 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:

Bob Jurek  
General Counsel

Recommended by:

Amelia Sawyer  
Executive Director

**112105 JAN 28 10**

Minute Number      Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes  
3 amendments to §1.1, Texas Transportation Commission, §1.2, Texas  
4 Department of Transportation, §1.21, Scope and Purpose, §1.22,  
5 Definitions, and §1.26, Initiation of Contested Cases, Service  
6 of Notice of Hearing, Standard of Review, and Burden of Proof,  
7 all concerning management.

8

9 EXPLANATION OF PROPOSED AMENDMENTS

10 The legislature at its 2009 Regular Session enacted H.B. No.  
11 3097, which created the Department of Motor Vehicles (DMV) and  
12 transferred to the DMV the powers, duties, obligations, and  
13 rights of action of the department's vehicle titles and  
14 registration division and motor vehicle division, the Automobile  
15 Burglary Theft Prevention Authority, and the part of the  
16 department's motor carrier division responsible for motor  
17 carrier registration and the enforcement of Transportation Code,  
18 Title 7, Subtitle F, which relates to the regulation of  
19 commercial motor vehicles. As a result of the transfer, the  
20 rules of the Texas Transportation Commission (commission)  
21 relating to the management of the department need to be revised.

22

23 Amendments to §1.1, Texas Transportation Commission, delete the  
24 references in subsection (b)(1) to the commission's duties  
25 related to vehicle registration and titling, regulation of motor

1 carriers, and regulation of the distribution and sale of motor  
2 vehicles. The rule changes are made to conform to the transfer  
3 of those duties to the DMV.

4

5 Amendments to §1.2, Texas Department of Transportation, conform  
6 the cross references in subsection (c) to the changes made in 43  
7 TAC §1.1(b)(1). The amendments also delete former subsection  
8 (f) relating to the Automobile Burglary and Theft Prevention  
9 Authority, which was transferred from the department to the DMV  
10 by H.B. 3097, 80th Legislature, 2009.

11

12 Amendments to §1.21, Scope and Purpose, remove the references to  
13 claims under statutory provisions that were transferred to the  
14 DMV by H.B. 3097.

15

16 Amendments to §1.22, Definitions, remove the references in the  
17 definition of "claim" to those claims that were transferred to  
18 the DMV by H.B. 3097.

19

20 Amendments to §1.26, Initiation of Contested Cases, Service of  
21 Notice of Hearing, Standard of Review, and Burden of Proof,  
22 remove the references in subsection (c) to claims under  
23 statutory provisions that were transferred to the DMV by  
24 H.B. 3097.

25

1 FISCAL NOTE

2 James Bass, Chief Financial Officer, has determined that for  
3 each of the first five years the amendments as proposed are in  
4 effect, there will be no fiscal implications for state or local  
5 governments as a result of enforcing or administering the  
6 amendments.

7

8 Bob Jackson, General Counsel, has certified that there will be  
9 no significant impact on local economies or overall employment  
10 as a result of enforcing or administering the amendments.

11

12 PUBLIC BENEFIT AND COST

13 Mr. Jackson has also determined that for each year of the first  
14 five years the sections are in effect, the public benefit  
15 anticipated as a result of enforcing or administering the  
16 amendments will be that the current practices and statutory  
17 requirements are accurately reflected in the rules of the  
18 commission. There are no anticipated economic costs for persons  
19 required to comply with the sections as proposed. There will be  
20 no adverse economic effect on small businesses.

21

22 SUBMITTAL OF COMMENTS

23 Written comments on the proposed amendments to §1.1, §1.2,  
24 §1.21, §1.22, and §1.26, may be submitted to Bob Jackson,  
25 General Counsel, Texas Department of Transportation, 125 East

1 11th Street, Austin, Texas 78701-2483. The deadline for receipt  
2 of comments is 5:00 p.m. on March 15, 2010.

3

4 STATUTORY AUTHORITY

5 The amendments 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 Transportation Code, §201.101, §201.202(a), Transportation Code,  
11 Chapter 201, Subchapter L, and Transportation Code, Chapter  
12 1001.

1 SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

2 §1.1. Texas Transportation Commission.

3 (a) Commission.

4 (1) The Texas Department of Transportation is governed by  
5 the Texas Transportation Commission, consisting of five  
6 commissioners appointed by the governor with the advice and  
7 consent of the senate.

8 (2) The governor designates one commissioner as the chair  
9 of the commission.

10 (b) Commission responsibilities.

11 (1) The Texas Transportation Commission, with the advice  
12 and recommendations of the executive director, will:

13 (A) plan and make policies for the location,  
14 construction, and maintenance of a comprehensive system of state  
15 highways and public roads;

16 (B) lay out, construct, maintain, and operate a modern  
17 state highway system;

18 (C) develop a statewide transportation plan that  
19 contains all modes of transportation, including highways and  
20 turnpikes, aviation, mass transportation, railroads and high-  
21 speed railroads, and water traffic;

22 (D) award contracts necessary for the improvement of  
23 the state highway system, as provided by Transportation Code,

1 Chapter 223, and §§9.10-9.21 of this title (relating to Highway  
2 Improvement Contracts);

3 (E) encourage, foster, and assist in the development of  
4 public and mass transportation in the state;

5 (F) encourage, foster, and assist in the development of  
6 aeronautics in the state and encourage, aid, and assist in the  
7 establishment of airports, airstrips, and air navigational  
8 facilities in the state;

9 (G) fulfill the local sponsorship requirements of the  
10 Gulf Intracoastal Waterway as agent for the state;

11 [~~(H) provide for the registration and titling of~~  
12 ~~vehicles operating on the public roads;~~]

13 (H) [~~(I)~~] provide for the development and operation of  
14 toll projects on the state highway system;

15 (I) [~~(J)~~] approve a toll project constructed by a  
16 private entity or corporation if the project connects to the  
17 state highway system;

18 (J) [~~(K)~~] approve the construction of a toll project by  
19 a governmental or private entity other than a county with a  
20 population of more than 1.5 million people, if it is to become a  
21 part of the state highway system;

22 (K) [~~(L)~~] appoint an internal auditor for the  
23 department who shall report directly to the commission on the

1 conduct of departmental affairs;

2 (L) [~~(M)~~] adopt rules for the operation of the  
3 department;

4 (M) [~~(N)~~] divide the department into districts to  
5 accomplish the department's functions and the duties assigned to  
6 it;

7 [~~(O) provide for the regulation of motor carriers;~~]

8 (N) [~~(P)~~] carry out such transportation functions as  
9 may be delegated by the governor pursuant to applicable federal  
10 law;

11 (O) [~~(Q)~~] establish policy necessary to carry out the  
12 duties and functions of the department and the commission;

13 (P) [~~(R)~~] administer the state infrastructure bank;

14 [~~(S) provide for the regulation of the distribution and  
15 sale of motor vehicles and for the protection of consumers who  
16 purchase new motor vehicles;~~]

17 (Q) [~~(T)~~] organize the department into divisions to  
18 accomplish the department's functions and duties assigned to it;

19 (R) [~~(U)~~] approve recommendations for changes to the  
20 department's organizational structure submitted by the chair of  
21 the commission under subsection (d)(1)(F) of this section;

22 (S) [~~(V)~~] plan and make policies for the location,  
23 construction, maintenance, and operation of rail facilities;

1           (T) [~~(W)~~] administer the Texas Mobility Fund as a  
2 revolving fund to provide a method of financing the  
3 construction, reconstruction, acquisition, and expansion of  
4 state highways, and for the construction of other transportation  
5 projects;

6           (U) [~~(X)~~] designate and provide for the development of  
7 a statewide system of multi-modal transportation facilities  
8 known as the Trans-Texas Corridor;

9           (V) [~~(Y)~~] approve the creation of regional mobility  
10 authorities;

11           (W) [~~(Z)~~] consider ways in which the department's  
12 operations may be improved and periodically report to the  
13 legislature concerning potential statutory changes that would  
14 improve the operation of the department; and

15           (X) [~~(AA)~~] perform other duties required by law.

16           (2) The commission may, consistent with applicable law,  
17 delegate one or more of the functions listed under paragraph (1)  
18 of this subsection to the executive director. The executive  
19 director may further delegate such functions to one or more  
20 employees of the department.

21           (c) Attendance at meetings. Each commissioner shall:  
22 attend at least half of the regularly scheduled meetings that  
23 the commissioner is eligible to attend during a calendar year

1 unless the absence is excused by majority vote of the  
2 commission.

3 (d) Chair of the commission.

4 (1) The chair of the commission, with the advice and  
5 recommendations of the executive director and the executive  
6 director's staff, shall:

7 (A) preside over commission meetings, make rulings on  
8 motions and points of order, and determine the order of  
9 business;

10 (B) represent the department in dealing with the  
11 governor;

12 (C) report at least quarterly to the governor on the  
13 state of affairs at the department;

14 (D) report suggestions made by the governor for  
15 departmental operations to the commission;

16 (E) report to the governor on efforts to maximize the  
17 efficiency of departmental operations through the use of private  
18 enterprise;

19 (F) periodically review the department's organizational  
20 structure and submit recommendations for structural changes to  
21 the governor, the commission, and the Legislative Budget Board;

22 (G) designate one or more employees of the department  
23 as a civil rights division of the department and receive regular

1 reports from the division on the department's efforts to comply  
2 with civil rights legislation and administrative rules;

3 (H) create subcommittees, appoint commissioners to  
4 subcommittees, and receive the reports of subcommittees to the  
5 commission as a whole;

6 (I) appoint a commissioner to act in the chair's  
7 absence;

8 (J) serve as the departmental liaison with the governor  
9 and the Office of State-Federal Relations to maximize federal  
10 funding for transportation;

11 (K) on behalf of the commission, report to the  
12 governor, the lieutenant governor, the speaker of the house of  
13 representatives, and the presiding officer of relevant  
14 legislative committees on legislative recommendations adopted by  
15 the commission and relating to the operation of the department;

16 (L) oversee the preparation of an agenda for each  
17 commission meeting and ensure that a copy is provided to each  
18 commissioner at least seven days before a regular meeting; and

19 (M) perform any other duties assigned by law.

20 (2) The chair may, consistent with applicable law,  
21 delegate one or more of the functions listed under paragraph (1)  
22 of this subsection to the executive director, who in turn may  
23 further delegate such functions to one or more employees of the

1 department.

2 (3) The chair or a commissioner designated by the chair  
3 shall serve as a member of the Coastal Coordination Council.

4

5 §1.2. Texas Department of Transportation.

6 (a) Executive director.

7 (1) The commission will elect an executive director for  
8 the department who shall be skilled in transportation planning  
9 and development and in organizational management. The executive  
10 director, as the chief executive officer of the department, is  
11 authorized to administer the day-to-day operations of the  
12 department. The executive director may hold that position until  
13 removed by the commission.

14 (2) To assist in discharging the duties and  
15 responsibilities of the executive director, the executive  
16 director may organize, appoint, and retain such administrative  
17 staff as he or she deems appropriate.

18 (3) The executive director shall:

19 (A) serve the commission in an advisory capacity,  
20 without vote;

21 (B) submit quarterly, annually, and biennially to the  
22 commission detailed reports of the progress of public road  
23 construction, public and mass transportation development, and

1 detailed statement of expenditures;

2 (C) hire, promote, assign, re-assign, transfer, and,  
3 consistent with applicable law and policy, terminate staff  
4 necessary to accomplish the roles and missions of the  
5 department;

6 (D) notify the chair of grounds for removal of a  
7 commissioner if the executive director knows that a potential  
8 ground for removal exists, or, if the potential ground for  
9 removal relates to the chair, notify another commissioner;

10 (E) under the direction and with the approval of the  
11 commission, prepare a comprehensive plan providing a system of  
12 state highways; and

13 (F) perform other responsibilities as required by law  
14 or assigned by the commission.

15 (4) The executive director may, consistent with  
16 applicable law, delegate one or more of the functions listed  
17 under paragraph (3)(B)-(F) of this subsection to the staff of  
18 the department.

19 (b) Department staff. The staff of the Texas Department of  
20 Transportation, under the direction of the executive director,  
21 is responsible for:

22 (1) implementing the policies and programs of the  
23 commission by:

1 (A) formulating and applying operating procedures; and

2 (B) prescribing such other operating policies and  
3 procedures as may be consistent with and in furtherance of the  
4 roles and missions of the department;

5 (2) providing the chair and commissioners administrative  
6 support necessary to perform their respective duties and  
7 responsibilities, including:

8 (A) assigning staff to assist commissioners;

9 (B) providing necessary office space and equipment;

10 (C) furnishing in-house legal counsel;

11 (D) providing all information and documents necessary  
12 for the commission to effectively perform its responsibilities;  
13 and

14 (E) preparing an agenda under the direction of the  
15 chair, providing notice, and transcribing commission meetings  
16 and hearings as required by the Texas Open Meetings Act,  
17 Government Code, Chapter 551; and

18 (3) performing all other duties as prescribed by law or  
19 as assigned by the commission.

20 (c) Divisions. Consistent with commission direction  
21 provided under §1.1(b)(1)(Q) and (R) [~~§1.1(b)(1)(T) and (U)~~] of  
22 this subchapter, the executive director shall organize the  
23 department into headquarters operating divisions and offices

1 reflecting the various functions and duties assigned to the  
2 department, and shall designate a division or office director  
3 who shall administer each division or office.

4 (d) Districts.

5 (1) District office. The department is divided into  
6 geographical districts, each containing one district office.  
7 Each district is administered by a district engineer who is a  
8 registered professional engineer and is appointed by the  
9 executive director.

10 (2) Area office. A district contains one or more area  
11 offices, each of which is responsible for carrying out the  
12 department's primary functions at the local level for a  
13 designated geographical area. Each area office is normally  
14 administered by an area engineer who shall be a registered  
15 professional engineer.

16 (3) Project office. A district may contain one or more  
17 project offices, which is normally responsible for a specific  
18 project within an area.

19 (e) Regional Support Centers. The department has four  
20 regional support centers, which provide operational and project  
21 development support functions to the districts. The regional  
22 support centers are located in Fort Worth, Houston, San Antonio,  
23 and Lubbock.

1            [~~(f) Automobile Burglary and Theft Prevention Authority.~~  
2            ~~The Automobile Burglary and Theft Prevention Authority~~  
3            ~~(authority) is an independent authority within the department.~~  
4            ~~The authority undertakes a variety of programs designed to~~  
5            ~~reduce thefts of motor vehicles.]~~

1 SUBCHAPTER E. PROCEDURES IN CONTESTED CASES

2 §1.21. Scope and Purpose. The sections in this subchapter  
3 describe the procedures to be followed in contested cases  
4 arising under Government Code, Chapter 2001[, ~~with the exception~~  
5 ~~of contested cases arising under Occupations Code, Chapter 2301,~~  
6 ~~Sale or Lease of Motor Vehicles, or under Transportation Code,~~  
7 ~~Chapter 503, Dealer's and Manufacturer's Vehicle License Plates,~~  
8 ~~which are governed by 16 TAC Chapter 111]. Except as provided~~  
9 in this subchapter, all contested cases shall be governed by the  
10 procedural rules of the State Office of Administrative Hearings.

11  
12 §1.22. Definitions. The following words and terms, when used  
13 in this subchapter, shall have the following meanings, unless  
14 the context clearly indicates otherwise.

15 (1) Administrative Law Judge--A person appointed by the  
16 State Office of Administrative Hearings to conduct a hearing on  
17 matters within the department's jurisdiction.

18 (2) Claim--A claim made pursuant to [~~Occupations Code,~~  
19 ~~Chapter 2302, Salvage Vehicle Dealers; Occupations Code, Chapter~~  
20 ~~2303, Vehicle Storage Facilities; Transportation Code, §681.012,~~  
21 ~~Seizure and Revocation of Placard; Transportation Code, Chapter~~  
22 ~~643, Motor Carrier and Leasing Company Registration;~~  
23 ~~Transportation Code, Chapter 645, Single State Registration for~~

1 ~~Motor Carriers;~~] §21.572 of this title (relating to Notice and  
2 Appeal) concerning control of signs along rural roads;  
3 §21.149(f) [~~21.149(f)~~] of this title (relating to Licenses)  
4 concerning revocation or suspension of a county sign license; or  
5 §21.150(k) of this title (relating to Permits) concerning  
6 cancellation of a permit.

7 (3) Contract claim--Any claim arising under a contract  
8 governed by Transportation Code, §22.018 (concerning the  
9 designation of the department as agent in contracting and  
10 supervising for aviation projects); by Transportation Code,  
11 Chapter 223 (concerning bids and contracts for highway  
12 improvement projects); Transportation Code, §391.091 (concerning  
13 erection and maintenance of [~~specific information logo signs,~~  
14 ~~major area shopping guide, and major agricultural interest~~]  
15 signs); Chapter 361 (concerning state highway turnpike  
16 projects); or by Government Code, Chapter 2254 (concerning  
17 professional and [~~or~~] consulting services).

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

19 (5) Executive director--The chief administrative officer  
20 of the department or, if permitted by law, the director's  
21 designee.

22 (6) Party--The department or a person named or permitted  
23 to participate in a contested case.

1           (7) Petition--The document that initiates a contested  
2 case.

3           (8) Petitioner--A party who files a petition.  
4

5 §1.26. Initiation of Contested Cases, Service of Notice of  
6 Hearing, Standard of Review, and Burden of Proof.

7           (a) Initiation.

8           (1) If the executive director finds that a petition meets  
9 all legal requirements, the department will initiate a contested  
10 case in accordance with the rules of the State Office of  
11 Administrative Hearings.

12           (2) The department may initiate a contested case on its  
13 own initiative in accordance with the rules of the State Office  
14 of Administrative Hearings.

15           (b) Service of notice of hearing. Service of the Notice of  
16 Hearing shall be accomplished by certified or registered mail to  
17 the party's last known address as shown in the department's  
18 records. A notice of a hearing in a contested case is  
19 sufficient for purposes of notice if it includes a copy of the  
20 petition prepared in accordance with §1.24 of this subchapter  
21 (relating to Content of Petition), and the following  
22 information, unless it is included in the petition:

23           (1) a statement of the time, place, and nature of the

1 hearing;

2 (2) a statement of the legal authority and jurisdiction  
3 under which the hearing is to be held; and

4 (3) reference to the particular sections of the statutes  
5 and rules involved.

6 (c) Standard of review.

7 (1) The standard of review is reasonableness, if not  
8 otherwise specified[, and for claims made pursuant to  
9 Transportation Code, §681.012, Seizure and Revocation of  
10 Placard].

11 (2) The standard of review is whether the agency's  
12 actions were based on fraud, misconduct, or such gross mistake  
13 as would imply bad faith or failure to exercise an honest  
14 judgment for:

15 (A) contract claims;

16 [~~(B) claims related to Occupations Code, Chapter 2302,~~  
17 ~~Salvage Vehicle Dealers;]~~

18 [~~(C) claims related to Occupations Code, Chapter 2303,~~  
19 ~~Vehicle Storage Facilities;]~~

20 (B) [~~(D)~~] claims related to revocation or suspension of  
21 a county sign license under §21.149(f) of this title (relating  
22 to Licenses);

23 (C) [~~(E)~~] claims related to cancellation of a permit

1 under §21.150(k) of this title (relating to Permits); and  
2 (D) [~~F~~] claims related to control of signs along  
3 rural roads under §21.572 of this title (relating to Notice and  
4 Appeal).[+]

5 [~~C~~] ~~claims related to motor carrier and leasing~~  
6 ~~company registration, Transportation Code, Chapter 643; and]~~

7 [~~H~~] ~~claims related to single state registration for~~  
8 ~~motor carriers, Transportation Code, Chapter 645.]~~

9 (d) Burden of proof. A party seeking monetary damages or  
10 penalties shall bear the burden of proof. In all other  
11 instances, the party challenging a department decision or action  
12 shall bear the burden of proof.