

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 §15.55 relating to construction cost participation to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, 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 amendments to §15.55 are adopted and are authorized for filing with the Office of the Secretary of State.

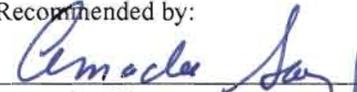
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Director, Bridge Division

Recommended by:



Executive Director

**112338 JUL 29 10**

Minute  
Number

Date  
Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts  
3 amendments to §15.55, Construction Cost Participation,  
4 concerning federal, state, and local participation. The  
5 amendments to §15.55 are adopted without changes to the proposed  
6 text as published in the May 14, 2010 issue of the *Texas*  
7 *Register* (35 TexReg 3802) and will not be republished.

8

9 EXPLANATION OF ADOPTED AMENDMENTS

10 The department has identified several off-state highway system  
11 bridge projects that require coordination with neighboring  
12 states. Many of the counties in which these projects are  
13 located are considered economically disadvantaged and do not  
14 have the funding or equivalent match projects necessary to  
15 finance the local cost participation requirement. In addition,  
16 the contractual and technical issues that may arise during the  
17 construction of border crossing projects are complex.

18

19 The department feels that removing the local cost participation  
20 requirement for off-state highway system bridge projects  
21 involving neighboring states will enhance relationships with  
22 those states, expedite the construction of projects, and further  
23 the department's mission to provide a safe and efficient  
24 transportation system for the traveling public. In addition, by  
25 serving as the facilitator for projects with neighboring states,

1 the department can ensure compliance with the applicable laws,  
2 regulations, and project guidelines of both states.

3

4 The amendments to §15.55 clarify the federal, state, and local  
5 participation ratios for bridge projects connecting Texas with a  
6 neighboring state. New subsection §15.55(d)(8) specifically  
7 provides that local cost participation is not required for a  
8 bridge connecting Texas with a neighboring state.

9

10 COMMENTS

11 No comments on the proposed amendments were received.

12

13 STATUTORY AUTHORITY

14 The amendments are adopted under Transportation Code, §201.101,  
15 which provides the Texas Transportation Commission with the  
16 authority to establish rules for the conduct of the work of the  
17 department.

18

19 CROSS REFERENCE TO STATUTE

20 23 U.S.C. §144.

1 SUBCHAPTER E. FEDERAL, STATE, AND LOCAL PARTICIPATION

2 §15.55. Construction Cost Participation.

3 (a) Required cost participation. The commission may  
4 require, request, or accept from a local government matching or  
5 other funds, rights-of-way, utility adjustments, additional  
6 participation, planning, documents, or any other local  
7 incentives.

8 (b) Economically disadvantaged counties. In evaluating a  
9 proposal for a highway improvement project with a local  
10 government that consists of all or a portion of an economically  
11 disadvantaged county, the executive director shall, for those  
12 projects in which the commission is authorized by law to provide  
13 state cost participation, adjust the minimum local matching  
14 funds requirement after receipt of a request for adjustment  
15 under paragraph (3) of this subsection.

16 (1) Commission certification. The commission will  
17 certify a county as an economically disadvantaged county on an  
18 annual basis as soon as possible after the comptroller reports  
19 on the economic indicators listed under §15.51(7) of this  
20 subchapter (relating to Definitions).

21 (2) Local match adjustment. In determining the  
22 adjustment to the local matching funds requirement, and a local  
23 government's effort and ability to meet the requirement, the

1 commission will consider a local government's:

2 (A) population level;

3 (B) bonded indebtedness;

4 (C) tax base;

5 (D) tax rate;

6 (E) extent of in-kind resources available; and

7 (F) economic development sales tax.

8 (3) Request for adjustment. The city council, county  
9 commissioners court, district board, or similar governing body  
10 of a local government that represents all or a portion of an  
11 economically disadvantaged county, shall submit a request for  
12 adjustment to the local district office of the department. The  
13 request will include, at a minimum:

14 (A) the proposed project scope;

15 (B) the estimated total project cost;

16 (C) a breakdown of the anticipated total cost by  
17 category (e.g., right-of-way, utility adjustment, plan  
18 preparation, construction);

19 (D) the proposed participation rate;

20 (E) the nature of any in-kind resources to be provided  
21 by the local government;

22 (F) the rationale for adjusting the minimum local  
23 matching funds requirement; and

1 (G) any other information considered necessary to  
2 support a request.

3 (4) Timing of determination. The executive director will  
4 determine whether to make an adjustment at the time the local  
5 government submits a proposal for a highway improvement project.

6 (5) Definition. For purposes of this subsection,  
7 "executive director" means the executive director or his or her  
8 designee, not below the level of district engineer or division  
9 or office director.

10 (c) Participation ratios. The following chart [~~Appendix A~~  
11 ~~to this section~~] establishes federal, state, and local cost  
12 participation ratios for highway improvement projects, subject  
13 to the availability of funds to the department.

14 Figure: 43 TAC §15.55(c)



Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
Project is on a Phase 1 Trunk System Corridor, Designated Statewide Mobility Corridor, or On-System Turnpike Project	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State
State Park Road Program	100% State	100% State	100% State
On-State System Bridge Program	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
Off-State System Bridge Program  <u>If bridge project connects Texas with a neighboring state</u>	80% Federal 10% State 10% Local -or- 80% Federal 20% State #1  <u>80% Federal</u> <u>20% State</u>	80% Federal 10% State 10% Local -or- 80% Federal 20% State #1  <u>80% Federal</u> <u>20% State</u>	100% Local
On-State System Safety Program	100% State -or- 90% Federal 10% State	90% Federal 10% State	100% State -or- 90% Federal 10% State
Off-State System Safety Program  If included in the Railroad Signal Safety Program	90% Federal 10% Local -or- 90% Federal 10% State	90% Federal 10% Local -or- 90% Federal 10% State	90% Federal 10% Local -or- 90% Federal 10% State
Transportation Enhancement Program #2	80% Federal 20% Local	80% Federal 20% Local	80% Federal 20% Local

NOTE: Additions underlined  
 Deletions in [ ]  
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Exhibit B

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
On-State System Safe Routes to Schools Program	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State -or- 90% Federal 10% State -or- 90% State 10% Local
Off-State System Safe Routes to Schools Program	80% Federal 20% Local	80% Federal 20% Local	100% Local -or- 80% Federal 20% Local -or- 90% Federal 10% Local

1

2 All participation ratios shown depict the minimum local participation for eligible costs. For continuous lighting systems or safety lighting on the state  
 3 highway system, refer to Chapter 25, §25.11 of this title.

4

5 NOTES:

6 #1 If approved in accordance with §15.55(d) of this subchapter.

7 #2 For projects selected in the Transportation Enhancement Program call, federal participation is limited to the amount authorized by the commission,  
 8 not to exceed 80% of the eligible costs.

1 (d) Off-state highway system bridge program.

2 (1) Definitions. The following words and terms, when  
3 used in this subsection, shall have the following meanings,  
4 unless the context clearly indicates otherwise.

5 (A) Bridge--For an equivalent-match project, a bridge  
6 or other mainlane cross-drainage structure, including low water  
7 crossings (with or without conduit).

8 (B) Deficient bridge--A bridge having a structural load  
9 capacity or other safety condition that is inadequate.

10 (C) District engineer--The chief executive officer in  
11 each designated district office of the department.

12 (D) Equivalent-match project--A project in which the  
13 local government will improve the structural load capacity or  
14 other safety condition of off-state system bridges utilizing  
15 100% local funds.

16 (E) Participation-waived project--An off-state system  
17 bridge project in which the state agrees to pay for local  
18 participation for eligible preliminary engineering,  
19 construction, and construction engineering costs as shown in  
20 subsection (c) of this section. This project must be authorized  
21 for development only, or for development and construction, on  
22 the department's approved Unified Transportation Program,  
23 satisfy minimum standards established by the department for off-

1 state system bridges, and meet the additional requirements of  
2 this subsection.

3 (F) Safety work--Work performed as part of an  
4 equivalent-match project that improves the safety of the  
5 project. This work may include, but is not limited to,  
6 providing improved structural load capacity, improved hydraulic  
7 capacity, increased roadway width, adequate bridge rail, and  
8 adequate approach guardrail.

9 (2) Waiver. The district engineer may waive the  
10 requirement for a local government to provide the original 10%  
11 estimate of direct costs for preliminary engineering,  
12 construction engineering, and construction funds on the  
13 participation-waived project(s) if the local governmental body  
14 commits by written resolution or ordinance, as described in  
15 paragraph (4) of this subsection, to spend an equivalent amount  
16 of funds for structural improvement or other safety work on  
17 another bridge or bridges on the equivalent-match project(s)  
18 within its jurisdiction or the jurisdiction of a geographically  
19 adjacent or overlapping governmental unit. An equivalent amount  
20 includes, but is not limited to, expenditures for direct or  
21 indirect costs for structural improvement or other safety work  
22 on bridge(s) in the equivalent-match project(s). Work on one or  
23 more equivalent-match projects may be credited to one or more

1 participation-waived projects.

2 (3) Eligibility. A local government is eligible for a  
3 waiver if:

4 (A) the construction contract for the participation-  
5 waived project has not been awarded;

6 (B) work on the equivalent-match project has not begun  
7 prior to approval of the waiver (approval of the waiver does not  
8 guarantee that the participation-waived project agreement will  
9 be executed);

10 (C) the local government is in compliance with load  
11 posting and closure regulations as defined in the National  
12 Bridge Inspection Standards under 23 C.F.R. §650.303;

13 (D) the bridge on the proposed equivalent-match  
14 project(s) is a deficient bridge, or a bridge that is weight  
15 restricted for school buses; and

16 (E) the equivalent-match project increases the  
17 structural load capacity of the existing bridge, replaces the  
18 bridge with a new bridge, or otherwise increases safety, with a  
19 minimum upgrade to safely carry expected school bus loading.

20 (4) Request for waiver. To request a waiver, a local  
21 government must provide a written request to the district  
22 engineer that includes the location(s), description of  
23 structural improvement or other safety work proposed, estimated

1 cost for the equivalent-match project(s), and a copy of the  
2 local governmental body's resolution or ordinance. The  
3 resolution or ordinance must acknowledge assumption of all  
4 responsibilities for engineering and construction and complying  
5 with all applicable state and federal environmental regulations  
6 and permitting requirements for the bridge(s) on the equivalent-  
7 match project(s).

8 (5) Considerations. In approving a request for waiver,  
9 the district engineer will consider:

10 (A) the type of work proposed for the equivalent-match  
11 project(s);

12 (B) regional transportation needs; and

13 (C) past performance under this subsection.

14 (6) Approval. The district engineer will submit a letter  
15 to the local government indicating the district engineer's  
16 approval or disapproval of the waiver. If disapproved, the  
17 letter will state the reasons for disapproval. If the waiver is  
18 approved, the letter will state that the local government, for  
19 the equivalent-match project(s) will assume:

20 (A) all costs of the work;

21 (B) responsibility for complying with all applicable  
22 state and federal environmental regulations and permitting  
23 requirements; and

1 (C) responsibility for the engineering and construction  
2 necessary for completion of the work.

3 (7) Agreement and conditions.

4 (A) If the district engineer approves the waiver, the  
5 local government and the department will enter into an agreement  
6 for the participation-waived project as specified in §15.52 of  
7 this subchapter. One or more participation-waived project  
8 agreements can utilize one or more common or independent  
9 equivalent-match projects if the total equivalent-match project  
10 amount equals or exceeds the total remaining local participation  
11 amount being waived at the time the agreement is executed, and  
12 the common agreements are adequately cross-referenced.  
13 Previously executed agreements may be amended to incorporate  
14 these participation waiver provisions, or to utilize an  
15 additional equivalent-match project(s) for any outstanding  
16 amount not previously waived, provided the construction contract  
17 for the participation-waived project has not been awarded and  
18 the equivalent-match work has not begun.

19 (B) Local governments will be allowed a maximum of  
20 three years after the contract award of the participation-waived  
21 project(s) to complete structural or other safety improvements  
22 on the equivalent-match project(s). If more than one  
23 participation-waived project utilizes a common equivalent-match

1 project, the time period allowed for completion of the  
2 equivalent-match project(s) will begin when the first of the  
3 participation-waived projects is awarded. The district engineer  
4 may specify a period less than three years for completion of  
5 equivalent-match projects if project specific conditions  
6 warrant. If specified, the shorter allowable work period must  
7 be explicitly stated in the agreement(s). No later than 30 days  
8 after completion, documentation of completion of the equivalent-  
9 match project(s) requirement will be provided by letter to the  
10 district engineer. If the local government fails to adequately  
11 complete the equivalent-match project(s), it will be excluded  
12 from future waivers under this subsection for a minimum of five  
13 years. The district engineer may grant an extension to the  
14 three-year completion requirement if a contract for the  
15 equivalent-match project(s) has been executed within that three  
16 years and the contract timeline for completion is reasonable.  
17 In the absence of information suggesting that a shorter or  
18 longer period is appropriate, two years or less will be presumed  
19 to be a reasonable time, for a maximum of five years to complete  
20 the equivalent-match project(s) following award of the  
21 programmed bridge. The granting of an extension to the three-  
22 year time limit must be done in writing in response to a written  
23 request to the district engineer from the local government. The

1 extension approval must specify a new required completion date.

2 (C) With the approval of the district engineer, an  
3 equivalent-match project(s) may be substituted by subsequent  
4 amendment to the participation-waived project agreement(s). A  
5 substitution may be allowed for unforeseen circumstances,  
6 including but not limited to, an equivalent-match project that  
7 is selected for replacement under some other program of work.  
8 Work on the substituted equivalent-match project(s) must be  
9 completed within a maximum of three years after the award of the  
10 construction contract for the original participation-waived  
11 project.

12 (D) The local government is responsible for all of the  
13 direct cost of any participation-waived project cost item or  
14 portion of a cost item that is not eligible for federal  
15 participation under the Federal Highway Bridge Replacement and  
16 Rehabilitation Program under 23 U.S.C. §144 and 23 C.F.R. §650  
17 Subpart D. The local government is also responsible for any  
18 costs resulting from changes made at the request of the local  
19 government.

20 (E) The local government will be responsible for 100%  
21 of right of way and utilities for the participation-waived  
22 project.

23 (F) A local government located in an economically

1 disadvantaged county that receives an adjustment under  
2 subsection (b) of this section may participate in the provisions  
3 of this subsection in the amount of its reduced matching funds  
4 requirement.

5 (G) The department will not reimburse funds already  
6 received by the department under the terms of existing  
7 agreements. Funds already received for a specific project(s)  
8 may be credited against the local government's required  
9 participation for the subsequent participation-waived project  
10 agreement(s) for that same project(s).

11 (H) Any equivalent-match project(s) cost that is in  
12 excess of the local government's required participation for a  
13 specific participation-waived project agreement(s) cannot be  
14 credited for use on a future participation-waived project(s).

15 (I) Each equivalent-match project(s) must be  
16 specifically identified in the participation-waived project  
17 agreement(s) at the time of execution.

18 (J) The local government must pay its funding share of  
19 the estimated participation-waived project cost, as provided in  
20 §15.52(6)(A) of this subchapter, for any local participation  
21 balance that is remaining at the time the project agreement(s)  
22 is executed. This balance would include any remaining required  
23 local participation amount in excess of the amount waived as a

1 result of credit for equivalent-match work to be performed as  
2 part of the agreement.

3 (8) Projects with neighboring states. Local cost  
4 participation is not required for a bridge connecting Texas with  
5 a neighboring state.