

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

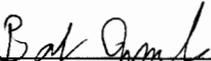
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §21.406, §25.101, §25.103, §27.40, §27.42, and §27.73 relating to updates to statutory population references to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - G, 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 §21.406, §25.101, §25.103, §27.40, §27.42, and §27.73 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

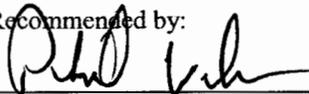
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



General Counsel

Recommended by:



Executive Director

112930 DEC 15 11

Minute Number Date Passed

1 law.

2

3 HB 2702 changes some statutory references that affect existing
4 rules of the Texas Transportation Commission (commission). The
5 amendments made by this rule are being made in conjunction with
6 other rules that change population references in Title 43 of the
7 Texas Administrative Code to conform those references to the
8 changes made by HB 2702.

9

10 Amendments to §21.406(a) change "population of 2.4 million or
11 more" to "population of 3.3 million or more" to conform to the
12 change made to Transportation Code, §394.063(a) by Section 130
13 of HB 2702 and in §21.406(b) to conform to the changes made to
14 Transportation Code, §394.061 by Section 129 of HB 2702.

15

16 COMMENTS

17 No comments on the proposed amendments were received.

18

19 STATUTORY AUTHORITY

20 The amendments are adopted under Transportation Code, §201.101,
21 which provides the commission with the authority to establish
22 rules for the conduct of the work of the department, and more
23 specifically, Transportation Code, §394.004, which provides the
24 commission with the authority to establish rules relating to
25 regulation of outdoor signs on rural roads.

- 1
- 2 CROSS REFERENCE TO STATUTE
- 3 Transportation Code, Chapter 394, Subchapter D.

1 SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

2 §21.406. Exemptions for Certain Populous Counties.

3 (a) This subchapter does not apply to an off-premise
4 portable sign in an unincorporated area of a county with a
5 population of 3.3 [~~2.4~~] million or more, according to the most
6 recent federal census, if the county either prohibits or
7 regulates the location, height, size, anchoring, or use of such
8 a portable sign.

9 (b) This subchapter does not apply to an on-premise sign in
10 an unincorporated area of a county with a population of 3.3
11 [~~2.4~~] million or more or a county that borders such a county if:

12 (1) the county has adopted an ordinance to regulate on-
13 premise signs; or

14 (2) the commissioner's court of the county, by order, has
15 authorized the commission to regulate on-premise signs in the
16 unincorporated area of the county in accordance with a municipal
17 or county regulation.

Adoption Preamble

The Texas Department of Transportation (department) adopts amendments to §25.101, Purpose, and §25.103, Routing Designations by Political Subdivisions, concerning changes to population references in the rules. The amendments to §25.101 and §25.103 are adopted without changes to the proposed text as published in the October 14, 2011 issue of the *Texas Register* (36 TexReg 6926) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Section 56, Article III of the Texas Constitution, generally prohibits the legislature from passing local laws regulating the affairs of political subdivisions. To avoid that prohibition some statutes use population brackets to limit their application to classes of political subdivisions. Unless expressly provided otherwise, a statutory reference to population means the population according to the most recent federal census. As population data changes with the release of each federal census, the political subdivision for which a population bracket was designed may no longer be in the bracket. Therefore, it is usual for the legislature to enact a bill that updates population references in the statutes as necessary after each federal census. The bill reflecting the 2010 federal census changes is HB 2702, 82nd Legislature. Because the bill is essentially enacted simultaneously with the release of the

1 census information, it results in no substantive change in the
2 law.

3
4 HB 2702 changes some statutory references that affect existing
5 rules of the Texas Transportation Commission (commission). The
6 amendments made by this rule are being made in conjunction with
7 other rules that change population references in Title 43 of the
8 Texas Administrative Code to conform those references to the
9 changes made by HB 2702.

10
11 Amendments to §25.103 change "population of more than 750,000"
12 to "population of more than 850,000" to conform to the change
13 made to Transportation Code, §644.202(b) by Section 177 of HB
14 2702.

15
16 Additionally, the amendments make nonsubstantive changes to
17 §25.103, as well as §25.101, updating obsolete statutory
18 references.

19
20 COMMENTS

21 No comments on the proposed amendments were received.

22
23 STATUTORY AUTHORITY

24 The amendments are adopted under Transportation Code, §201.101,
25 which provides the commission with the authority to establish

1 rules for the conduct of the work of the department, and more
2 specifically, Transportation Code, §644.201, which provides the
3 commission with the authority to establish rules relating to the
4 routing of nonradioactive hazardous materials.

5

6 CROSS REFERENCE TO STATUTE

7 Transportation Code, Chapter 644, Subchapter E.

1 SUBCHAPTER F. HAZARDOUS MATERIAL ROUTING DESIGNATIONS

2 §25.101. Purpose. Transportation Code, §644.201 [~~Texas Civil~~
3 ~~Statutes, Article 6675d, Section 3A~~] designates the department
4 as the state routing agency for non-radioactive hazardous
5 materials (NRHM), in accordance with Title 49, Code of Federal
6 Regulations, Part 397, Subpart C. Effective January 1, 1998,
7 the department is required to approve all new NRHM routing
8 designations or revisions to routing designations established
9 prior to January 1, 1998 by the Texas Department of Public
10 Safety.

11
12 §25.103. Routing Designations by Political Subdivisions.

13 (a) Purpose. Title 49, Code of Federal Regulations
14 (C.F.R.), Part 397, Subpart C, authorizes a political
15 subdivision of a state to establish NRHM route designations on
16 roads and highways open to the public under the jurisdiction of
17 the political subdivision. Transportation Code, §644.202 [~~Texas~~
18 ~~Civil Statutes, Article 6675d, §7(f)~~] requires a municipality
19 with a population of more than 850,000 [~~750,000~~] to develop a
20 route for commercial motor vehicles carrying NRHM on a road or
21 highway in the municipality and to submit the proposed route to
22 the department for approval. This section prescribes the
23 responsibilities of political subdivisions in establishing NRHM

1 route designations and requires a political subdivision
2 proposing the establishment of a new or revised NRHM routing
3 designation to comply with this section in order to ensure that
4 all route designations are properly established.

5 (b) Costs. The political subdivision is responsible for
6 all costs of NRHM route development, including proposal
7 preparation, public hearings, signs, sign supports, sign
8 installation, and sign maintenance.

9 (c) Initial contact. A political subdivision considering
10 the establishment of a NRHM route shall contact the local
11 district office of the department and any other political
12 subdivisions within a 25 mile radius of any point along the
13 proposed NRHM route, and shall consult with those entities
14 during the process for determining the best NRHM route.
15 Coordination with the Texas Department of Public Safety and the
16 local emergency planning council or committee is encouraged.

17 (d) Route analysis and proposal. A political subdivision
18 intending to establish a NRHM routing designation shall fully
19 consider and address in writing all of the federal standards and
20 factors listed in 49 C.F.R. §397.71(b) in the route
21 determination process. When analyzing these standards and
22 factors, the political subdivision shall use the most current
23 version of the United States Department of Transportation

1 publication entitled "Guidelines for Applying Criteria to
2 Designate Routes for Transporting Hazardous Materials" or an
3 equivalent routing analysis tool to develop a route proposal.
4 If an equivalent routing analysis tool is used, the political
5 subdivision shall include in its route proposal a written
6 explanation of how the tool is equivalent to the United States
7 Department of Transportation standards.

8 (e) Local public hearing. A political subdivision shall
9 hold at least one public hearing on any proposed NRHM routing
10 designation. Public hearings may take the form of a city
11 council or commissioners court meeting and shall conform with
12 all applicable state laws governing public meetings, including
13 the Texas Open Meetings Act, Government Code, Chapter 551.
14 Public notification of the hearing shall comply with the
15 following criteria.

16 (1) The public shall be given 30 days prior notice of the
17 hearing through publication in at least two newspapers of
18 general circulation in the affected area, one of which is a
19 newspaper with statewide circulation.

20 (2) The notice shall contain a complete description of
21 the proposed route, including the location, route name, highway
22 number if the route is on the state highway system, and
23 beginning and ending points of the route, together with the

1 date, time, and location of the public hearing.

2 (3) The notice shall initiate a 30-day public comment
3 period and shall inform the public where to send any written
4 comments.

5 (f) Proposal submission. A political subdivision that has
6 conducted a local public hearing in compliance with subsection
7 (e) of this section shall submit eight copies of the NRHM route
8 designation proposal and one original color map of the proposed
9 NRHM route to the department for approval. The proposal and map
10 shall be submitted to the Texas Department of Transportation,
11 Traffic Operations Division, 125 East 11th Street, Austin, Texas
12 78701-2483. The proposal shall include:

13 (1) documentation demonstrating compliance with Title 49,
14 C.F.R. [~~Code of Federal Regulations~~], Part 397, Subpart C, and
15 this section;

16 (2) a complete description of the proposed route; and

17 (3) a signature of approval by an authorized official of
18 the political subdivision such as the mayor, city manager,
19 county judge or an equivalent level of authority.

20 (g) Proposal review. The department will provide the
21 public with notice through publication in the *Texas Register*, a
22 30-day period in which to comment, and will conduct a public
23 hearing to receive additional comments on the proposed NRHM

1 routing designation. The public hearing will be conducted
2 before the executive director or the designee of the executive
3 director. The department will publish a notice satisfying the
4 criteria identified in subsection (e) of this section in two
5 newspapers of general circulation in the affected area. Public
6 hearings under this subsection will be held in Austin, Texas.

7 (h) Consultation with other states or Indian tribes. At
8 least 60 days prior to establishing the NRHM routing
9 designation, the department will provide written notice to the
10 officials responsible for NRHM highway routing in all other
11 affected states or Indian tribes. If no response is received
12 within 60 days from the date of receipt of the notification of
13 the proposed routing designation, the routing designation will
14 be considered approved by the affected states or Indian tribes.
15 The department will attempt to resolve any concerns or
16 disagreement expressed by any consulted states or Indian tribes
17 related to the proposed routing designation. If these concerns
18 or disagreements are not resolved, the department will petition
19 the Federal Highway Administration for resolution of the dispute
20 in accordance with 49 C.F.R. §397.75.

21 (i) Authorization and approval. If the department
22 determines that a route has met all of the criteria for
23 approval, the executive director will approve the NRHM routing

1 designation, notify the political subdivision in writing that
2 the proposed routing designation is authorized, and issue
3 appropriate notice to the Federal Highway Administration and the
4 Texas Department of Public Safety. A political subdivision that
5 is issued a letter of approval shall designate the NRHM route by
6 ordinance, resolution, rule, regulation, or other official
7 order, and shall forward a copy of the order to the department
8 within 30 days of receipt of the letter of approval.

9 (j) Route signing. After receipt of department approval
10 and passage of the order, the political subdivision shall submit
11 the proposed sign and installation locations of the NRHM route
12 designation to the local district office for approval. All
13 signs must conform to the latest version of the Texas Manual on
14 Uniform Traffic Control Devices. Sign installations shall be
15 coordinated with the local district office prior to placement.

Adoption Preamble

The Texas Department of Transportation (department) adopts amendments to §27.40, Purpose, §27.42, Creation, and §27.73, Commission Approval of County Toll Project, concerning changes to population references in the rules. The amendments to §27.40, §27.42, and §27.73 are adopted without changes to the proposed text as published in the October 14, 2011 issue of the *Texas Register* (36 TexReg 6929) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Section 56, Article III of the Texas Constitution, generally prohibits the legislature from passing local laws regulating the affairs of political subdivisions. To avoid that prohibition some statutes use population brackets to limit their application to classes of political subdivisions. Unless expressly provided otherwise, a statutory reference to population means the population according to the most recent federal census. As population data changes with the release of each federal census, the political subdivision for which a population bracket was designed may no longer be in the bracket. Therefore, it is usual for the legislature to enact a bill that updates population references in the statutes as necessary after each federal census. The bill reflecting the 2010 federal census changes is HB 2702, 82nd Legislature. Because the bill is essentially enacted simultaneously with the release of the

1 census information, it results in no substantive change in the
2 law.

3
4 HB 2702 changes some statutory references that affect existing
5 rules of the Texas Transportation Commission (commission). The
6 amendments made by this rule are being made in conjunction with
7 other rules that change population references in Title 43 of the
8 Texas Administrative Code to conform those references to the
9 changes made by HB 2702.

10
11 Amendments to §§27.40 and 27.42 change "population of 1.5
12 million or more" to "population of two million or more" to
13 conform to the change made to Transportation Code, §366.031(a)
14 by Section 127 of HB 2702.

15
16 Additional amendments to §27.42(b)(3)(A) and (c)(2) update
17 references to the Texas Transportation Plan by changing the
18 reference to statewide transportation plan to conform to current
19 terminology usage.

20
21 Amendments to §27.73(a) change "population of more than 1.5
22 million" to "population of more than two million" to conform to
23 the change made to Transportation Code, §362.055 by Section 126
24 of HB 2702.

25

1 COMMENTS

2 No comments were received on the proposed amendments.

3

4 STATUTORY AUTHORITY

5 The amendments are adopted 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, and more
8 specifically, Transportation Code, §366.031, which provides the
9 commission with the authority to establish rules relating to the
10 creation of a regional tollway authority.

11

12 CROSS REFERENCE TO STATUTE

13 Transportation Code, §§362.055 and 366.031.

1 SUBCHAPTER D. REGIONAL TOLLWAY AUTHORITIES

2 §27.40. Purpose. Transportation Code, Chapter 366, authorizes
3 two or more counties, if one of the counties has a population of
4 not less than 300,000 and the counties form a contiguous
5 territory, to create a regional tollway authority for the
6 purpose of the expansion and improvement of transportation
7 facilities and systems in this state. Unless one of the
8 counties has a population of two [~~1.5~~] million or more, the
9 creation of a regional tollway authority requires that the
10 counties gain the approval of the Texas Transportation
11 Commission. Transportation Code, §201.113 authorizes the Texas
12 Transportation Commission and a regional tollway authority to
13 enter into an agreement for the improvement by a regional
14 tollway authority of portions of the state highway system. This
15 subchapter prescribes the policies and procedures governing
16 commission approval of the creation of a regional tollway
17 authority and an improvement to the state highway system by a
18 regional tollway authority.

19
20 §27.42. Creation.

21 (a) Purpose. Transportation Code, §366.031 authorizes two
22 or more counties to create a regional tollway authority if: one
23 of the counties has a population of not less than 300,000; the

1 counties form a contiguous territory; and each county, acting
2 through its respective commissioners court, passes an order to
3 propose creation of a regional tollway authority. Unless one of
4 the counties has a population of two [~~more than 1.5~~] million or
5 more, §366.031 requires the approval of the commission for the
6 creation of a regional tollway authority. This section
7 prescribes the policies and procedures governing commission
8 approval of the creation of a regional tollway authority.

9 (b) Application. To secure commission approval under this
10 section for the creation of a regional tollway authority, the
11 commissioners courts shall jointly submit to the executive
12 director, in a form prescribed by the department, a written
13 request for approval. The request shall be accompanied by:

14 (1) from each member county, each incorporated city
15 within those counties, and each metropolitan planning
16 organization with jurisdiction in those counties, a resolution
17 of the entity's governing body indicating its support;

18 (2) a description of how the existence of a regional
19 tollway authority would expand the availability of funding for
20 transportation projects or reduce direct state costs;

21 (3) a description of the first turnpike project the
22 regional tollway authority intends to undertake including, but
23 not limited to:

1 (A) an explanation of how the project will be
2 consistent with the appropriate policies, strategies and actions
3 of the statewide transportation plan [~~Texas Transportation Plan~~]
4 and, if appropriate, with the metropolitan transportation plan
5 developed by the metropolitan planning organization;

6 (B) if the project is in a Clean Air Act nonattainment
7 area, an explanation of how the project will be consistent with
8 the transportation air quality goals outlined in the State
9 Implementation Plan; and

10 (C) a study of the potential social, economic, and
11 environmental impacts of the initial project.

12 (c) Approval.

13 (1) The executive director will determine the sufficiency
14 of the information provided, and if determined to be in
15 compliance with subsection (b) of this section, will submit the
16 application to the commission for approval.

17 (2) The commission may grant approval for creation of a
18 regional tollway authority if it finds that creation:

19 (A) will result in construction of a project consistent
20 with the appropriate policies, strategies, and actions of the
21 statewide transportation plan [~~Texas Transportation Plan~~] at an
22 earlier date than the department would otherwise construct the
23 project, and that project is needed to address a severe safety

1 issue, substantially reduce severe traffic congestion, or
2 substantially improve air quality in a nonattainment area more
3 quickly than the department would otherwise attain these goals;

4 (B) will result in direct benefit to the state, local
5 governments, and the traveling public;

6 (C) will improve the efficiency of the state's
7 transportation systems and would neither duplicate nor conflict
8 with the operations of the department, including the Texas
9 Turnpike Authority Division of the department;

10 (D) will expand the availability of funding for
11 transportation projects or reduce direct state costs;

12 (E) is supported by each member county, each
13 incorporated city within those counties, and each metropolitan
14 planning organization with jurisdiction within those counties;
15 and

16 (F) is in the best interest of the state.

17 (d) Social, environmental, and economic impact. In
18 evaluating the proposed creation of a regional tollway
19 authority, the commission will consider the potential social,
20 environmental, and economic impacts of the initial project.

21 (e) Contingencies. The commission may make its approval
22 contingent upon the proposed regional tollway authority
23 applicant complying with identified revisions to the proposed

1 project or complying with other conditions determined by the
2 commission as necessary to provide for the health or safety of
3 the traveling public.

4 (f) Order of approval or disapproval. Approval or
5 disapproval of the creation of a regional tollway authority
6 shall be by written order of the commission, and shall include
7 the rationale, findings, and conclusions on which approval or
8 disapproval is based.

9 (g) Department responsibility. Approval of the creation of
10 a regional tollway authority shall in no way constitute nor be
11 construed as department assumption of any liability,
12 responsibility, or duty for financing, design, construction,
13 maintenance, or operation of any project under the jurisdiction
14 of the regional tollway authority.

1 SUBCHAPTER F. COUNTY TOLL ROADS AND FERRIES

2 §27.73. Commission Approval of County Toll Project.

3 (a) Purpose. Transportation Code, Chapter 284, authorizes
4 a county to construct a toll road project. Transportation Code,
5 §362.051 provides that a governmental or private entity must
6 obtain the commission's approval before beginning construction
7 of a toll project that is to be a part of the state highway
8 system. Transportation Code, §284.008(c) specifies that a
9 county's toll road project will become a part of the state
10 highway system when all the bonds and interest on the bonds of
11 the project are paid, thereby requiring commission approval of a
12 county toll road project under Transportation Code, §362.051.

13 This section prescribes the procedure by which a county may
14 obtain commission approval under Transportation Code, §362.051.
15 This section does not apply to a county toll project for which
16 the commission has adopted an order under Transportation Code,
17 §284.008(d), stating that the project will not become a part of
18 the state highway system under §284.008(c). This section also
19 does not apply to a county with a population of more than two
20 [~~1.5~~] million.

21 (b) Request. To secure approval of a toll road project
22 under this section, a county shall submit a written request for
23 approval to the executive director. The request must be

1 accompanied by:

2 (1) a summary of the anticipated financing plan for
3 purposes of seeking the approval described in subsection (e)(2)
4 of this section;

5 (2) traffic and revenue forecasts;

6 (3) a detailed schematic indicating the location of
7 interchanges and mainlanes;

8 (4) a report identifying relocations or reconstruction to
9 state highway system facilities anticipated in connection with
10 the proposed toll road project;

11 (5) an evaluation of the toll road project's integration
12 into the state highway system;

13 (6) documentation demonstrating that the environmental
14 review and public involvement for the project have been
15 conducted in the manner prescribed by Chapter 2, Subchapter C of
16 this title (relating to Environmental Review and Public
17 Involvement for Transportation Projects); and

18 (7) a written commitment to comply with the design and
19 construction standards prescribed in §27.74 of this subchapter
20 (relating to Design and Construction Standards for Toll Road
21 Projects) when developing the toll road project.

22 (c) Environmental review and public involvement.

23 (1) When a county proposes to develop a toll road project

1 under this section, the county shall conduct a study of the
2 social and environmental impacts of the project in accordance
3 with Chapter 2, Subchapter C, of this title.

4 (2) The county shall provide for public involvement by
5 complying with §2.43(c) of this title (relating to Non Federal-
6 Aid Transportation Projects).

7 (3) When a county proposes to develop a toll road project
8 under this section and requests federal-aid or federal-aid and
9 state highway funds to assist with the project, the project
10 shall be developed in accordance with §2.50 of this title
11 (relating to Financial Assistance for Toll Facilities and Pass-
12 Through Toll Projects).

13 (4) When a county proposes a toll road project under this
14 section and no federal-aid or state highway funds are used, the
15 county shall complete environmental studies and public
16 involvement in accordance with all applicable federal and state
17 requirements and in accordance with Chapter 2, Subchapter C, of
18 this title.

19 (d) Respective roles and responsibilities. The county
20 shall request that the department make a determination of the
21 respective roles and responsibilities of the county and the
22 department under Chapter 2, Subchapter C, of this title. The
23 county shall comply with the department's directives. The

1 directives will specify who will conduct the following work,
2 either by the county or by the department:

3 (1) preparation and completion of environmental studies;

4 (2) submission of appropriate environmental documentation
5 for department review;

6 (3) preparation of any document revisions;

7 (4) submission of copies of the environmental studies and
8 documentation adequate for distribution;

9 (5) preparation of legal and public notices for
10 department review and use;

11 (6) arrangements for appropriate public involvement,
12 including court reporters and accommodations if requested for
13 persons with special communication or physical needs related to
14 the public hearing;

15 (7) preparation of public meeting and hearing materials;

16 (8) preparation of any responses to comments;

17 (9) preparation of public meeting and public hearing

18 summary and analysis, the comment and response reports, and

19 submission of a verbatim transcript of any public hearing and a
20 signed certification that the hearing has been held in

21 accordance with §2.43(c) of this title (relating to Non Federal-

22 Aid Transportation Projects), the Civil Rights Act of 1964, and

23 the Civil Rights Restoration Act of 1987; and

1 (10) submission of documentation showing that all EPIC
2 have been or will be completed, including copies of permits or
3 other approvals required prior to construction.

4 (e) Approval. In deciding whether to approve a county
5 toll road project, the commission will consider whether:

6 (1) the toll road project may be effectively integrated
7 into the state highway system;

8 (2) the department is able to construct any connecting
9 roads necessary for the toll road project to generate sufficient
10 revenue to pay the debt incurred for its construction; and

11 (3) the environmental review and public involvement for
12 the toll road project have been conducted in the manner
13 prescribed by Chapter 2, Subchapter C of this title [~~relating~~
14 ~~to Environmental Review and Public Involvement for~~
15 ~~Transportation Projects~~].