

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

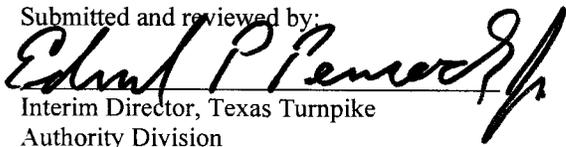
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§26.61 - 26.63 and new §26.65 relating to regional mobility authorities' reports and audits to be codified under Title 43, Texas Administrative Code, Part 1.

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*.

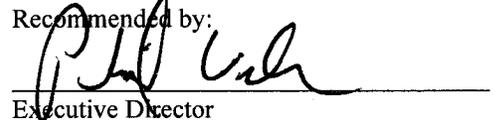
IT IS THEREFORE ORDERED by the commission that the amendments to §§26.61 - 26.63 and new §26.65 are adopted and are authorized for filing with the Office of the Secretary of State.

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:


Interim Director, Texas Turnpike
Authority Division

Recommended by:


Executive Director

112931 DEC 15 11

Minute
Number

Date
Passed

Adoption Preamble

1
2 The Texas Department of Transportation (department) adopts
3 amendments to §26.61, Written Reports, §26.62, Annual Audits,
4 and §26.63, Other Reports, and new §26.65, Annual Reports to the
5 Commission, all concerning reports and audits of regional
6 mobility authorities (RMA). The amendments to §§26.61 - 26.63
7 are adopted without changes to the proposed text as published in
8 the October 14, 2011 issue of the *Texas Register* (36 TexReg
9 6927) and will not be republished. New §26.65 is adopted with
10 changes to the proposed text as published in the October 14,
11 2011 issue of the *Texas Register* (36 TexReg 6927).

12

13 EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

14 Transportation Code, Chapter 370, Subchapter B, provides that
15 after approval by the Texas Transportation Commission
16 (commission), an RMA may be created by one or more counties or
17 by the city of El Paso, Laredo, Brownsville, McAllen, or Port
18 Aransas. A county may become part of an existing RMA if the
19 addition is approved by the commission. Under certain
20 conditions, a county may be allowed to withdraw from an RMA. A
21 county or city that is a part of an RMA has the authority to
22 oversee the activities of the RMA. A city that is part of an
23 RMA is distinguished from a city that merely lies within the
24 boundaries of an authority. Such a city has no oversight
25 authority for the RMA.

1
2 Chapter 26, Subchapter G of the department's rules requires RMAs
3 to file several reports with the department. These reports
4 include the annual operating and capital budgets adopted by the
5 RMA under the trust agreement or indenture securing bonds issued
6 for a project and amendments or supplements to such a budget,
7 financial information required to be disclosed under Rule 15c2-
8 12 of the United States Securities and Exchange Commission (17
9 C.F.R. §240.15c2-12), statements of surplus revenue held by the
10 RMA and the intended use of the surplus revenue, and an
11 independent auditor's reviews of the reports of investment
12 transactions required by law and prepared by an RMA's investment
13 officers under Government Code, §2256.023. An RMA is also
14 required to submit an annual financial and compliance audit of
15 its books and records to the department and any other reports
16 and information regarding its activities that are requested by
17 the commission or the executive director of the department.
18 While state statutes require commission or department approval
19 of some activities of an RMA, such as approval of the
20 construction of a transportation project that will connect to
21 the state highway system or a department rail facility or
22 approval of an application for federal highway or rail funds,
23 neither the commission nor the department has general oversight
24 responsibilities for an RMA. The information should more
25 appropriately be given to the public entity or entities that

1 oversee the operation of the RMA and the purpose of the
2 amendments under this rule is to require an RMA to deliver the
3 information to the public entity or entities.

4
5 Amendments to §26.61, Written Reports, change the entity to
6 which an RMA submits certain information from the department to
7 each county or city that is a part of the RMA. Subsection (a)
8 applies to financial and operating reports specified in that
9 subsection and subsection (b) applies to an independent
10 auditor's review of specified investment reports.

11
12 Amendments to §26.62, Annual Audits, require that an annual
13 financial and compliance audit of an RMA's books and records be
14 submitted to each county or city that is a part of the RMA
15 rather than to the executive director of the department, as
16 required under the current section. The amendments also delete
17 subsection (e), which requires audit work papers to be made
18 available to the department.

19
20 Amendments to §26.63, Other Reports, require an RMA to provide
21 other reports and information relating to the RMA's activities
22 if requested by the counties or cities that are parts of the RMA
23 rather than on request of the commission or department. The
24 amendments also change the heading of the section to more
25 clearly indicate the entities to which the reports are to be

1 made.

2

3 New §26.65 relates to annual reports that an RMA is required to
4 provide to the commission. Instead of providing the reports and
5 audits required under §§26.61 - 26.63 to the commission, new
6 §26.65(a) requires an RMA to submit to the executive director of
7 the department an annual report, in the form prescribed by the
8 department, that provides a checklist of each duty that the RMA
9 is required to perform under Subchapter G of Chapter 26 and that
10 indicates that the RMA has performed that requirement for that
11 fiscal year. Each report must be approved by the board of the
12 RMA and certified by the chief administrative officer of the
13 RMA. New §26.65(b) requires an RMA to provide to the commission
14 an annual progress report on each transportation project or
15 system of projects of the RMA, including the initial project for
16 which the RMA was created. These reports are intended to
17 provide the commission and department with the information they
18 need to perform their statutory duties related to RMAs.

19

20 COMMENTS

21 Comments on the proposed amendments were received from C. Brian
22 Cassidy of Locke Lord, LLP, who represents six of the eight RMAs
23 in the state - the Alamo Regional Mobility Authority, Cameron
24 County Regional Mobility Authority, Camino Real Regional
25 Mobility Authority, Central Texas Regional Mobility Authority,

1 Grayson County Regional Mobility Authority, and North East Texas
2 Regional Mobility Authority.

3

4 Comment: Mr. Cassidy supports the changes to §§26.61 - 26.63.

5 He writes that "[t]hese changes would enhance local control by
6 ensuring that primary oversight of RMAs takes place at the local
7 level, by those most familiar with local needs" and that they
8 "are consistent with existing statutory requirements..."

9 Additionally, Mr. Cassidy writes that the requirements in new
10 §26.65 "would provide the department with information necessary
11 to carry out its duties with regard to RMAs, while limiting the
12 documentation that an RMA must submit to the Department." While
13 he agrees with the intent of the new section, he suggests
14 extending the time for filing the report under that section
15 until at least 150 days after the end of the fiscal year to
16 provide time for the completion and filing of the required
17 annual audit. Mr. Cassidy supports the adoption of the
18 amendments and additions, subject to extending the time for
19 filing the compliance report with the department or otherwise
20 amending proposed §26.65.

21

22 Response: The department appreciates Mr. Cassidy's comments and
23 agrees to extend the filing deadline, so that §26.65 is amended
24 to provide within 150 days after the end of an RMA's fiscal
25 year, it is required to submit a report that lists each duty

1 that it is required to perform under Subchapter G of Chapter 26
2 and that indicates that it has performed that requirement for
3 that fiscal year.

4

5 STATUTORY AUTHORITY

6 The amendments and new section are adopted under Transportation
7 Code, §201.101, which provides the commission with the authority
8 to establish rules for the conduct of the work of the
9 department, and more specifically, Transportation Code,
10 §370.038, which provides the commission with the authority to
11 establish rules related to regional mobility authorities, and
12 Transportation Code, §370.187, which provides the commission
13 with the authority to establish rules for approval of a regional
14 mobility authority's construction of a transportation project
15 that will connect to the state highway system or to a department
16 rail facility.

17

18 CROSS REFERENCE TO STATUTE

19 Transportation Code, Chapter 370.

1 SUBCHAPTER G. REPORTS AND AUDITS

2 §26.61. Written Reports.

3 (a) Financial and operating reports. An RMA shall submit
4 the following financial and operating reports to each county or
5 city that is a part of the RMA [~~the department~~]:

6 (1) the annual operating and capital budgets adopted by
7 the RMA each fiscal year pursuant to the trust agreement or
8 indenture securing bonds issued for a project, and any amended
9 or supplemental operating or capital budget;

10 (2) annual financial information and notices of material
11 events required to be disclosed under Rule 15c2-12 of the United
12 States Securities and Exchange Commission (17 C.F.R. §240.15c2-
13 12); and

14 (3) to the extent not otherwise disclosed in another
15 report required under this subsection, a statement of any
16 surplus revenue held by the RMA and a summary of how it intends
17 to use the surplus revenue.

18 (b) Investment reports. An RMA shall submit to each county
19 or city that is a part of the RMA [~~the department~~] an
20 independent auditor's review, if required by law, of the reports
21 of investment transactions prepared by an RMA's investment
22 officers under Government Code, §2256.023.

23 (c) Certification. Reports submitted under this section

1 must be approved by official action of the board and certified
2 as correct by the chief administrative officer of the RMA.

3 (d) Submission dates. Reports required by subsection
4 (a)(1) and (3) of this section must be submitted [~~to the~~
5 ~~executive director~~] within 90 days after the beginning of the
6 fiscal year or the adoption of any amended or supplemental
7 budget. Reports required by subsection (a)(2) and subsection
8 (b) of this section must be submitted [~~to the executive~~
9 ~~director~~] within 30 days after disclosure under Rule 15c2-12 or
10 approval of the independent auditor's report.

11

12 §26.62. Annual Audits.

13 (a) General. The RMA shall maintain its books and records
14 in accordance with generally accepted accounting principles in
15 the United States, as promulgated by the Government Accounting
16 Standards Board, the Financial Accounting Standards Board, or
17 pursuant to applicable federal or state laws or regulations, and
18 shall have an annual financial and compliance audit of such
19 books and records in accordance with this section.

20 (b) Submission date. The annual audit shall be submitted
21 to each county or city that is a part of the RMA [~~the executive~~
22 ~~director~~] within 120 days after the end of the fiscal year.

23 (c) Certification. The financial and compliance audit must

1 be conducted by an independent certified public accountant in
2 accordance with generally accepted auditing standards, as
3 modified by the governor's Uniform Grant Management Standards,
4 or the standards of the Office of Management and Budget Circular
5 A-133, Audits of States, Local Governments and Non-profit
6 Organizations, as applicable.

7 (d) Paperwork retention period. All work papers and
8 reports shall be retained for a minimum of four years from the
9 date of the audit report, unless the counties or cities that are
10 parts of the RMA require a longer [~~the department notifies the~~
11 ~~RMA in writing to extend the~~] retention period.

12 [~~(e) Availability of audit work papers. If requested by~~
13 ~~the department, audit work papers shall be made available to the~~
14 ~~executive director, within 30 days of request, at any time~~
15 ~~during the retention period.~~]

16

17 §26.63. Other Reports to Counties and Cities. The RMA will
18 provide other reports and information regarding its activities
19 promptly when requested by the counties or cities that are parts
20 of the RMA [~~commission or the executive director~~].

21

22 §26.65. Annual Reports to the Commission.

23 (a) Compliance Report. Within 150 days after the end of

1 the fiscal year of an RMA, the RMA shall submit to the executive
2 director a report that lists each duty that the RMA is required
3 to perform under this subchapter and that indicates that the RMA
4 has performed that requirement for that fiscal year. Each
5 report submitted under this subsection must be in the form
6 prescribed by the department, approved by official action of the
7 board, and certified as correct by the chief administrative
8 officer of the RMA.

9 (b) Project Report. Not later than December 31 of each
10 year, an RMA shall submit to the commission a written report
11 that describes the progress made during that year on each
12 transportation project or system of projects of the RMA,
13 including the initial project for which the RMA was created.