

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose new §1.12 relating to negotiated rulemaking to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed new section, 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 new §1.12 is proposed for adoption and is authorized for publication in the *Texas Register* for the purpose of receiving public comments.

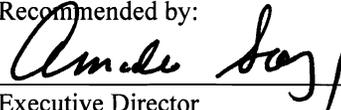
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



General Counsel

Recommended by:



Executive Director

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Minute Date
Number Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes new
3 §1.12, concerning negotiated rulemaking.

4

5 EXPLANATION OF PROPOSED NEW SECTION

6 S. B. No. 1420, 82nd Legislature, Regular Session, the
7 department's sunset bill, added Transportation Code, Section
8 201.118, which in part contains the Sunset Commission's across-
9 the-board provision that requires the Texas Transportation
10 Commission (commission) to develop and implement a policy to
11 encourage the use of negotiated rulemaking procedures under
12 Government Code, Chapter 2008.

13

14 New §1.12, adds provisions related to negotiated rulemaking.
15 The new section provides a statement of the commission's policy
16 of encouraging the use of negotiated rulemaking when that
17 approach is appropriate. The commission appoints the general
18 counsel as the negotiated rulemaking coordinator. The
19 coordinator begins the negotiated rulemaking process on his or
20 her own initiative or at the request of the commission or the
21 department's executive director and is responsible for
22 determining if the process is feasible and appropriate for a
23 specified subject. If the negotiated rulemaking process is
24 used, the coordinator is required to ensure compliance with the
25 Negotiated Rulemaking Act (Government Code, Chapter 2008). The

1 commission authorizes the general counsel to delegate the duties
2 and functions of the coordinator to another person.

3

4 FISCAL NOTE

5 James Bass, Chief Financial Officer, has determined that for
6 each of the first five years the new section as proposed is in
7 effect, there will be no fiscal implications for state or local
8 governments as a result of enforcing or administering the new
9 section.

10

11 Bob Jackson, General Counsel has certified that there will be no
12 significant impact on local economies or overall employment as a
13 result of enforcing or administering the new section.

14

15 PUBLIC BENEFIT AND COST

16 Mr. Jackson has also determined that for each year of the first
17 five years in which the section is in effect, the public benefit
18 anticipated as a result of enforcing or administering the new
19 section will be compliance with newly enacted legislation.

20 There are no anticipated economic costs for persons required to
21 comply with the section as proposed. There will be no adverse
22 economic effect on small businesses.

23

24 SUBMITTAL OF COMMENTS

25 Written comments on the proposed new §1.12 may be submitted to

1 Bob Jackson, General Counsel, Texas Department of
2 Transportation, 125 East 11th Street, Austin, Texas 78701-2483.
3 The deadline for receipt of comments is 5:00 p.m. on September
4 12, 2011.

5

6 STATUTORY AUTHORITY

7 The new section is proposed under Transportation Code, §201.101,
8 which provides the commission with the authority to establish
9 rules for the conduct of the work of the department, and more
10 specifically, Transportation Code, §201.118, which requires the
11 commission to develop and implement a policy to encourage the
12 use of negotiated rulemaking procedures.

13

14 CROSS REFERENCE TO STATUTE

15 Transportation Code, §201.118.

1 SUBCHAPTER D. PROCEDURE FOR ADOPTION OF RULES

2 §1.12. Negotiated Rulemaking.

3 (a) The Texas Transportation Commission (commission)
4 encourages the use of negotiated rulemaking for the adoption of
5 commission rules in appropriate situations.

6 (b) The general counsel of the Texas Department of
7 Transportation is the commission's negotiated rulemaking
8 coordinator. The general counsel may designate a person to
9 perform the duties and functions of the coordinator.

10 (c) The negotiated rulemaking coordinator, on the
11 coordinator's own determination or on the request of the
12 commission or the executive director, will begin the negotiated
13 rulemaking process on a specified subject.

14 (d) The negotiated rulemaking coordinator will follow the
15 procedures provided in the Negotiated Rulemaking Act (Government
16 Code, Chapter 2008) to determine whether the negotiated
17 rulemaking process is a feasible method to develop a particular
18 rule. If the coordinator determines that the negotiated
19 rulemaking process is feasible and appropriate, the coordinator
20 will ensure compliance with the Negotiated Rulemaking Act in
21 developing the rule.