

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 §2.1, §2.2, §2.5, §2.12, §2.16, §2.19, §9.6, §24.11, §24.12, and §27.2 relating to the implementation of provisions in Transportation Code, Chapter 227, concerning the Trans-Texas Corridor, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and the proposed amendments, attached to this minute order as Exhibits A - H, 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*.

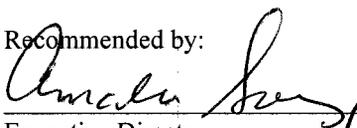
IT IS THEREFORE ORDERED by the commission that the amendments to §2.1, §2.2, §2.5, §2.12, §2.16, §2.19, §9.6, §24.11, §24.12, and §27.2 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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:


Director, Texas Turnpike Authority Division

Recommended by:


Executive Director

112719 JUN 30 11

Minute
Number

Date
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §2.1, General; Emergency Action Procedures, §2.2,
4 Definitions, §2.5, Public Involvement, §2.12, Environmental
5 Impact Statement (EIS), §2.16, Mitigation, and §2.19, Rail
6 Transportation Project all concerning Environmental Review and
7 Public Involvement for Transportation Projects.

8

9 EXPLANATION OF PROPOSED AMENDMENTS

10 House Bill No. 1201, Acts of 82nd Legislature, Regular Session,
11 2011, repealed the authority for the establishment and operation
12 of the Trans-Texas Corridor and removed all references in state
13 statutes to the Trans-Texas Corridor. The purpose of these
14 amendments is to remove all provisions in Chapter 2 of the rules
15 of the department relating to the Trans-Texas Corridor. The
16 effect of these amendments in conjunction with amendments to
17 other chapters of the department's rules being simultaneously
18 considered by the Texas Transportation Commission (commission)
19 is the removal of all provisions in department's rules relating
20 to the Trans-Texas Corridor.

21

22 Amendments to §2.1, General; Emergency Action Procedures, remove
23 the reference in subsection (b)(2) to a construction or
24 operation project of a facility that is part of the Trans-Texas
25 Corridor and to Transportation Code, Chapter 227, which related

1 to the corridor and was repealed by H.B. No. 1201. The
2 amendments to subsection (c) remove all references in that
3 subsection to sections in Transportation Code, Chapter 227.

4

5 Amendments to §2.2, Definitions, remove the definition of Trans-
6 Texas Corridor and renumber the following definition
7 appropriately.

8

9 Amendments to §2.5, Public Involvement, remove subsection (e)(9)
10 relating to the notice of availability of a Final Environmental
11 Impact Statement (FEIS) for a Trans-Texas Corridor project and
12 redesignate the following paragraph accordingly.

13

14 Amendments to §2.12, Environmental Impact Statement (EIS),
15 remove subsection (e)(2) relating to the contents of a Draft
16 Environmental Impact Statement (DEIS) for a Trans-Texas Corridor
17 project and redesignate the following paragraphs accordingly.

18

19 Amendments to §2.16, Mitigation, remove subsection (b)(6), which
20 provides for compensatory mitigation of an adverse environmental
21 impact resulting from a Trans-Texas Corridor project and
22 redesignate the following paragraph accordingly.

23

24 Amendments to §2.19, Rail Transportation Project, remove the
25 references to Transportation Code, Chapter 227 in subsections

1 (a) and (c).

2

3 FISCAL NOTE

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

9

10 Mark Tomlinson, Director, Texas Turnpike Authority Division, has
11 certified that there will be no significant impact on local
12 economies or overall employment as a result of enforcing or
13 administering the amendments.

14

15 PUBLIC BENEFIT AND COST

16 Mr. Tomlinson has also determined that for each year of the
17 first five years in which the sections are in effect, the public
18 benefit anticipated as a result of enforcing or administering
19 the amendments will be to have the rules accurately reflect the
20 statutory law. There are no anticipated economic costs for
21 persons required to comply with the sections as proposed.

22

23 SUBMITTAL OF COMMENTS

24 Written comments on the proposed amendments to §2.1, §2.2, §2.5,
25 §2.12, §2.16, and §2.19 may be submitted to Mark Tomlinson,

1 Director, Texas Turnpike Authority Division, 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 August 15,
4 2011.

5

6 STATUTORY AUTHORITY

7 The amendments are 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.

10

11 CROSS REFERENCE TO STATUTE

12 None.

1 SUBCHAPTER A. ENVIRONMENTAL REVIEW AND PUBLIC INVOLVEMENT
2 FOR TRANSPORTATION PROJECTS

3 §2.1. General; Emergency Action Procedures.

4 (a) (No change.)

5 (b) Applicability; Exception.

6 (1) (No change.)

7 (2) Transportation project. A transportation project is
8 a highway improvement, rest area, aviation, toll project, public
9 transportation, rail transportation project, ferry landing
10 project, ferry maintenance, or transportation enhancement~~[, or a~~
11 ~~project for the construction or operation of a facility that is~~
12 ~~a part of the Trans Texas Corridor]~~. A highway improvement
13 project is a highway construction or maintenance project under
14 one or more of Transportation Code, Chapters 201, 203, 221, 223,
15 ~~[227,~~ or 228.

16 (3) (No change.)

17 (c) Purpose. This subchapter implements the requirements
18 of Transportation Code, §91.033, §91.034, §201.604, §201.607,
19 §201.610, §201.617, §203.021, and §203.022~~[, §227.004, §227.013,~~
20 ~~§227.027, and §227.028]~~. Also, the requirements in this chapter
21 follow the requirements of the National Environmental Policy
22 Act, 42 United States Code §§4321 et seq., 23 United States Code
23 §109(h), and federal rules adopted under those laws. For a

1 federal-aid transportation project, the subchapter sets forth
2 additional requirements the department shall follow in order to
3 comply with the National Environmental Policy Act and federal
4 rules adopted under that law.

5 (d) - (h) (No change.)

6

7 §2.2. Definitions. The following words and terms, when used in
8 this subchapter and Subchapters B and C of this chapter shall
9 have the following meanings, unless the context clearly
10 indicates otherwise.

11 (1) - (46) (No change.)

12 [~~(47) Trans Texas Corridor~~ The system of multimodal
13 facilities designated by the commission under Transportation
14 Code, ~~§227.011.~~]

15 (47) [~~(48)~~] Toll project--Has the meaning assigned by
16 Transportation Code, §201.001.

17

18 §2.5. Public Involvement.

19 (a) - (d) (No change.)

20 (e) Public involvement for EIS project or supplemental EIS
21 project.

22 (1) - (8) (No change.)

23 [~~(9) Notice of availability of FEIS for project on Trans-~~

1 ~~Texas Corridor. In addition to the requirements in paragraph~~
2 ~~(7) of this subsection, after the FEIS for a project on the~~
3 ~~Trans-Texas corridor is approved under §2.12 of this subchapter,~~
4 ~~the district shall take the actions described in this~~
5 ~~paragraph.]~~

6 [~~(A) The district shall post the FEIS on the~~
7 ~~department's internet website, along with information detailing~~
8 ~~where a copy may be reviewed or obtained.]~~

9 [~~(B) The district shall notify the following persons~~
10 ~~that the FEIS is available on the department's website:]~~

11 [~~(i) each state senator and representative who~~
12 ~~represents any part of the area in which a segment of the~~
13 ~~project is located; and]~~

14 [~~(ii) the commissioners court of each county in which~~
15 ~~the project is located.]~~

16 (9) [~~(10)~~] Notice of ROD. The environmental division
17 shall publish notice of the ROD in the *Texas Register*. The
18 district shall publish a notice of availability of the ROD in
19 local newspapers.

20 (f) - (i) (No change.)

21

22 §2.12. Environmental Impact Statement (EIS)

23 (a) - (d) (No change.)

1 (e) DEIS.

2 (1) (No change.)

3 [~~(2) In accordance with Transportation Code, §227.004, a~~
4 ~~DEIS for a Trans Texas Corridor project shall explain each of~~
5 ~~the matters described in this paragraph.]~~

6 [~~(A) The reasons for the immediate and future needs of~~
7 ~~the project.]~~

8 [~~(B) The reasonableness of and necessity for the~~
9 ~~project.]~~

10 [~~(C) The reasons for the immediate and future needs for~~
11 ~~each mode of transportation in that segment of the project.]~~

12 [~~(D) The reasonableness and necessity for each mode of~~
13 ~~transportation in that segment of the project.]~~

14 (2) [~~(3)~~] The environmental division shall review the
15 DEIS to determine if it complies with this subsection and other
16 requirements, and if appropriate, approve it for circulation by
17 signing and dating the cover sheet. For a federal-aid project,
18 the FHWA shall review and if appropriate approve the DEIS.

19 (3) [~~(4)~~] The district shall circulate the DEIS in
20 accordance with §2.5(e) of this subchapter.

21 (4) [~~(5)~~] The district and environmental division shall
22 give notice of availability of the DEIS in accordance with
23 §2.5(e) of this subchapter.

1 (5) [~~(6)~~] After the DEIS is circulated, public hearing
2 held, and comments reviewed, the district shall prepare an FEIS
3 or a supplemental DEIS.

4 (f) (No change.)

5

6 §2.16. Mitigation.

7 (a) (No change.)

8 (b) Compensatory mitigation may include:

9 (1) - (4) (No change.)

10 (5) an agreement with the Texas Historical Commission
11 under §2.24 of this chapter (relating to Memorandum of
12 Understanding with the Texas Historical Commission) on
13 appropriate mitigation measures for an adverse effect directly
14 resulting from a transportation project; or

15 ~~[(6) mitigation for the Trans-Texas Corridor as provided~~
16 ~~by Transportation Code, §227.028; or]~~

17 (6) [~~(7)~~] the transfer of real property to a public
18 agency or private entity with or without monetary consideration
19 if the property is used or is proposed to be used for mitigation
20 purposes.

21 (c) (No change.)

22

23 §2.19. Rail Transportation Project.

1 (a) Environmental studies for the acquisition, abandonment,
2 design, construction, lease, maintenance, or operation of a
3 passenger or freight rail facility under Transportation Code,
4 Chapter 91 [~~or Chapter 227~~] that are subject to 49 United States
5 Code §10901 will be accomplished in accordance with applicable
6 state and federal requirements and, in particular, 49 Code of
7 Federal Regulations Part 1105.

8 (b) Public involvement for a rail transportation project
9 that is subject to 49 United States Code §10901 shall be
10 consistent with applicable state and federal law, particularly
11 49 Code of Federal Regulations Part 1105, this subchapter, and
12 Subchapters B and C of this chapter.

13 (c) Environmental studies and public involvement for the
14 acquisition, abandonment, design, construction, lease,
15 maintenance, or operation of a passenger or freight rail
16 facility, under Transportation Code, Chapter [~~Chapters~~] 91 [~~and~~
17 ~~227~~], that are not subject to 49 United States Code §10901 shall
18 be accomplished in accordance with this subchapter and
19 Subchapters B and C of this chapter.

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §9.6, concerning Contract Claim Procedure for
4 Comprehensive Development Agreement.

5

6 EXPLANATION OF PROPOSED AMENDMENTS

7 House Bill No. 1201, Acts of 82nd Legislature, Regular Session,
8 2011, repealed the authority for the establishment and operation
9 of the Trans-Texas Corridor and removed all references in state
10 statutes to the Trans-Texas Corridor. The purpose of these
11 amendments is to remove all provisions in Chapter 9 of the rules
12 of the department relating to the Trans-Texas Corridor. The
13 effect of these amendments in conjunction with amendments to
14 other chapters of the department's rules being simultaneously
15 considered by the Texas Transportation Commission (commission)
16 is the removal of all provisions in the department's rules
17 relating to the Trans-Texas Corridor.

18

19 Amendments to §9.6, Contract Claim Procedure for Comprehensive
20 Development Agreement, remove the reference to Transportation
21 Code, §227.023.

22

23 FISCAL NOTE

24 James Bass, Chief Financial Officer, has determined that for
25 each of the first five years the amendments as proposed are in

1 effect, there will be no fiscal implications for state or local
2 governments as a result of enforcing or administering the
3 amendments.

4

5 Mark Tomlinson, Director, Texas Turnpike Authority Division, has
6 certified that there will be no significant impact on local
7 economies or overall employment as a result of enforcing or
8 administering the amendments.

9

10 PUBLIC BENEFIT AND COST

11 Mr. Tomlinson has also determined that for each year of the
12 first five years in which the sections are in effect, the public
13 benefit anticipated as a result of enforcing or administering
14 the amendments will be to have the rules accurately reflect the
15 statutory law. There are no anticipated economic costs for
16 persons required to comply with the sections as proposed.

17

18 SUBMITTAL OF COMMENTS

19 Written comments on the proposed amendments to §9.6 may be
20 submitted to Mark Tomlinson, Director, Texas Turnpike Authority
21 Division, Texas Department of Transportation, 125 East 11th
22 Street, Austin, Texas 78701-2483. The deadline for receipt of
23 comments is 5:00 p.m. on August 15, 2011.

24

1 STATUTORY AUTHORITY

2 The amendments are proposed under Transportation Code, §201.101,
3 which provides the commission with the authority to establish
4 rules for the conduct of the work of the department.

5

6 CROSS REFERENCE TO STATUTE

7 None.

SUBCHAPTER A. GENERAL

§9.6. Contract Claim Procedure for Comprehensive Development Agreement.

(a) - (b) (No change.)

(c) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Comprehensive development agreement (CDA)--An agreement with a developer that, at a minimum, provides for the design and construction, reconstruction, extension, expansion, or improvement of a project described in Transportation Code, §223.201(a), and may also provide for the financing, acquisition, maintenance, or operation of such a project. A CDA is also authorized under Transportation Code, §91.054 (rail facilities)[, ~~and under Transportation Code, §227.023 (Trans-Texas Corridor)~~]. A CDA includes related agreements that collectively constitute a CDA or other agreements entered into with or for the benefit of the department in connection with the CDA.

(3) - (9) (No change.)

(d) - (m) (No change.)

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes the
3 repeal of §24.11, Comprehensive Development Agreements, and
4 §24.12, Environmental Review and Public Involvement concerning
5 Trans-Texas Corridor.

6

7 EXPLANATION OF PROPOSED REPEALS

8 House Bill No. 1201, Acts of 82nd Legislature, Regular Session,
9 2011, repealed the authority for the establishment and operation
10 of the Trans-Texas Corridor and removed all references in state
11 statutes to the Trans-Texas Corridor. The purpose of these
12 amendments is to repeal all provisions in Chapter 24 of the
13 rules of the department, which relates to the Trans-Texas
14 Corridor. The effect of these repeals in conjunction with
15 amendments to other chapters of the department's rules being
16 simultaneously considered by the Texas Transportation Commission
17 (commission) is the removal of all provisions in the
18 department's rules relating to the Trans-Texas Corridor.

19

20 Changes repeal §§24.11 and 24.12, the two sections in Chapter
21 24, Trans-Texas Corridor.

22

23 FISCAL NOTE

24 James Bass, Chief Financial Officer, has determined that for
25 each of the first five years the repeals as proposed are in

1 effect, there will be no fiscal implications for state or local
2 governments as a result of enforcing or administering the
3 repeals.

4

5 Mark Tomlinson, Director, Texas Turnpike Authority Division, has
6 certified that there will be no significant impact on local
7 economies or overall employment as a result of enforcing or
8 administering the repeals.

9

10 PUBLIC BENEFIT AND COST

11 Mr. Tomlinson has also determined that for each year of the
12 first five years in which the sections are in effect, the public
13 benefit anticipated as a result of enforcing or administering
14 the repeals will be to have the rules accurately reflect the
15 statutory law. There are no anticipated economic costs for
16 persons required to comply with the sections as proposed.

17

18 SUBMITTAL OF COMMENTS

19 Written comments on the proposed repeals to §24.11 and §24.12
20 may be submitted to Mark Tomlinson, Director, Texas Turnpike
21 Authority Division, Texas Department of Transportation, 125 East
22 11th Street, Austin, Texas 78701-2483. The deadline for receipt
23 of comments is 5:00 p.m. on August 15, 2011.

24

1 STATUTORY AUTHORITY

2 The repeals are proposed under Transportation Code, §201.101,
3 which provides the commission with the authority to establish
4 rules for the conduct of the work of the department.

5

6 CROSS REFERENCE TO STATUTE

7 None.

1 SUBCHAPTER B. DEVELOPMENT OF FACILITIES

2 §24.11. Comprehensive Development Agreements.

3 (a) To the extent and in the manner that the department may
4 enter into comprehensive development agreements with respect to
5 turnpike projects under §§27.1-27.5 of this title (relating to
6 Policy, Rules, and Procedures for Private Involvement in
7 Department Turnpike Projects), the department may enter into
8 comprehensive development agreements for the financing, design,
9 construction, maintenance, or operation of a facility on the
10 Trans-Texas Corridor.

11 (b) The department shall utilize the processes and
12 procedures provided in §§27.1-27.5 of this title when
13 considering the use of a comprehensive development agreement,
14 including when:

15 (1) requesting qualifications and proposals or accepting
16 unsolicited proposals for the financing, design, construction,
17 maintenance, or operation of a facility;

18 (2) evaluating and ranking submissions and proposals; and

19 (3) selecting the proposal that provides the best value
20 to the department.

21 (c) The following words and terms, when used in this
22 section, shall have the following meanings, unless the context
23 clearly indicates otherwise.

1 (1) Facility--Has the meaning assigned by Transportation
2 Code, §227.001(4).

3 (2) Trans-Texas Corridor--The system of multimodal
4 facilities designated under Transportation Code, §227.011.

5

6 §24.12. Environmental Review and Public Involvement.

7 (a) To the extent and in the manner that the department
8 utilizes those processes and procedures for highway construction
9 projects, the department shall utilize the processes and
10 procedures provided in Chapter 2, Subchapter C, of this title
11 (relating to Environmental Review and Public Involvement for
12 Transportation Projects) when:

13 (1) performing environmental studies and preparing
14 environmental documents for the design, construction,
15 maintenance, or operation of a facility on the Trans-Texas
16 Corridor; and

17 (2) providing for public involvement in, and carrying out
18 other environmental review and consultation requirements for,
19 the design, construction, maintenance, or operation of a
20 facility on the Trans-Texas Corridor.

21 (b) The terms facility and Trans-Texas Corridor have the
22 meanings provided in §24.11 of this subchapter.

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §27.2, Definitions concerning Comprehensive
4 Development Agreements.

5

6 EXPLANATION OF PROPOSED AMENDMENTS

7 House Bill No. 1201, Acts of 82nd Legislature, Regular Session,
8 2011, repealed the authority for the establishment and operation
9 of the Trans-Texas Corridor and removed all references in state
10 statutes to the Trans-Texas Corridor. The purpose of these
11 amendments is to remove all provisions in Chapter 27 of the
12 rules of the department relating to the Trans-Texas Corridor.
13 The effect of these amendments in conjunction with amendments to
14 other chapters of the department's rules being simultaneously
15 considered by the Texas Transportation Commission (commission)
16 is the removal of all provisions in the department's rules
17 relating to the Trans-Texas Corridor.

18

19 Amendments to §27.2, remove paragraph (15)(B) relating to a
20 facility or a combination of facilities on the Trans-Texas
21 Corridor being an eligible project for the purposes of 43 TAC
22 Chapter 27, Subchapter A and redesignate the following
23 subparagraphs accordingly.

24

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 Mark Tomlinson, Director, Texas Turnpike Authority Division, has
9 certified that there will be no significant impact on local
10 economies or overall employment as a result of enforcing or
11 administering the amendments.

12

13 PUBLIC BENEFIT AND COST

14 Mr. Tomlinson has also determined that for each year of the
15 first five years in which the sections are in effect, the public
16 benefit anticipated as a result of enforcing or administering
17 the amendments will be to have the rules accurately reflect the
18 statutory law. There are no anticipated economic costs for
19 persons required to comply with the sections as proposed.

20

21 SUBMITTAL OF COMMENTS

22 Written comments on the proposed amendments to §27.2 may be
23 submitted to Mark Tomlinson, Director, Texas Turnpike Authority
24 Division, Texas Department of Transportation, 125 East 11th
25 Street, Austin, Texas 78701-2483. The deadline for receipt of

1 comments is 5:00 p.m. on August 15, 2011.

2

3 STATUTORY AUTHORITY

4 The amendments are proposed under Transportation Code, §201.101,
5 which provides the commission with the authority to establish
6 rules for the conduct of the work of the department.

7

8 CROSS REFERENCE TO STATUTE

9 None.

1 SUBCHAPTER A. COMPREHENSIVE DEVELOPMENT AGREEMENTS

2 §27.2. Definitions. The following words and terms, when used
3 in this subchapter, shall have the following meanings, unless
4 the context clearly indicates otherwise.

5 (1) - (14) (No change.)

6 (15) Eligible project--A project described in
7 Transportation Code, §223.201, and including a:

8 (A) toll project;

9 [~~(B) facility or a combination of facilities on the~~
10 ~~Trans Texas Corridor, as defined in §24.11 of this title~~
11 ~~(relating to Comprehensive Development Agreements);~~]

12 (B) [~~(C)~~] state highway improvement project that
13 includes both tolled and nontolled lanes and that may include
14 nontolled appurtenant facilities;

15 (C) [~~(D)~~] state highway improvement project in which
16 the private entity has an interest in the project;

17 (D) [~~(E)~~] state highway improvement project financed
18 wholly or partly with the proceeds of private activity bonds, as
19 defined by Section 141(a), Internal Revenue Code of 1986; or

20 (E) [~~(F)~~] project that combines a toll project and a
21 rail facility as defined in Transportation Code, §91.001.

22 (16) - (33) (No change.)