

TEXAS TRANSPORTATION COMMISSION

MINUTE ORDER

ALL Counties

ALL Districts


The Texas Transportation Commission (commission) finds it necessary to propose amendments to §21.10, Negotiations, §21.13, Highway Right-of-Way Values, §21.14, Qualifications of Real Estate Appraisers and Other Technical Experts or Estimators, §21.111, Definitions, and §21.118, Relocation Review Committee all relating to right of way 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 - C, 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*.

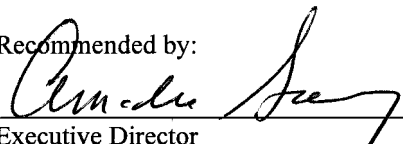
IT IS THEREFORE ORDERED by the commission that the amendments to §21.10, §21.13, §21.14, §21.111, and §21.118 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

**112720 JUN 30 11**

Minute Number      Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes  
3 amendments to §21.10, Negotiations, §21.13, Highway Right-of-Way  
4 Values, §21.14, Qualifications of Real Estate Appraisers and  
5 Other Technical Experts or Estimators, §21.111, Definitions, and  
6 §21.118, Relocation Review Committee, all concerning department  
7 land acquisition procedures.

8  
9 EXPLANATION OF PROPOSED AMENDMENTS

10 Title 43, Texas Administrative Code (TAC), Chapter 21,  
11 Subchapter A, Land Acquisition Procedures, was adopted to  
12 prescribe requirements for the acquisition of real property by  
13 the department in accordance with Property Code, Chapter 21,  
14 Subchapter B, Procedure. Senate Bill 18 (SB 18), 82nd  
15 Legislature, Regular Session, 2011, amended Property Code,  
16 §21.0111 and added Property Code, §21.0113 to require certain  
17 procedures be followed in connection with offers for real  
18 property made by entities with eminent domain authority, such as  
19 the department. The proposed amendments are necessary to comply  
20 with the provisions of SB 18 and to clarify existing language.

21  
22 Amendments to §21.10 include multiple changes. The first change  
23 in §21.10(a) deletes the provision that a property owner will be  
24 provided with a copy of existing appraisal reports that were  
25 used in determining the final valuation offer, as the provision

1 conflicts with the procedures required by SB 18. Second, new  
2 §21.10 adds negotiation procedures required by SB 18.  
3 Specifically, new subsection (b) requires the department to make  
4 a bona fide offer to acquire real property voluntarily and  
5 requires the offers be in writing and advise owners of their  
6 disclosure rights.

7  
8 New subsection (c) requires that an initial offer include copies  
9 of all related appraisal reports prepared in the previous ten  
10 years that were produced or acquired by the department and be  
11 sent to the property owner by certified mail, return receipt  
12 requested.

13  
14 New subsection (d) requires that the final offer be equal to or  
15 greater than the amount of an appraisal by a certified appraiser  
16 of the value of the property being acquired and any damages to  
17 any of the owner's remaining property. It also requires that  
18 the final offer include a copy of the appraisal the final offer  
19 is based on, the conveyance document to be signed by the  
20 property owner, and a copy of the statutorily required  
21 landowners' bill of rights statement, unless such items have  
22 been previously provided. Finally, it provides that the  
23 department will not make a final offer before the 30th day after  
24 the date of delivery of the initial offer.

25

1 New subsection (e) requires the department to give the property  
2 owner 14 days after the date of the final offer to respond to  
3 the offer before filing a petition of condemnation.

4

5 The last sentence of current §21.10(a) and paragraphs  
6 §21.10(a)(1), (2), and (3) are redesignated as new subsection  
7 (f) and current §21.10(b) is redesignated as new subsection (g).

8

9 New subsection (h) of §21.10 provides that for the purposes of  
10 §21.10 a document is considered delivered on the earlier of the  
11 delivery date on the certified mail receipt or the fifth day  
12 after the date the document, properly addressed with postage  
13 paid, is deposited with the United States Postal Service. This  
14 provision allows for certainty in determining when the  
15 department can make a final offer or begin a condemnation  
16 proceeding.

17

18 Amendments to §21.13 delete the original heading "Highway Right-  
19 of-Way Values" and add new heading "Valuation for Real Property  
20 to be Acquired", and delete the phrase "right-of-way" and  
21 replace it with "real property", to clarify that the section  
22 applies to all acquisitions of real property by the department.  
23 A new provision is added providing that the approved values used  
24 for the final offer will be determined based on a written  
25 appraisal by a certified appraiser, as required by SB 18.

1

2 Amendments to §21.14 delete the phrase "In the acquisition of  
3 highway right-of-way" and add the language "used in the  
4 acquisition of real property for highway purposes" to clarify  
5 that the section applies to all acquisitions of real property  
6 for highway purposes, not just right-of-way. The word "are" is  
7 deleted and replaced with "must be" to clarify that the  
8 department must approve qualifications of real estate appraisers  
9 and other technical experts or estimators. Finally, the  
10 amendments add a requirement that the qualifications of a real  
11 estate appraiser must include a requirement that the appraiser  
12 be certified, as required by SB 18.

13

14 Amendments to §21.111 clarify the definition of "Relocation  
15 Review Committee" by removing provisions regarding the  
16 appointment and composition of the committee and moving those  
17 provisions to §21.118.

18

19 Amendments to §21.118 add new subsection (a) to set forth the  
20 process for the appointment of members of the Relocation Review  
21 Committee. The amendments require the executive director to  
22 appoint at least three persons as members of the Relocation  
23 Review Committee. The amendments also establish that in order  
24 to be eligible for appointment to or service on the committee, a  
25 person may not be below the level of department division

1 director, office director, or district engineer, and may not be  
2 directly involved with the relocation assistance program. The  
3 amendments designate the existing provisions of §21.118 as new  
4 subsection (b).

5

6 FISCAL NOTE

7 James Bass, Chief Financial Officer, has determined that for  
8 each of the first five years the amendments as proposed are in  
9 effect, there will be no fiscal implications for state or local  
10 governments as a result of enforcing or administering the  
11 amendments. There are no anticipated economic costs for persons  
12 required to comply with the sections as proposed.

13

14 Bob Jackson, General Counsel, has certified that there will be  
15 no significant impact on local economies or overall employment  
16 as a result of enforcing or administering the sections.

17

18 PUBLIC BENEFIT

19 Mr. Jackson has also determined that for each year of the first  
20 five years in which the sections are in effect, the public  
21 benefit anticipated as a result of enforcing or administering  
22 the amendments will be consolidation of applicable regulations  
23 into 43 TAC Chapter 21 and improved efficiency and consistency  
24 in the handling of acquisitions of real property by the  
25 department. There are no anticipated economic costs for persons

1 required to comply with the sections as proposed. There will be  
2 no adverse economic effect on small businesses.

3

4 SUBMITTAL OF COMMENTS

5 Written comments on the amendments to §21.10, §21.13, §21.14,  
6 §21.111, and §21.118 may be submitted to Suzanne Mann, Office of  
7 General Counsel, Texas Department of Transportation, 125 East  
8 11th Street, Austin, Texas 78701-2483. The deadline for receipt  
9 of comments is 5:00 p.m. on August 15, 2011.

10

11 STATUTORY AUTHORITY

12 The amendments are proposed under Transportation Code, §201.101,  
13 which provides the commission with the authority to establish  
14 rules for the conduct of the work of the department, and more  
15 specifically, Transportation Code, §203.051, which provides the  
16 commission with the authority to acquire real property on behalf  
17 of the department.

18

19 CROSS REFERENCE TO STATUTE

20 Transportation Code, Chapter 203.

1 SUBCHAPTER A. LAND ACQUISITION PROCEDURES

2 §21.10. Negotiations.

3 (a) Every reasonable effort will be made to acquire real  
4 property by negotiation and the full amount established as just  
5 compensation will be offered for the property. [~~At the time an~~  
6 ~~offer to purchase is made, an owner of real property will be~~  
7 ~~provided with a copy of all existing appraisal reports that were~~  
8 ~~used in determining the final valuation offer in accordance with~~  
9 ~~Property Code, Section 21.0111.~~] Where appropriate, the just  
10 compensation for the real property acquired and for damages to  
11 remaining real property shall be separately stated. [~~No owner~~  
12 ~~shall be required to surrender possession of real property~~  
13 ~~before.~~]

14 [~~(1) payment of the agreed purchase price;~~]

15 [~~(2) in the case of condemnation, the amount of~~  
16 ~~compensation stated in the final judgment is paid to the owner~~  
17 ~~or deposited with a court for the benefit of the owner; or]~~

18 [~~(3) in the case of condemnation when possession is~~  
19 ~~required by the department prior to a final judgment being~~  
20 ~~entered, the department has deposited with the court, for the~~  
21 ~~benefit of the owner, the amount of a special commissioners'~~  
22 ~~award or the amount of the department's approved appraisal of~~  
23 ~~the property, whichever is greater.]~~



1           (b) The department will make a bona fide offer to acquire  
2 the real property from the property owner voluntarily, as  
3 provided by Property Code, §21.0113. All offers will be in  
4 writing, and will inform the owner of the owner's right to  
5 discuss the offer with others or to keep the offer confidential,  
6 as provided by Property Code, §21.0111. [~~In the case of~~  
7 ~~condemnation where the department does not take possession until~~  
8 ~~after a final judgment of the court has been entered, the amount~~  
9 ~~of compensation paid to the owner of the property or deposited~~  
10 ~~with a court for the benefit of the owner shall be the amount of~~  
11 ~~compensation stated in the final judgment in the condemnation~~  
12 ~~proceeding for the property. To the greatest extent~~  
13 ~~practicable, no person lawfully occupying real property shall be~~  
14 ~~required to move without at least 90 days written notice of the~~  
15 ~~date by which the move is required.]~~

16           (c) An initial offer to purchase or lease will include  
17 copies of all appraisal reports that relate to the real  
18 property, that were prepared during the ten-year period  
19 preceding the date that the offer was sent to the owner, and  
20 that were produced or acquired by the department. The initial  
21 offer will be sent to the owner of the real property by  
22 certified mail, return receipt requested.

23           (d) The final offer must be equal to or greater than the

1 amount of an appraisal obtained by the department from a  
2 certified appraiser of the value of the property being acquired  
3 and the damages, if any, to any of the property owner's  
4 remaining property. The department will include with the final  
5 offer a copy of the appraisal on which the final offer is based,  
6 the conveyance document that is to be signed by the property  
7 owner, and a copy of the landowners' bill of rights statement  
8 required by Property Code, §21.0112, unless the department has  
9 provided a copy of the document to the owner before the final  
10 offer is made. The department will not make the final offer  
11 before the 30th day after the date that the initial offer was  
12 delivered to the owner.

13 (e) Before filing a petition of condemnation, the  
14 department will give the property owner at least 14 days after  
15 the date that the final offer was delivered to the owner to  
16 respond to that offer.

17 (f) No owner shall be required to surrender possession of  
18 real property before:

19 (1) payment of the agreed purchase price;

20 (2) in the case of condemnation, the amount of  
21 compensation stated in the final judgment is paid to the owner  
22 or deposited with a court for the benefit of the owner; or

23 (3) in the case of condemnation when possession is

1 required by the department prior to a final judgment being  
2 entered, the department has deposited with the court, for the  
3 benefit of the owner, the amount of a special commissioners'  
4 award or the amount of the department's approved appraisal of  
5 the property, whichever is greater.

6 (g) In the case of condemnation where the department does  
7 not take possession until after a final judgment of the court  
8 has been entered, the amount of compensation paid to the owner  
9 of the property or deposited with a court for the benefit of the  
10 owner shall be the amount of compensation stated in the final  
11 judgment in the condemnation proceeding for the property. To  
12 the greatest extent practicable, no person lawfully occupying  
13 real property shall be required to move without at least 90 days  
14 written notice of the date by which the move is required.

15 (h) For the purposes of this section, a document is  
16 considered to be delivered on the earlier of the delivery date  
17 indicated on the certified mail receipt or the fifth day after  
18 the date that the document, properly addressed with postage  
19 prepaid, is deposited with the United States Postal Service.

20  
21 §21.13. Valuation for Real Property to be Acquired [~~Highway~~  
22 ~~Right of Way Values~~]. Prior to the making of an offer [~~offers~~]  
23 to purchase real property [~~right-of-way~~] for highway purposes by

1 the department, approved values are determined based upon  
2 appraisals (including short form appraisals, memorandums of  
3 value, or opinions of value) of the real property to be  
4 acquired. The approved values used for the final offer are  
5 determined based upon a written appraisal by a certified  
6 appraiser. The owner or the owner's designated representative  
7 is given the opportunity to accompany the appraiser during the  
8 inspection of the property being appraised.

9  
10 §21.14. Qualifications of Real Estate Appraisers and Other  
11 Technical Experts or Estimators. The [~~In the acquisition of~~  
12 ~~highway right of way, the~~] qualifications of real estate  
13 appraisers, and other technical experts or estimators used in  
14 the acquisition of real property for highway purposes must be  
15 [~~are~~] approved by the department. The qualifications of a real  
16 estate appraiser must include a requirement that the appraiser  
17 be certified.

1 SUBCHAPTER G. RELOCATION ASSISTANCE AND BENEFITS

2 §21.111. 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) Commission--The Texas Transportation Commission.

6 (2) Department--The Texas Department of Transportation.

7 (3) Displacee--A person lawfully present in the United  
8 States who, as a result of the acquisition of property for  
9 highway right of way purposes, is required to move from a  
10 dwelling, business, or farm.

11 (4) District engineer--The chief administrative officer  
12 in charge of a district of the department, or the designee.

13 (5) Executive director--The chief executive officer of  
14 the Texas Department of Transportation.

15 (6) Relocation Review Committee--A [~~An administrative~~]  
16 committee whose members are appointed under §21.118 of this  
17 subchapter (relating to Relocation Review Committee)[~~by the~~  
18 ~~executive director and include the deputy executive director~~  
19 ~~(chair) and at least two other department employees who are not~~  
20 ~~directly involved with the relocation assistance program~~].

21  
22 §21.118. Relocation Review Committee.

23 (a) The executive director will appoint at least three

1 persons as members of the Relocation Review Committee. To be  
2 eligible for appointment to or service on the committee, a  
3 person may not be:

4 (1) below the level of department division director,  
5 office director, or district engineer; and

6 (2) directly involved with the relocation assistance  
7 program.

8 (b) A displacee who is dissatisfied with the department's  
9 determination of eligibility or relocation payments and services  
10 may request a review by the Relocation Review Committee. The  
11 review procedures are as follows.

12 (1) Applications must be filed with the appropriate  
13 district office within 90 days after the displacee receives  
14 notice of relocation entitlements.

15 (2) The district engineer will promptly and carefully  
16 review the facts and attempt to resolve the matter at the  
17 district level. The displacee will be promptly notified in  
18 writing of the results of the district engineer's review.

19 (3) A displacee who is still dissatisfied after the first  
20 review may request that the district engineer's decision be  
21 reviewed by the department's Relocation Review Committee.

22 (4) The district shall promptly forward the application  
23 together with all the information the district has relating to

1 the displacee's application and the district engineer's personal  
2 recommendation to the department's Right of Way Division. The  
3 division will review the materials, make a determination on the  
4 application, and prepare a written statement as to the issues  
5 involved for the relocation assistance appeal file. If the  
6 division does not find in favor of the displacee's claim, the  
7 division will promptly forward the file to the Relocation Review  
8 Committee.

9 (5) The Relocation Review Committee shall give each  
10 displacee a full opportunity to be heard, carefully review all  
11 facts presented, and render a prompt decision. The decision  
12 will be supported by the necessary rationale and will be  
13 documented in the parcel file.

14 (6) The committee may discuss an application with the  
15 executive director. The executive director shall make the final  
16 ruling or may counsel with the commission if necessary.