

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §§2.61 - 2.71 and propose new Chapter 12, Public Participation in Landscaping and Litter Removal, new Subchapter A, Public Participation Programs, new §§12.1-12.11 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 - D, 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*.

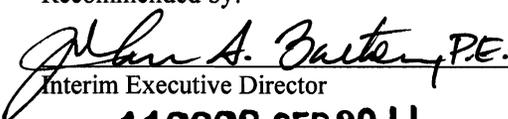
IT IS THEREFORE ORDERED by the commission that the repeal of §§2.61 - 2.71 and new §§12.1 - 12.11 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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:

  
\_\_\_\_\_  
Interim Executive Director

**112828 SEP 29 11**

Minute Number      Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes the  
3 repeal of §2.61, Purpose and Scope, §2.62, Definitions, §2.63,  
4 Adopt-a-Highway Program, §2.64, Adopt-a-Highway for Landscaping  
5 Program, §2.65, Landscape Cost Sharing Program, §2.66, Adopt-a-  
6 Freeway Program, §2.67, Landscape Partnership Program, §2.68,  
7 General Sign Restrictions, §2.69, Approval and Appeal, §2.70,  
8 Termination or Revision of a Program, and §2.71, Adopt-an-  
9 Airport Program, all concerning the department's public  
10 participation programs.

11

12 EXPLANATION OF PROPOSED REPEALS

13 The current rules relating to the department's public  
14 participation programs, such as the Adopt-a-Highway Program, are  
15 contained in 43 TAC Chapter 2, Subchapter D, of the department's  
16 rules. Chapter 2 relates to environmental polices and the  
17 public participation programs subchapter bears little in common  
18 with the other topics contained in the chapter. These changes  
19 repeal the sections in Chapter 2, Subchapter D, and move the  
20 content without substantive change to new Chapter 12 which is  
21 simultaneously proposed with these repeals.

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

8  
9 PUBLIC BENEFIT AND COST

10 Mr. Jackson has also determined that for each year of the first  
11 five years the sections are in effect, the public benefit  
12 anticipated as a result of enforcing or administering the  
13 repeals will be better organization of environmental and public  
14 participation rules and greater flexibility in the structuring  
15 of revised environmental rules. There are no anticipated  
16 economic costs for persons required to comply with the sections  
17 as proposed. There will be no adverse economic effect on small  
18 businesses.

19  
20 SUBMITTAL OF COMMENTS

21 Written comments on the proposed repeal of §§2.61 - 2.71 may be  
22 submitted to Bob Jackson, General Counsel, Texas Department of  
23 Transportation, 125 East 11th Street, Austin, Texas 78701-2483.  
24 The deadline for receipt of comments is 5:00 p.m. on  
25 November 14, 2011.

1

2 STATUTORY AUTHORITY

3 The repeals are proposed under Transportation Code, §201.101,  
4 which provides the Texas Transportation Commission (commission)  
5 with the authority to establish rules for the conduct of the  
6 work of the department, and more specifically, Transportation  
7 Code, §21.054, which provides the department with the authority  
8 to contract as necessary or advisable to encourage and assist  
9 the development of aeronautics, including the design,  
10 construction, repair, maintenance, or improvement of airports  
11 and airstrips, and Transportation Code, §203.002, which  
12 authorizes and empowers the commission to lay out, construct,  
13 maintain, and operate a modern state highway system.

14

15 CROSS REFERENCE TO STATUTE

16 Transportation Code, §21.054 and §203.002.

1                   SUBCHAPTER D. PUBLIC PARTICIPATION PROGRAMS

2   §2.61. Purpose and Scope.

3   §2.62. Definitions.

4   §2.63. Adopt-a-Highway Program.

5   §2.64. Adopt-a-Highway for Landscaping Program.

6   §2.65. Landscape Cost Sharing Program.

7   §2.66. Adopt-a-Freeway Program.

8   §2.67. Landscape Partnership Program

9   §2.68. General Sign Restrictions.

10   §2.69. Approval and Appeal.

11   §2.70. Termination or Revision of a Program.

12   §2.71. Adopt-an-Airport Program.

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes new  
3 Chapter 12, Public Participation in Landscaping and Litter  
4 Removal, new Subchapter A, Public Participation Programs, new  
5 §12.1, Purpose and Scope, new §12.2, Definitions, new §12.3,  
6 Adopt-a-Highway Program, new §12.4, Adopt-a-Highway for  
7 Landscaping Program, new §12.5, Landscape Cost Sharing Program,  
8 new §12.6, Adopt-a-Freeway Program, new §12.7, Landscape  
9 Partnership Program, new §12.8, General Sign Restrictions, new  
10 §12.9, Approval and Appeal, new §12.10, Termination or Revision  
11 of a Program, and new §12.11, Adopt-an-Airport Program.

12

13 EXPLANATION OF PROPOSED NEW SECTIONS

14 The current rules relating to the department's public  
15 participation programs, such as the Adopt-a-Highway Program, are  
16 contained in 43 TAC Chapter 2, Subchapter D, of the department's  
17 rules. Chapter 2 relates to environmental polices and the  
18 public participation programs subchapter bears little in common  
19 with the other topics contained in the chapter. The changes  
20 move the public participation programs to new Chapter 12 to  
21 provide flexibility for the structure of revised Chapter 2. To  
22 accomplish the move, the new sections merely renumber the  
23 sections and change, within the new chapter, the references to  
24 sections and other rule divisions accordingly. All changes that  
25 are made are non-substantive.

- 1
- 2 New §12.1, Purpose and Scope, is the same as current §2.61.
- 3
- 4 New §12.2, Definitions, is the same as current §2.62.
- 5
- 6 New §12.3, Adopt-a-Highway Program, is the same as current
- 7 §2.63.
- 8
- 9 New §12.4, Adopt-a-Highway for Landscaping Program, is the same
- 10 as current §2.64.
- 11
- 12 New §12.5, Landscape Cost Sharing Program, is the same as
- 13 current §2.65.
- 14
- 15 New §12.6, Adopt-a-Freeway Program, is the same as current
- 16 §2.66.
- 17
- 18 New §12.7, Landscape Partnership Program, is the same as current
- 19 §2.67.
- 20
- 21 New §12.8, General Sign Restrictions, is the same as current
- 22 §2.68.
- 23
- 24 New §12.9, Approval and Appeal, is the same as current §2.69.
- 25

1 New §12.10, Termination or Revision of a Program, is the same as  
2 current §2.70.

3

4 New §12.11, Adopt-an-Airport Program, is the same as current  
5 §2.71.

6

7 FISCAL NOTE

8 James Bass, Chief Financial Officer, has determined that for  
9 each of the first five years the new sections as proposed are in  
10 effect, there will be no fiscal implications for state or local  
11 governments as a result of enforcing or administering the new  
12 sections.

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 new sections.

17

18 PUBLIC BENEFIT AND COST

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 new sections will be better organization of environmental  
23 and public participation rules and greater flexibility in the  
24 structuring of revised environmental rules. There are no  
25 anticipated economic costs for persons required to comply with

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

3

4 SUBMITTAL OF COMMENTS

5 Written comments on the proposed new §§12.01 - 12.11 may be  
6 submitted to Bob Jackson, General Counsel, Texas Department of  
7 Transportation, 125 East 11th Street, Austin, Texas 78701-2483.  
8 The deadline for receipt of comments is 5:00 p.m. on  
9 November 14, 2011.

10

11 STATUTORY AUTHORITY

12 The new sections are proposed under Transportation Code,  
13 §201.101, which provides the Texas Transportation Commission  
14 (commission) with the authority to establish rules for the  
15 conduct of the work of the department, and more specifically,  
16 Transportation Code, §21.054, which provides the department with  
17 the authority to contract as necessary or advisable to encourage  
18 and assist the development of aeronautics, including the design,  
19 construction, repair, maintenance, or improvement of airports  
20 and airstrips, and Transportation Code, §203.002, which  
21 authorizes and empowers the commission to lay out, construct,  
22 maintain, and operate a modern state highway system.

23

24 CROSS REFERENCE TO STATUTE

25 Transportation Code, §21.054 and §203.002.

1                   SUBCHAPTER A. PUBLIC PARTICIPATION PROGRAMS

2 §12.1. Purpose and Scope. In order to increase public  
3 awareness of the maintenance needs of the state highway and  
4 airport systems, improve the aesthetics of state highways and  
5 airports, and maximize the use of taxpayer revenue, it is the  
6 policy of the Texas Transportation Commission to encourage  
7 public participation in the maintenance, landscaping, and  
8 beautification of the state highway and airport systems through  
9 the creation of programs whereby local governments and private  
10 entities may adopt sections of the state highway system or  
11 airports for litter pickup, routine maintenance, landscaping,  
12 and beautification. The sections under this subchapter govern  
13 the operation of these programs.

14  
15 §12.2. Definitions. The following words and terms, when used  
16 in this subchapter, shall have the following meanings, unless  
17 the context clearly indicates otherwise.

18           (1) Adopt-a-Highway coordinator--A district employee  
19 responsible for coordinating the Adopt-a-Highway program within  
20 the district's counties.

21           (2) Adopted section--A section of state highway right of  
22 way or an airport approved for adoption by a group.

23           (3) Airport--A publicly-owned airport that is included in

1 the Texas Airport System Plan (TASP).

2 (4) Aviation Division--A division of the department.

3 (5) Authorized representative--An individual with the  
4 authority to sign agreements for the group or donor.

5 (6) Commission--The Texas Transportation Commission.

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

7 (8) Design fee--Those engineering or project administration  
8 costs or expenses identified prior to the construction of a  
9 project.

10 (9) District--One of the 25 geographical areas, managed by  
11 a district engineer, in which the department conducts its  
12 primary work activities.

13 (10) District engineer--The chief executive officer in  
14 charge of a district, or his or her designee.

15 (11) Donation--A contribution of anything of value given to  
16 the department.

17 (12) Donor--The private business or civic organization that  
18 donates funds or services for the purpose of participating in  
19 the Landscape Cost Sharing or Adopt-a-Freeway Programs.

20 (13) Family member--Any spouse, sibling, parent,  
21 stepparent, grandparent, child, stepchild, aunt, uncle or  
22 cousin.

23 (14) Group--An entity that adopts a section of state

1 highway right of way or an airport.

2 (15) Highway landscaping--A project design intent which  
3 attempts to provide primarily for the installation of native,  
4 naturalized, or adapted plant material within the project  
5 limits.

6 (16) Local government--A city or county.

7 (17) Non-cash contributions--The agreed value of labor,  
8 equipment, material, or design services furnished by a local  
9 government or donor in support of the project.

10 (18) Pedestrian landscaping--A project design intent which  
11 requires the installation of elements oriented primarily to  
12 pedestrian usage, including, but not limited to, parking, curbs,  
13 sidewalks, pavers, ramps for the disabled, cycling or jogging  
14 trails, benches, trash receptacles, or illumination.

15 (19) Project concept plan--The preliminary sketches,  
16 drawings, details, estimates, and specifications required by the  
17 department to illustrate the type of project development and  
18 establishment proposed, and as required for the department to  
19 determine if the proposed project is a highway landscaping  
20 project or a pedestrian landscaping project.

21 (20) Project design plan--The final drawings, details,  
22 specifications, and estimates as may be required by the  
23 department to fully control the work to be performed on the

1 project.

2 (21) Project development--The initial construction and  
3 installation of the landscape items in accordance with the  
4 project design plan.

5 (22) Project establishment--The landscape maintenance  
6 activities required to ensure the viability, upkeep, and  
7 continued effectiveness of the project.

8 (23) Project maintenance--The activities performed as  
9 determined by the program agreement to ensure the establishment,  
10 upkeep, and continued effectiveness of the project.

11 (24) Sponsor--A local government or other public entity  
12 that owns or operates an airport.

13 (25) Vandalism--Significant and deliberate damage or  
14 defacement that renders a sign unreadable or unsightly.

15

16 §12.3. Adopt-a-Highway Program.

17 (a) Purpose. The Adopt-a-Highway Program (Program) allows  
18 private citizens an opportunity to support the department's  
19 litter prevention programs by adopting a section of highway for  
20 the purpose of reducing litter on an adopted section through  
21 public participation. This section sets forth policies and  
22 procedures to be used in administering the Program.

23 (b) Participation.

1           (1) Adoption. An eligible group may, upon approval by  
2 the department, adopt a section of a highway on the state  
3 highway system for purposes of picking up and removing litter  
4 from the rights-of-way of that section under such terms and  
5 conditions as may be prescribed by the department and the  
6 commission. The adoption of a section of highway is a privilege  
7 that may be granted by the department to individuals or groups  
8 who would assist the Program in achieving its purpose and goals.  
9 The department may deny a request to adopt a section of highway  
10 if, in its opinion, granting the request would jeopardize the  
11 Program, be counterproductive to its purpose, or create a hazard  
12 to the safety of the traveling public. Highway safety is a  
13 principal concern in all decisions related to the Program.  
14 Program participants must agree to hold the department harmless  
15 and agree not to hold the department responsible for any  
16 injuries that they may suffer or damages they may cause or  
17 suffer as a result of participation in the Program.

18           (2) Eligibility.

19           (A) The following groups are eligible to participate in  
20 the Program:

21           (i) members or employees of civic and nonprofit  
22 organizations;

23           (ii) employees of private businesses and governmental

1 entities;

2 (iii) families; and

3 (iv) individuals.

4 (B) To be eligible a group must be located or reside in  
5 the county or a county adjacent to the county in which the  
6 adopted section is located.

7 (C) Only individuals or groups who are responsible and  
8 wish to assist the department will be allowed to adopt a  
9 highway.

10 (c) Application.

11 (1) The authorized representative of a group who desires  
12 to participate, or to continue to participate, in the Program  
13 shall submit an application to the district Adopt-a-Highway  
14 coordinator of the district in which the section of highway to  
15 be adopted is located.

16 (2) The application shall be in the form prescribed by  
17 the department and shall at a minimum include:

18 (A) the date of application;

19 (B) the name and complete mailing address, including  
20 street address, of the group;

21 (C) the name, telephone number, complete mailing  
22 address, and e-mail address if applicable, of the group's  
23 authorized representative, and the same information for a

1 secondary representative, or in the case of school or university  
2 groups, the name and contact information for a faculty sponsor;  
3 and

4 (D) the highway section the group is interested in  
5 adopting.

6 (d) Agreement.

7 (1) If the application submitted by the group under  
8 subsection (c) of this section is approved by the district  
9 engineer, the authorized representative of that group shall  
10 execute a written agreement with the department providing for  
11 the group's participation in the Program.

12 (2) The agreement shall be in the form prescribed by the  
13 department and shall include:

14 (A) an acknowledgment by the group of the hazardous  
15 nature of the work involved in participating in the Program;

16 (B) an acknowledgment that the members of the group  
17 agree jointly and severally to be bound by and comply with the  
18 terms of the agreement; and

19 (C) the respective responsibilities of the group and  
20 the department as contained in subsection (e) of this section.

21 (e) Responsibilities of group and department.

22 (1) Groups must:

23 (A) appoint or select an authorized representative and

1 alternate to serve as spokesperson for the group;

2 (B) obey and abide by all laws and regulations relating  
3 to safety and such other terms and conditions as may be required  
4 by the district engineer for special conditions on a particular  
5 adopted section;

6 (C) furnish adequate supervision by one or more adults  
7 for minor participants of a group who are 15 years of age and  
8 older, with at least one adult for every three children who are  
9 7 to 14 years of age ;

10 (D) conduct or attend at least two safety meetings per  
11 year and ensure participants of the group attend a safety  
12 meeting before participating in the cleanup of the adopted  
13 section;

14 (E) adopt a section that is a minimum of two miles in  
15 length unless the district engineer determines a shorter length  
16 is in the best interests of the department;

17 (F) adopt a section for a minimum period of two years;

18 (G) pick up litter a minimum of four times a year at  
19 approximately quarterly intervals and at such additional times  
20 as required by the district engineer, unless the district  
21 engineer determines that two times a year is adequate to  
22 maintain an acceptable right of way (it is desired that one of  
23 these pickups occur during the department's annual Don't Mess

1 with Texas trash-off events);

2 (H) obtain required supplies and materials from the  
3 department during regular business hours;

4 (I) assure that traffic control signs are open during  
5 a cleanup and returned to the closed position (or removed in the  
6 case of detachable signs) after the cleanup;

7 (J) wear department furnished safety vests during the  
8 pickup;

9 (K) place litter in trash bags furnished by the  
10 department, place filled trash bags at the sign base, and  
11 contact the district maintenance office the first working day  
12 after the cleanup for removal of the bags;

13 (L) return all unused materials and supplies to the  
14 department within one week following cleanup;

15 (M) neither possess nor consume alcoholic beverages or  
16 illegal drugs while on the adopted section; and

17 (N) maintain a first-aid kit and adequate drinking  
18 water while picking up litter on the adopted section.

19 (2) The department will:

20 (A) work with the group to determine the specific  
21 section of state highway right of way to be adopted;

22 (B) erect a sign at each end of the adopted section  
23 with the group's name or acronym displayed;

1 (C) provide traffic control signs, safety vests,  
2 trashbags, and safety information ;

3 (D) after notification from the group, remove the  
4 filled trashbags the first workday after the pickup; and

5 (E) remove litter from the adopted section only under  
6 unusual circumstances, i.e., to remove large, heavy, or  
7 hazardous items or if the group has not fulfilled its  
8 responsibilities.

9 (f) General limiting conditions. The Program is subject to  
10 the following conditions.

11 (1) The department may consider such factors as width of  
12 right of way, geometrics, congestion, and sight distance of  
13 roadways in determining what sections of highways shall be  
14 eligible for adoption. In no circumstance shall a section of an  
15 interstate highway be eligible for adoption.

16 (2) If any actions are determined to be contrary to any  
17 legislative restrictions or any restrictions on the use of  
18 appropriated funds for political activities, the department, at  
19 its sole discretion will take any and all necessary remedial  
20 actions, including, but not limited to, the removal of signs  
21 displaying the group's name or acronym.

22 (3) Adopt-a-Highway signs shall be four feet by four  
23 feet, shall be the least expensive and most effective for each

1 situation, and will not state the full name or official title of  
2 an elected official.

3 (4) A group may not subcontract or assign its  
4 responsibilities to any other group, organization, or enterprise  
5 without the express written authorization of the department.

6 (5) The department, in no event, shall have the right to  
7 control the group in performing the details of picking up litter  
8 from the section of highway adopted by the group, and, in  
9 picking up litter, the group shall act as an independent  
10 contractor without direct, on-site supervision from the  
11 department.

12 (6) Children under the age of seven may not participate  
13 in the Program.

14 (g) Modification/renewal/termination of the agreement.

15 (1) An agreement may be modified in any manner at the  
16 sole discretion of the department.

17 (2) If the department undertakes a construction project  
18 on an adopted section, the group may suspend its agreement or  
19 choose a new section to adopt for the duration of the  
20 construction project.

21 (3) The group will have the option of renewing an  
22 agreement subject to the approval of the district engineer and  
23 the continuation of the Program.

1           (4) The department may terminate an agreement and remove  
2 the signs upon 30-day notice, if in its sole judgment it finds  
3 and determines that the group is not meeting the terms and  
4 conditions of the agreement.

5           (h) Memorial adoptions. An eligible group may adopt a  
6 section of highway as a memorial to an individual who has died  
7 as a result of a motor vehicle accident on the state highway  
8 system. Except as provided in this subsection, all applicable  
9 provisions of this subchapter governing the Adopt-a-Highway  
10 program apply to memorial adoptions under this subsection.

11           (1) The adopting group must include family members of the  
12 individual in whose memory the section of highway is adopted.

13           (2) A sign erected for a memorial adoption may include  
14 the phrase "in memory of" and the name of the individual in  
15 whose memory the section is adopted, along with the name of the  
16 adopting group.

17           (3) In approving memorial adoptions, the district  
18 engineer will consider:

19           (A) the availability of sections of highway on the  
20 state highway system that are appropriate for litter control by  
21 volunteers; and

22           (B) the potential of the proposed adoption to increase  
23 public awareness of traffic safety.

1           (4) The requirements of subsection (b)(2)(B) do not apply  
2 if the adopting group adopts the segment of highway on which the  
3 accident occurred.

4

5 §12.4. Adopt-a-Highway for Landscaping Program.

6           (a) Purpose. The Adopt-a-Highway for Landscaping Program  
7 (Program) augments the Adopt-a-Highway Program, established in  
8 §12.3 of this title (relating to Adopt-a-Highway Program) by  
9 allowing groups to adopt a section of rural state highway right-  
10 of-way for landscape development and maintenance to enhance the  
11 beauty of rural Texas highways while preserving the integrity of  
12 native Texas flora and providing litter pickup. This section  
13 sets forth policies and procedures to be used in administering  
14 the Program.

15           (b) Participation.

16           (1) Adoption. An eligible group may, upon approval by  
17 the department, adopt a rural section of the state highway  
18 system for landscape development and maintenance and litter  
19 pickup.

20           (2) Eligibility.

21           (A) The following groups are eligible to participate in  
22 the Program:

23           (i) members or employees of civic and nonprofit

1 organizations;

2 (ii) employees of private businesses and governmental  
3 entities; and

4 (iii) families.

5 (B) To be eligible a group must be located or reside in  
6 the county or a county adjacent to the county in which the  
7 adopted section is located.

8 (3) Current participating groups. Groups currently  
9 participating in the Program for litter control will be given  
10 the opportunity to expand their scope of support by adopting  
11 their respective sections of highway right-of-way as a landscape  
12 project if their section satisfies requirements relating to  
13 right-of-way width, highway geometrics, sight distance, and  
14 safety considerations.

15 (c) Application.

16 (1) The authorized representative of a group who desires  
17 to participate, or continue to participate, in the Program shall  
18 submit an application to the district engineer of the district  
19 in which the proposed adopted section is located.

20 (2) The application shall be in the form prescribed by  
21 the department and shall at a minimum include:

22 (A) the date of application;

23 (B) the name and complete mailing address, including

1 the street address, of the group;

2 (C) the name, telephone number, and complete mailing  
3 address, including street address, of the authorized  
4 representative of the group;

5 (D) the highway section the group is interested in  
6 adopting;

7 (E) whether the group proposes to adopt the section for  
8 project development, establishment, and maintenance only, or  
9 also for litter control in accordance with §12.3 of this title  
10 (relating to Adopt-a-Highway Program); and

11 (F) the project design plan, including sketches,  
12 drawings, and specifications as may be required by the  
13 department to illustrate the level of landscape development.

14 (3) Groups currently participating in the Adopt-a-Highway  
15 Program will be required to indicate on the application their  
16 current participation in such Program.

17 (d) Agreement.

18 (1) If the application submitted by the group under  
19 subsection (c) of this section is approved by the district  
20 engineer, the authorized representative of that group shall  
21 enter into a written agreement with the department providing for  
22 the group's participation in the Program.

23 (2) The agreement shall be in the form prescribed by the

1 department and shall at a minimum include the following terms.

2 (A) The project design plan furnished by the group  
3 shall consist of plans, sketches, drawings, notes, and  
4 specifications required to fully illustrate the level of project  
5 development proposed.

6 (B) The group shall acknowledge the hazardous nature of  
7 the work involved in participating in the Program.

8 (C) The group shall agree that its members are jointly  
9 and severally to be bound by and comply with the terms of the  
10 agreement.

11 (D) The project design plan shall be subject to the  
12 approval of the department.

13 (E) All costs, materials, labor, and equipment  
14 necessary for project development shall be furnished by the  
15 group.

16 (F) All costs, materials, labor, and equipment  
17 necessary to provide for project establishment and maintenance  
18 for a period specified by the department, such period being not  
19 less than two consecutive years following the completion of  
20 project development, shall be furnished by the group.

21 (G) The respective responsibilities of the group and  
22 the department as cited in subsection (e) of this section.

23 (H) Conditions by which the agreement may be

1 terminated.

2 (I) A provision to satisfy legal relations and  
3 responsibilities to the public, including insurance and traffic  
4 control.

5 (3) The department's decision will be final with respect  
6 to any disputes that may arise concerning the group's  
7 responsibilities under the agreement.

8 (e) Responsibilities of group and department.

9 (1) Groups must:

10 (A) appoint an authorized representative who shall have  
11 the authority to execute the agreement as defined in subsection  
12 (d) of this section;

13 (B) obey and abide by all laws and regulations relating  
14 to safety, and legal relations to the public, and such other  
15 terms and conditions as may be required by the district engineer  
16 for special conditions on a particular adopted section;

17 (C) comply with §12.3 of this title (relating to Adopt-  
18 a-Highway Program) if participation includes that Program;

19 (D) furnish adequate supervision by one or more adults  
20 for participants who are 15 years of age or younger;

21 (E) conduct at least two safety meetings per year and  
22 ensure participants of the group attend at least one safety  
23 meeting before participating in the cleanup of the adopted

1 section;

2 (F) adopt the section of highway for a minimum period  
3 of two years;

4 (G) adopt only those sections of highway determined by  
5 the department to be appropriate for project development and  
6 maintenance;

7 (H) provide for the establishment of plant material;

8 (I) water all plant material except seeding at least  
9 twice per month during the months of April through September,  
10 and at least once per month during the months of October through  
11 March, unless in the opinion of the department, sufficient  
12 natural rainfall has occurred;

13 (J) remove weeds and vegetative matter from within the  
14 watering basins of all installed plant material at least once  
15 per month during the months of April through September, and at  
16 least once every other month during the months of October  
17 through March;

18 (K) assure that the fold-down traffic control signs are  
19 folded open during project participation and returned to the  
20 closed position after project completion each day;

21 (L) assure each individual participant of the group  
22 wears department-furnished safety vests while on the adopted  
23 section;

1 (M) neither possess nor consume alcoholic beverages  
2 while on the adopted section;

3 (N) maintain a first-aid kit and adequate drinking  
4 water while on the adopted section; and

5 (O) act as an independent contractor during project  
6 participation.

7 (2) A group may not subcontract or assign its project  
8 responsibilities to any other group, organization, or  
9 enterprise, unless expressly authorized by the department.

10 (3) The department will:

11 (A) work with the group to determine the specific  
12 section of the state highway right-of-way to be adopted.

13 (B) comply with §12.3 of this title (relating to Adopt-  
14 a-Highway Program) if litter control is included as a portion of  
15 the application;

16 (C) review the group's design plan for project  
17 development and reserves the right to require modifications to  
18 the design prior to approval; and

19 (D) provide for the installation of suitable Adopt-a-  
20 Highway for Landscaping signs in accordance with existing  
21 regulations relating to the Adopt-a-Highway Program, including  
22 §12.3(f)(3) of this title (relating to Adopt-a-Highway Program).

23 (f) General limiting conditions and eligibility. The

1 Program is subject to the following conditions.

2 (1) Only highway right-of-way eligible for the Program  
3 for litter control and only those sections which are deemed  
4 appropriate for landscape development, as determined by the  
5 department, may be adopted. Unless otherwise approved by the  
6 department, controlled access highways or routes within urban or  
7 metropolitan areas are not eligible for adoption.

8 (2) The department may consider such factors as width of  
9 right-of-way, geometrics, congestion, and sight distance of  
10 roadways in determining what highway shall be eligible for  
11 adoption.

12 (3) Limits for adopted sections for landscape development  
13 will be subject to the approval of the department.

14 (4) Plant material will be limited to native and adapted  
15 trees, shrubs and wildflower and grass seeding activities.

16 (5) Groups currently participating in the Adopt-a-Highway  
17 Program which submit an application under subsection (c) of this  
18 section to participate in the Program may only adopt within the  
19 limits of the original adopted section. Project maintenance  
20 shall be performed for a period as specified by the department,  
21 such period being not less than two consecutive years following  
22 the completion of the project development.

23 (6) Sections currently adopted under the Adopt-a-Highway

1 Program shall not be eligible for adoption under the Adopt-a-  
2 Highway for Landscaping Program by any other group until the  
3 original adoption under the Adopt-a-Highway Program has expired.

4 (7) Signs shall be four feet by four feet and shall be  
5 the least expensive and most effective for each situation.

6 (8) With the exception of the Adopt-a-Highway Program,  
7 work under the Adopt-a-Highway for Landscaping Program will not  
8 be combined with any other landscape-related program sponsored  
9 by the department.

10 (9) If any actions are determined to be contrary to any  
11 legislative restrictions or any restrictions on the use of  
12 appropriated funds for political activities, the department, at  
13 its sole discretion, will take all necessary remedial actions,  
14 including, but not limited to, the removal of signs displaying  
15 the group's name or acronym.

16 (g) Modification/renewal/termination of the agreement. The  
17 agreement may be modified in any manner at the sole discretion  
18 of the department. The group will have the option of renewing  
19 the agreement subject to the approval of the district engineer  
20 and the continuation of the Program. The department may  
21 terminate the agreement and remove the signs upon 30-day notice,  
22 if in its sole judgment it finds and determines that the group  
23 is not meeting the terms and conditions of the agreement.

1

2 §12.5. Landscape Cost Sharing Program.

3 (a) Purpose. The Landscape Cost Sharing Program (Program)  
4 allows private businesses, civic organizations, and local  
5 governments an opportunity to support the aesthetic improvement  
6 of the state highway system by sharing the project development,  
7 establishment, and maintenance cost of landscaping the state  
8 highway system. This section sets forth policies and procedures  
9 governing the Program.

10 (b) Participation.

11 (1) Eligible entities. A local government or a private  
12 business or civic may share in the cost of the development,  
13 establishment, and maintenance of the landscaping of a segment  
14 of the state highway system upon approval of the district  
15 engineer. A private business or civic organization is eligible  
16 to participate:

17 (A) as a donor through the local by providing to the  
18 local government donations in an amount equal to not less than  
19 25% of the local government's share of the project cost; or

20 (B) as a non-governmental donor by providing donations  
21 directly to the department if the donor is located in the county  
22 or a county adjacent to the county in which the project site is  
23 located.

1           (2) Compliance with other rules. The department will  
2 process a donation under paragraph (1)(B) of this subsection in  
3 accordance with the requirements of Chapter 1, Subchapter G of  
4 this title (relating to Donations). If a provision of this  
5 section conflicts with a provision of Chapter 1, Subchapter G of  
6 this title, this section will prevail.

7           (3) Sign. The local government or donor will receive  
8 recognition of the donation by the erection, at the project  
9 site, of a sign announcing participation by the donor in the  
10 Program.

11           (c) Application.

12           (1) A local government or donor that desires to  
13 participate or to continue to participate in the Program shall  
14 submit an application to the district engineer of the district  
15 in which the project site is located.

16           (2) The application shall be in the form prescribed by  
17 the department and shall at a minimum include:

18               (A) the date of application;

19               (B) the name, telephone number, and complete mailing  
20 address of the local government or donor;

21               (C) the highway section the local government or donor  
22 is interested in developing;

23               (D) the project concept plan, containing sketches,

1 drawings, estimates, specifications, and descriptive text as may  
2 be required by the department to evaluate the project under  
3 required general, site, and design considerations, to determine  
4 the proposed design intent, and to estimate the amount of  
5 department participation; and

6 (E) a statement, chart, or spreadsheet based on the  
7 project concept plan, which illustrates the recommended  
8 responsibilities of the department and the local government and,  
9 if applicable, the donor (this statement, chart, or spreadsheet  
10 shall contain fully itemized cost figures for each portion of  
11 the project as may be required for the department to evaluate  
12 the recommended fair-market values for acceptable material and  
13 services proposed).

14 (d) Conditions. In order to participate in the Program,  
15 each project must meet the department's approval under general,  
16 site, and design considerations.

17 (1) General considerations. Normally, work on state  
18 highway right-of-way will be performed by state forces or by  
19 contractors selected and administered by the department. An  
20 exception will be granted to allow a local government or donor  
21 to perform work on state highway right-of-way when approved by  
22 the district engineer.

23 (A) A local government or donor may participate in the

1 joint beautification of the existing state highway system  
2 subject to the following restrictions.

3 (i) If the project is determined by the department to  
4 be a highway-landscaping project, the department will evaluate  
5 accepting labor, equipment, materials, design services, and cash  
6 as the contribution toward the proposed project.

7 (ii) If the project is determined by the department  
8 to be a pedestrian landscaping project, the department's  
9 participation will be limited to furnishing materials only for  
10 installation.

11 (B) Unless waived by the department, projects shall  
12 exceed \$25,000 if constructed by the department.

13 (C) The cost of any previous work by the local  
14 government or donor shall not be included as a portion of the  
15 contribution toward the project.

16 (D) For a project to be evaluated by the department for  
17 work under the Program, the minimum value of acceptable non-cash  
18 contributions plus cash contributions by the local government or  
19 donor must equal or exceed \$2,500.

20 (E) If the department is to provide for the project,  
21 applicable statutes, rules, and procedures relating to the  
22 purchase of materials using state funds will apply.

23 (F) If the department is to provide for the

1 construction of any portion of the project, applicable statutes,  
2 rules, and procedures relating to scheduling, processing, and  
3 administering a highway improvement project through the  
4 department's highway letting process will apply.

5 (2) Site considerations. For sites to be approved by the  
6 department, the following site conditions must be met. The site  
7 must:

8 (A) not be scheduled for future construction as defined  
9 within the department's current unified transportation plan  
10 which would conflict with the activities proposed on the  
11 project;

12 (B) contain sufficient right-of-way to reasonably  
13 permit planting and landscaping operations without conflicting  
14 with safety, geometric, and maintenance considerations;

15 (C) not contain overhead or underground utilities,  
16 driveways, pavement, sidewalks, or highway system fixtures  
17 including traffic signage or signalization which will conflict  
18 with the planting or landscaping operations proposed under the  
19 project; and

20 (D) not obstruct or interfere with existing drainage  
21 conditions along the site.

22 (3) Design considerations. For sites to be approved by  
23 the department, the following design considerations must be met.

1 (A) The project design, as shown on the project concept  
2 plan, must be acceptable to the department.

3 (B) Unless otherwise approved by the department, the  
4 project design may not include the following design elements:

5 (i) plant material or fixtures which, in the opinion  
6 of the department, require an intensive level of continued  
7 establishment and maintenance in order to assure the  
8 effectiveness and function within the design;

9 (ii) flagpoles or pennant poles;

10 (iii) fountains or water features; and

11 (iv) statuary, sculpture, or other art objects.

12 (C) The following items, if considered by the  
13 department as an acceptable element of the project design plan,  
14 may not be included as a contribution cost, and will not be  
15 furnished or installed by the department:

16 (i) benches and pedestrian seating;

17 (ii) pedestrian or historic lighting or illumination  
18 systems; and

19 (iii) trash or refuse receptacles.

20 (D) The local government or donor must fully illustrate  
21 the recommended division of responsibilities as necessary for  
22 the department to evaluate the proposed manner of project  
23 implementation, establishment, and maintenance if applicable.

1 The illustration of recommended project responsibilities shall  
2 at a minimum include:

3 (i) preparing the project design plan, provided that  
4 the cost of providing the project design plan for a pedestrian  
5 landscaping project shall be the sole responsibility of the  
6 local government or donor, and shall not be included as a  
7 portion of its contribution toward the project;

8 (ii) furnishing and installing required material; and

9 (iii) performing project establishment and  
10 maintenance, if required, provided that the cost of performing  
11 project establishment and maintenance on a pedestrian  
12 landscaping project shall be the sole responsibility of the  
13 local government or donor and shall not be included as a portion  
14 of its contribution toward the project.

15 (E) The local government or donor must fully itemize  
16 and document the proposed cash and non-cash contribution  
17 available to support the project. This itemization and  
18 documentation shall include at a minimum the following items:

19 (i) amount of cash to be provided to the department;

20 (ii) non-cash value of each individual item of  
21 material to be furnished by the local government or donor;

22 (iii) cost of each individual item or material to be  
23 furnished by the department;

1           (iv) non-cash value of labor and equipment necessary  
2 to install each individual item of material if performed by the  
3 local government or donor;

4           (v) cost of installing each individual item of  
5 material if performed by the department; and

6           (vi) non-cash value of the project design plan if  
7 furnished by the local government or donor, provided the maximum  
8 acceptable non-cash value of furnishing the project design plan,  
9 based upon the selected project cost, including project  
10 establishment and maintenance for highway landscaping projects  
11 and excluding project establishment and maintenance for  
12 pedestrian landscaping projects, shall not exceed 8.5% for  
13 projects up to and including \$200,000, and 7.5% for projects  
14 greater than \$200,000.

15           (e) Amount of departmental participation.

16           (1) Highway landscaping projects within the existing city  
17 limits of a city. The department, after approving the project  
18 under general, site, and design considerations, will participate  
19 in up to 50% of the total cost of the project including project  
20 establishment and maintenance, and preparation of the project  
21 design plan.

22           (2) Pedestrian landscaping within the existing city  
23 limits of a city. The department, after approving the project

1 under general, site, and design considerations, will participate  
2 by furnishing material only up to but not exceeding 50% of the  
3 total cost of project development, excluding project  
4 establishment and maintenance and the preparation of the project  
5 design plan.

6 (3) Highway landscaping projects outside the existing  
7 city limits of a city. The department, after approving the  
8 project under general, site, and design considerations, will  
9 participate in up to 50% of the total project development,  
10 establishment, maintenance and design cost.

11 (4) Pedestrian landscaping projects outside existing city  
12 limits. Unless otherwise approved, the department will not  
13 participate in the cost of these projects under the Program.

14 (f) Agreement.

15 (1) If the proposed project as submitted under subsection  
16 (c) [(d)] of this section is approved by the department, the  
17 local government or donor shall enter into a written agreement  
18 with the department providing participation in the Program. The  
19 agreement becomes effective when finally executed by the  
20 department and shall terminate upon satisfactory completion of  
21 the work as stipulated within the agreement. Work on any phase  
22 of the project may not begin until the agreement is fully  
23 executed by both parties.

1           (2) The agreement shall be in the form prescribed by the  
2 department and shall at a minimum include the following terms.

3           (A) The project design plan shall consist of plans,  
4 sketches, drawings, notes, estimates, and specifications as  
5 required by the department.

6           (B) Any changes to the agreement shall be enacted by  
7 written amendment.

8           (C) The parties shall not assign or otherwise transfer  
9 their obligations under this agreement except with prior written  
10 consent of the other party.

11           (D) The project design plan shall be subject to the  
12 review and satisfactory approval by the department prior to a  
13 departmental bid opening.

14           (E) Violation or breach of contract terms shall be  
15 grounds for termination of the agreement by the department. In  
16 the event of disputes as to obligations under the agreement, the  
17 department's decision shall otherwise be final and binding.

18           (F) The local government or donor and its contractors,  
19 if any, shall to the extent provided by law, furnish  
20 certificates of insurance, guarantees of self insurance if  
21 appropriate, and indemnification as may be prescribed by the  
22 department.

23           (G) The local government or donor shall provide, erect,

1 and maintain to the satisfaction of the department any  
2 barricades, signs, and traffic handling devices necessary to  
3 protect the safety of the travelling public while performing any  
4 work on the project.

5 (H) The department's employees shall not accept any  
6 benefits, gifts, or other.

7 (3) The agreement shall include the funding arrangement  
8 and payment schedule.

9 (g) General limiting conditions and eligibility. Because  
10 of administrative, legislative, and financial constraints, the  
11 Program shall be subject to the following terms.

12 (1) The department will consider such factors as width of  
13 right-of-way, geometrics, congestion, sight-distance, and  
14 maintenance requirements in determining the acceptability and/or  
15 amount of departmental participation in any proposed project.

16 (2) Signage for the Program shall be four feet by four  
17 feet and shall be the least expensive and most effective for  
18 each situation. Exceptions to the standard signage must be  
19 approved by the department to ensure the safety of the traveling  
20 public. All costs associated with non-standard signage shall be  
21 paid by the local government or donor and shall not be included  
22 as a portion of its contribution toward the project.

23 (3) Work under the Program shall not be combined with any

1 other landscape-related programs sponsored by the department.

2 (4) If any actions are determined to be contrary to any  
3 legislative restrictions or any restrictions on the use of  
4 appropriated funds for political activities, the department  
5 shall have the right to take any and all necessary remedial  
6 actions, including, but not limited to, the removal of the signs  
7 displaying the local governmental entity's or donor's name.

8 (h) Modification/termination of agreement. The agreement  
9 as cited in subsection (f) of this section may be modified in  
10 any manner at the sole discretion of the department.

11

12 §12.6. Adopt-a-Freeway Program.

13 (a) Purpose. The Adopt-a-Freeway Program (Program) allows  
14 private businesses, civic organizations, and local governments  
15 an opportunity to support the department's landscape programs by  
16 adopting a section of urban freeway for the purpose of project  
17 development and project establishment and maintenance on that  
18 section. This section sets forth policies and procedures  
19 governing the Program.

20 (b) Participation in program.

21 (1) Local government. A local government, upon approval  
22 by the district engineer, may adopt a section of urban state  
23 highway right-of-way for the purpose of project design, project

1 development, and project establishment and maintenance by  
2 assuming the responsibility for all design, construction,  
3 establishment, and maintenance costs involved in the project.

4 (2) Donor.

5 (A) An eligible private business or civic organization  
6 may participate in the Program by providing to the local  
7 government cash or non-cash donations in an amount equal to not  
8 less than 25% of the project cost. The donor will receive  
9 recognition of the donation by the erection at the project site  
10 of a sign announcing participation by the donor in the Program.

11 (B) A private business or civic organization is  
12 eligible to participate in the Program as a donor if the  
13 business or civic organization is located in the county or a  
14 county adjacent to the county in which the adopted section is  
15 located.

16 (c) Application.

17 (1) A local governmental entity which desires to  
18 participate or to continue to participate in the Program shall  
19 submit an application to the district engineer of the district  
20 in which the adopted section is located.

21 (2) The application shall be in the form prescribed by  
22 the department and shall at a minimum include:

23 (A) date of application;

1 (B) the name and complete mailing address of the local  
2 government;

3 (C) the name, telephone number, and complete mailing  
4 address of a contact person for the local government;

5 (D) the highway section the local government is  
6 interested in adopting;

7 (E) if provided by the local government, the project  
8 design plan, specifications, and estimates for the work the  
9 local government is interested in performing; and

10 (F) if provided by the department, the estimates,  
11 specifications, full descriptive text, sketches, or samples of  
12 work proposed by the local government as may be required by the  
13 department to produce the project design plan; and

14 (G) a resolution by the local government that includes:

15 (i) a statement that it approves participation in the  
16 Program;

17 (ii) a statement that it agrees to accept the  
18 responsibility of the project; and

19 (iii) a statement that the local government agrees  
20 and is authorized to enter into the agreement as defined in  
21 subsection (d) of this section.

22 (d) Agreement.

23 (1) If the application submitted under subsection (c) of

1 this section is approved by the department, the local government  
2 shall enter into a written agreement with the department  
3 providing for participation in the Program.

4 (2) The agreement shall be in the form prescribed by the  
5 department and shall contain at a minimum the following terms.

6 (A) The local government shall comply with the terms  
7 and conditions set forth in the agreement.

8 (B) All costs of project design, development,  
9 establishment, and maintenance shall be the sole responsibility  
10 of the local government. Prior to the date scheduled for  
11 contract award the local government shall remit to the  
12 department an amount equal to the remainder of the local  
13 government's funding share for the project.

14 (C) If prepared by the local government, the project  
15 design plan shall be subject to the review and satisfactory  
16 approval by the department prior to a departmental bid opening.

17 (D) The local government shall agree to provide funding  
18 for project establishment, and maintenance contracts let for  
19 construction by the department for a period as specified by the  
20 department, such period being not less than five consecutive  
21 years following the completion of the project development  
22 contract.

23 (E) A list of the respective responsibilities of the

1 local government and the department as cited in subsection (f)  
2 of this section.

3 (F) The local government shall agree to provide  
4 necessary indemnification as may be required by the department.

5 (e) Responsibilities of local government and department.

6 (1) A local government who desires to participate in the  
7 Program shall be subject to the following requirements and  
8 responsibilities relating to project development.

9 (A) If the project design plan is furnished by the  
10 local government, the local government must provide:

11 (i) for the department's review, the project design  
12 plan;

13 (ii) for the department's review, specifications,  
14 general notes, and estimates based upon the project design plan  
15 as may be necessary to fully document the project development;

16 (iii) after the department's review, all required  
17 revisions to the project design plan, specifications, general  
18 notes, and estimates as may be required; and

19 (iv) after revisions to the project design plan,  
20 specifications, general notes, and estimates have been made to  
21 the department's satisfaction, one set of reproducible mylars to  
22 the format and time schedule as may be required by the  
23 department, and three sets of 8 1/2 inches by 11 inches contract

1 documents including specifications, general notes, and  
2 estimates.

3 (B) If the project design plan is to be furnished by  
4 the department, the local government must provide:

5 (i) information which establishes the proposed design  
6 concept as may be required by the department (this information  
7 may be in the form of descriptive text, sketches, or copies of  
8 developments similar to the type of project development proposed  
9 by the local government); and

10 (ii) a check, payable to the Texas Department of  
11 Transportation, in the full amount of the design fee.

12 (C) The local government must provide a check, payable  
13 to the Texas Department of Transportation, in the full amount of  
14 the final departmental estimate for project development, no  
15 later than 60 days prior to the date of the project's scheduled  
16 bid opening.

17 (D) The local government must provide a check, payable  
18 to the Texas Department of Transportation, in the full amount of  
19 the final departmental estimate for project establishment and  
20 maintenance. Prior to the department's scheduled date for  
21 contract award, the local government shall remit to the  
22 department an amount equal to the remainder of the local  
23 government's funding share for the project.

1           (2) The department, conditioned on approving the project  
2 as submitted by the local government, will be responsible for  
3 providing the following services.

4           (A) Project design plan:

5           (i) if submitted by the local government the project  
6 design plan will be reviewed; and

7           (ii) if requested by the local government the project  
8 design plan will be prepared.

9           (B) Project development:

10           (i) scheduling the project for the first available  
11 departmental bid opening;

12           (ii) awarding the construction contract; and

13           (iii) administering the project during construction.

14           (C) Project establishment and maintenance:

15           (i) providing plans, specifications, and estimates as  
16 may be required for the establishment and maintenance project;

17           (ii) scheduling the establishment and maintenance  
18 project for the first available departmental bid opening;

19           (iii) awarding the establishment and maintenance  
20 contract; and

21           (iv) administering the project.

22           (f) General limiting conditions and eligibility. The  
23 Program shall be subject to each of the following conditions.

1           (1) No section will be approved for adoption if any  
2 portion of the section is scheduled for future construction  
3 within the department's current unified transportation plan.

4           (2) Designs which reflect the character of adjacent  
5 developments will be accepted by the department provided such  
6 designs do not include logos of private entities, civic  
7 organizations, or local governments and provided that the local  
8 government will provide funding for adequate project  
9 development, establishment and maintenance as required by the  
10 department.

11           (3) All major routes including controlled access routes  
12 on the highway system within the urban and metropolitan areas  
13 will be eligible for adoption.

14           (4) Signage announcing participation in the Program shall  
15 be four feet by four feet and shall be the least expensive and  
16 most effective for each situation.

17           (5) Special landscape features such as fountains,  
18 retaining walls, paving or walkway treatment, architectural  
19 lighting or landscape treatments which require, in the opinion  
20 of the department, high-level maintenance may be submitted and  
21 proposed for approval by the department.

22           (6) Work under the Program will not be combined with any  
23 other landscape-related programs sponsored by the department.

1           (7) The project design plan, if provided by the  
2 department, will be scheduled for preparation within the  
3 constraints of the department's existing resource capability.

4           (g) Modification/termination of agreement. The agreement  
5 as cited in subsection (d) of this section may be modified at  
6 the sole discretion of the department or commission. The  
7 agreement may also be terminated as provided in the agreement by  
8 mutual agreement and consent of the local government and the  
9 department, or by the department, after a 30-day notice, for  
10 failure by the local government to fulfill its responsibilities.

11

12 §12.7. Landscape Partnership Program

13           (a) Purpose. The Landscape Partnership Program (program)  
14 allows private businesses, civic organizations, and local  
15 governments an opportunity to support the aesthetic improvement  
16 of the state highway system by donating the project development,  
17 establishment, and maintenance of a landscaped section of the  
18 state highway system. This section sets forth policies and  
19 procedures governing the program.

20           (b) Participation.

21           (1) Eligible entities. A local government or a private  
22 business or civic organization may develop, establish, and  
23 maintain the landscape of a section of the state highway system

1 upon approval of the district engineer. A private business or  
2 civic organization is eligible to participate:

3 (A) as a donor through the local government by  
4 providing donations to the local government; or

5 (B) as a nongovernmental donor by providing donations  
6 directly to the department.

7 (2) Compliance with other rules. The department will  
8 process a donation under paragraph (1)(B) of this subsection in  
9 accordance with the requirements of Chapter 1, Subchapter G of  
10 this title (relating to Donations). If a provision of this  
11 section conflicts with a provision of Chapter 1, Subchapter G of  
12 this title, this section will prevail.

13 (3) Sign. A sign may be erected at the project site,  
14 announcing participation in the program. The sign will be  
15 erected by the donor and will be maintained for the duration of  
16 the project agreement.

17 (c) Application.

18 (1) A local government or donor that desires to  
19 participate or to continue to participate in the program shall  
20 submit an application to the district engineer of the district  
21 in which the project site is located.

22 (2) The application shall be in the form prescribed by  
23 the department and shall at a minimum include:

1 (A) the date of application;

2 (B) the name, telephone number, and complete mailing  
3 address of the local government or donor;

4 (C) the highway section the local government or donor  
5 is interested in developing, establishing, and maintaining; and

6 (D) the project concept plan containing sketches,  
7 drawings, specifications, and descriptive text as may be  
8 required by the department to evaluate the project under  
9 required general, site, and design consideration, to determine  
10 the proposed design intent.

11 (d) Conditions. In order to participate in the program,  
12 each project must meet the department's approval under general,  
13 site, and design considerations.

14 (1) General considerations. Normally, work on state  
15 highway right of way will be performed by state forces or under  
16 contracts awarded and administered by the department. Under  
17 this program, an exception will be granted to allow a local  
18 government or donor to perform work on state highway right of  
19 way if the project is approved by the district engineer.

20 (2) Site considerations. For sites to be approved by the  
21 department, the following site conditions must be met. The site  
22 must:

23 (A) not be scheduled for future construction, as

1 defined within the department's current unified transportation  
2 plan, that would conflict with the activities proposed on the  
3 project;

4 (B) contain sufficient right of way to reasonably  
5 permit planting and landscaping operations without conflicting  
6 with safety, geometric, and maintenance considerations;

7 (C) not contain overhead or underground utilities,  
8 driveways, pavement, sidewalks, or highway system fixtures  
9 including traffic signage or signalization that would conflict  
10 with the planting or landscaping operations proposed under the  
11 project; and

12 (D) not contain existing drainage conditions that will  
13 be obstructed or otherwise interfered with by the project.

14 (3) Design considerations. For sites to be approved by  
15 the department, the following design considerations must be met.

16 (A) The project design, as shown on the project concept  
17 plan, must be acceptable to the department.

18 (B) Unless otherwise approved by the department, the  
19 project design may not include the following design elements:

20 (i) plant material or fixtures that, in the opinion  
21 of the department, require an intense level of continued  
22 establishment and maintenance in order to assure the  
23 effectiveness and function within the design;

- 1           (ii) flagpoles or pennant poles;  
2           (iii) fountains or water features;  
3           (iv) statuary, sculpture, or other art objects; and  
4           (v) logos or other advertising.

5           (e) General limiting conditions and eligibility. Because  
6 of administrative, legislative, and financial constraints, the  
7 program shall be subject to the following terms.

8           (1) The department will consider such factors as width of  
9 right of way, geometrics, congestion, sight distance, and  
10 maintenance requirements in determining the acceptability of any  
11 proposed project.

12           (2) Signage for the program shall be four feet by four  
13 feet and shall conform to the current Texas Manual on Uniform  
14 Traffic Control Devices. All costs associated with signage  
15 shall be paid by the local government or donor.

16           (3) Work under the program shall not be combined with any  
17 other landscape-related programs sponsored by the department.

18           (f) Agreement.

19           (1) If the proposed project as submitted under subsection  
20 (c) of this section is approved by the department, the local  
21 government or donor shall enter into a written agreement with  
22 the department providing participation in the program. Work on  
23 any phase of the project may not begin until the agreement is

1 fully executed by both parties.

2 (2) The agreement shall be in the form prescribed by the  
3 department and shall at a minimum include the following terms.

4 (A) The project design plan shall consist of plans,  
5 sketches, drawings, notes, estimates, maintenance work  
6 schedules, and specifications as required by the department.

7 (B) Any changes to the agreement shall be enacted by  
8 written amendment.

9 (C) The parties shall not assign or otherwise transfer  
10 their obligations under this agreement, except with prior  
11 written consent of the other party.

12 (D) The project design plan shall be subject to the  
13 review and satisfactory approval by the department prior to  
14 installation.

15 (E) Violation or breach of contract terms shall be  
16 grounds for termination of the agreement by the department. In  
17 the event of disputes as to obligations under the agreement, the  
18 department's decision shall be final and binding.

19 (F) The local government or donor and its contractors,  
20 if any, shall to the extent provided by law, furnish  
21 certificates of insurance, guarantees of self insurance if  
22 appropriate, and indemnification as may be prescribed by the  
23 department.

1           (G) The local government or donor shall provide, erect,  
2 and maintain to the satisfaction of the department any  
3 barricades, signs, and traffic handling devices necessary to  
4 protect the safety of the traveling public while performing any  
5 work on the project.

6           (H) The agreement shall be for a period of not less  
7 than two years. If after two years, the local government or  
8 donor desires to continue the project, the agreement shall be  
9 subject to renewal.

10           (3) A donation schedule, if applicable, shall be outlined  
11 in the agreement.

12           (g) Modification/termination of agreement. The agreement  
13 as cited in subsection (f) of this section may be modified in  
14 any manner at the sole discretion of the department.

15           (1) If the project is not installed within one year, the  
16 agreement becomes void.

17           (2) If the local government or donor fail to maintain the  
18 project according to the schedule outlined in the agreement, the  
19 project will be subject to removal at the department's  
20 discretion.

21

22 §12.8. General Sign Restrictions.

23           (a) The department is generally prohibited by law from

1 expending any funds, directly or indirectly, for the purpose of  
2 influencing the outcome of any election or the passage or defeat  
3 of any legislation, and will not erect a sign in violation of  
4 this prohibition.

5 (b) The department will remove a sign erected under this  
6 subchapter which is damaged due to vandalism, and will not  
7 replace the sign within the terms of the agreement unless the  
8 group remits to the department an amount equal to the cost of  
9 the replacement sign.

10

11 §12.9. Approval and Appeal.

12 (a) A district engineer who receives an application  
13 submitted under this subchapter may defer approval to the  
14 executive director or the executive director's designee.

15 (b) If a district engineer denies, in whole or in part,  
16 approval of an application submitted under this subchapter, the  
17 applicant may appeal that action to the executive director or  
18 the executive director's designee.

19

20 §12.10. Termination or Revision of a Program. A program  
21 established under this subchapter may at any time and for any  
22 reason be terminated or revised at the sole discretion of the  
23 commission.

1

2 §12.11. Adopt-an-Airport Program.

3 (a) Purpose. The Adopt-an-Airport Program (Program) allows  
4 private citizens an opportunity to support the department's  
5 beautification programs by adopting an airport for the purposes  
6 of beautifying and creating a better image and enhancing public  
7 awareness for the airport. This section sets forth policies and  
8 procedures to be used in administering the Program.

9 (b) Participation.

10 (1) Airport.

11 (A) Only publicly-owned airports included in the Texas  
12 Airport System Plan (TASP) are eligible to participate in the  
13 Adopt-an-Airport Program.

14 (B) Eligible airports shall execute an agreement with  
15 the department to define their respective responsibilities  
16 before the airport may be adopted.

17 (2) Groups.

18 (A) The following groups are eligible to participate in  
19 the Program:

20 (i) members or employees of civic and nonprofit  
21 organizations;

22 (ii) employees of private businesses and governmental  
23 entities; and

1 (iii) families.

2 (B) To be eligible a group must be located or reside in  
3 the city or county in which the adopted airport is located.

4 (c) Application.

5 (1) The authorized representative of a group that desires  
6 to participate, or to continue to participate, in the program  
7 shall submit an application to the district engineer of the  
8 district in which the airport to be adopted is located.

9 (2) The application shall be in a form prescribed by the  
10 department and shall at a minimum include:

11 (A) the date of application;

12 (B) the name and complete mailing address, including  
13 street address, of the group;

14 (C) the name, telephone number, and complete mailing  
15 address of the group's authorized representative;

16 (D) the name of the airport the group is interested in  
17 adopting; and

18 (E) what activities the applicant proposes for  
19 maintenance or beautification.

20 (3) If the group meets the criteria of this section, the  
21 district engineer will approve the adoption unless he or she  
22 determines that to do so would endanger the traveling public, or  
23 otherwise not be in the best interest of the airport.

1 (d) Agreement.

2 (1) If the district engineer approves the application  
3 submitted by the group under subsection (c) of this section, the  
4 authorized representative of that group shall execute a written  
5 agreement with the sponsor and the department providing for the  
6 group's participation in the Program.

7 (2) The agreement shall be in the form prescribed by the  
8 department and shall include:

9 (A) an acknowledgment by the group of the possible  
10 hazardous nature of the work involved in participating in the  
11 Program;

12 (B) an acknowledgment that the members of the group  
13 agree jointly and severally to be bound by and comply with the  
14 terms of the agreement; and

15 (C) a statement of the respective responsibilities of  
16 the group and the department as contained in subsection (e) of  
17 this section.

18 (e) Responsibilities of group and department.

19 (1) Groups must:

20 (A) appoint or select an authorized representative to  
21 serve as spokesperson for the group;

22 (B) obey and abide by all laws and regulations relating  
23 to safety and such other terms and conditions as may be required

1 by the sponsor and the department for special conditions on a  
2 particular adopted airport;

3 (C) furnish adequate supervision by one or more adults  
4 for participants of a group who are 15 years of age or younger;

5 (D) conduct at least one safety meeting per year and  
6 ensure participants of the group attend a safety meeting before  
7 participating in the beautification of the adopted airport;

8 (E) adopt an airport for a minimum period of two years;

9 (F) pick up litter a minimum of four times a year and  
10 at such additional times as required by the sponsor or the  
11 department, if the group's responsibility is controlling and  
12 reducing litter;

13 (G) obtain required supplies and materials from the  
14 sponsor or the department during regular business hours;

15 (H) wear department furnished safety vests during the  
16 tasks being performed;

17 (I) place litter in trash bags furnished by the  
18 department and place filled trash bags at locations as  
19 determined by the sponsor or the department, if the group's  
20 responsibility is controlling and reducing litter;

21 (J) return all unused materials and supplies to the  
22 sponsor or the department within one week following cleanup  
23 unless the materials and supplies are necessary for continued

1 beautification;

2 (K) neither possess nor consume alcoholic beverages

3 while on the adopted airport; and

4 (L) maintain a first-aid kit and adequate drinking

5 water while on the adopted airport.

6 (2) The department will:

7 (A) work with the group and the sponsor to determine

8 the specific tasks to be performed;

9 (B) erect a sign on the closest highway right of way,

10 normally near the airport pointer sign, with the group's name or

11 acronym displayed;

12 (C) provide safety vests, trashbags, and safety

13 literature;

14 (D) remove the filled trashbags after the pickup; and

15 (E) remove litter from the adopted section only under

16 unusual circumstances, such as removal of large, heavy, or

17 hazardous items.

18 (f) General limiting conditions. The Program is subject to

19 the following conditions.

20 (1) The department may consider such factors as airport

21 size and activity, geometrics, congestion, and visibility

22 restrictions in determining which airports shall be eligible for

23 adoption.

1           (2) If any actions are determined to be contrary to any  
2 legislative restrictions on the use of appropriated funds for  
3 political activities, the department, at its sole discretion may  
4 take any and all necessary remedial actions, including, but not  
5 limited to, the removal of signs displaying the group's name or  
6 acronym.

7           (3) Adopt-an-Airport signs shall be four feet by four  
8 feet and shall be the least expensive and most effective for  
9 each situation. A sign will not state the full name or official  
10 title of an elected official.

11           (4) A group may not subcontract or assign its  
12 responsibilities to any other group, organization, or enterprise  
13 without the express written authorization of the department.

14           (5) The department shall not have the right to control  
15 the group in performing the agreed upon tasks and/or of picking  
16 up litter from the airport adopted by the group; and, in picking  
17 up litter, the group shall act as an independent contractor.

18           (g) Modification/renewal/termination of the agreement. The  
19 agreement may be modified in any manner at the discretion of the  
20 department. The group will have the option of renewing the  
21 agreement subject to the approval of the department and the  
22 sponsor, and the continuation of the Program. The department may  
23 terminate the agreement and remove the signs upon 30-day notice,

- 1 if in its sole judgment it finds and determines that the group
- 2 is not meeting the terms and conditions of the agreement.