

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

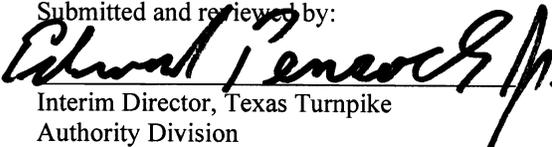
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§26.61 - 26.63 and new §26.65 relating to regional mobility authorities' reports and audits to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

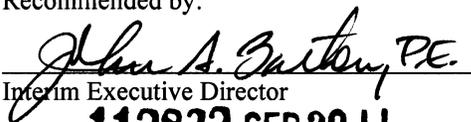
IT IS THEREFORE ORDERED by the commission that the amendments to §§26.61 - 26.63 and new §26.65 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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:


Interim Director, Texas Turnpike
Authority Division

Recommended by:


Interim Executive Director
112832 SEP 29 11

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §26.61, Written Reports, §26.62, Annual Audits,
4 and §26.63, Other Reports, and new §26.65, Annual Reports to the
5 Commission, all concerning reports and audits of regional
6 mobility authorities (RMA).

7

8 EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

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

21

22 Chapter 26, Subchapter G of the department's rules requires RMAs
23 to file several reports with the department. These reports
24 include the annual operating and capital budgets adopted by the
25 RMA under the trust agreement or indenture securing bonds issued

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

24

25 Amendments to §26.61, Written Reports, change the entity to

1 which an RMA submits certain information from the department to
2 each county or city that is a part of the RMA. Subsection (a)
3 applies to financial and operating reports specified in that
4 subsection and subsection (b) applies to an independent
5 auditor's review of specified investment reports.

6
7 Amendments to §26.62, Annual Audits, require that an annual
8 financial and compliance audit of an RMA's books and records be
9 submitted to each county or city that is a part of the RMA
10 rather than to the executive director of the department, as
11 required under the current section. The amendments also delete
12 subsection (e), which requires audit work papers to be made
13 available to the department.

14
15 Amendments to §26.63, Other Reports, require an RMA to provide
16 other reports and information relating to the RMA's activities
17 if requested by the counties or cities that are parts of the RMA
18 rather than on request of the commission or department. The
19 amendments also change the heading of the section to more
20 clearly indicate the entities to which the reports are to be
21 made.

22
23 New §26.65 relates to annual reports that an RMA is required to
24 provide to the commission. Instead of providing the reports and
25 audits required under §§26.61 - 26.63 to the commission, new

1 §26.65(a) requires an RMA to submit to the executive director of
2 the department an annual report, in the form prescribed by the
3 department, that provides a checklist of each duty that the RMA
4 is required to perform under Subchapter G of Chapter 26 and that
5 indicates that the RMA has performed that requirement for that
6 fiscal year. Each report must be approved by the board of the
7 RMA and certified by the chief administrative officer of the
8 RMA. New §26.65(b) requires an RMA to provide to the commission
9 an annual progress report on each transportation project or
10 system of projects of the RMA, including the initial project for
11 which the RMA was created. These reports are intended to
12 provide the commission and department with the information they
13 need to perform their statutory duties related to RMAs.

14

15 FISCAL NOTE

16 James Bass, Chief Financial Officer, has determined that for
17 each of the first five years in which the amendments and new
18 section as proposed are in effect, there will be no fiscal
19 implications for state or local governments as a result of
20 enforcing or administering the amendments and new section.

21

22 Ed Pensock, Interim Director, Texas Turnpike Authority Division,
23 has certified that there will be no significant impact on local
24 economies or overall employment as a result of enforcing or
25 administering the amendments and new section.

1

2 PUBLIC BENEFIT AND COST

3 Mr. Pensock has also determined that for each year of the first
4 five years in which the sections are in effect, the public
5 benefit anticipated as a result of enforcing or administering
6 the amendments will be increased accountability between RMAs and
7 the public entities which they report to and represent. There
8 are no anticipated economic costs for persons required to comply
9 with the sections as proposed. There will be no adverse
10 economic effect on small businesses.

11

12 SUBMITTAL OF COMMENTS

13 Written comments on the proposed amendments to §§26.61 - 26.63
14 and new §26.65 may be submitted to Ed Pensock, Interim Director,
15 Texas Turnpike Authority Division, Texas Department of
16 Transportation, 125 East 11th Street, Austin, Texas 78701-2483.
17 The deadline for receipt of comments is 5:00 p.m. on
18 November 14, 2011.

19

20 STATUTORY AUTHORITY

21 The amendments and new section are proposed under Transportation
22 Code, §201.101, which provides the commission with the authority
23 to establish rules for the conduct of the work of the
24 department, and more specifically, Transportation Code,
25 §370.038, which provides the commission with the authority to

1 establish rules related to regional mobility authorities, and
2 Transportation Code, §370.187, which provides the commission
3 with the authority to establish rules for approval of a regional
4 mobility authority's construction of a transportation project
5 that will connect to the state highway system or to a department
6 rail facility.

7

8 CROSS REFERENCE TO STATUTE

9 Transportation Code, Chapter 370.

SUBCHAPTER G. REPORTS AND AUDITS

§26.61. Written Reports.

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

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

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

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

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

(c) Certification. Reports submitted under this section

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

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

11

12 §26.62. Annual Audits.

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

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

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

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

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

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

16
17 §26.63. Other Reports to Counties and Cities. The RMA will
18 provide other reports and information regarding its activities
19 promptly when requested by the counties or cities that are parts
20 of the RMA [~~commission or the executive director~~].

21
22 §26.65. Annual Reports to the Commission.
23 (a) Compliance Report. Within 30 days after the end of the

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

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