

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

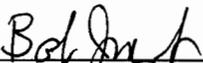
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §1.4 and §1.5 relating to public meetings and hearings to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted 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 §1.4 and §1.5 are adopted and are authorized for filing with the Office of the Secretary of State.

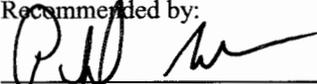
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



General Counsel

Recommended by:



Executive Director

113081 APR 26 12

Minute Date
Number Passed

Adoption Preamble

1
2 The Texas Department of Transportation (department) adopts
3 amendments to §1.4, Public Access to Commission Meetings and
4 §1.5, Public Hearings, both concerning public comment. The
5 amendments to §1.4 are adopted without changes to the proposed
6 text as published in the February 10, 2012 issue of the *Texas*
7 *Register* (37 TexReg 666) and will not be republished. The
8 amendments to §1.5 are adopted with changes to the proposed text
9 as published in the February 10, 2012 issue of the *Texas*
10 *Register* (37 TexReg 666).

11
12 EXPLANATION OF PROPOSED AMENDMENTS

13 S.B. No. 1420, 82nd Legislature, Regular Session, 2011, the
14 department's sunset bill, amended Transportation Code,
15 §201.802(a), to require the Texas Transportation Commission
16 (commission) to develop and implement policies that provide the
17 public with a reasonable opportunity to appear before the
18 commission and speak on any issue under the jurisdiction of the
19 department, rather than under the jurisdiction of the
20 commission, as required before the amendment. The commission
21 previously implemented the policies that were required under the
22 previous statute. This rule amends the current rules to clarify
23 that the commission will hear public comment on an issue within
24 the jurisdiction of the department. The change will have
25 little, if any, effect on the commission's operations. The

1 commission is ultimately responsible for the operation of the
2 department and for the related policy-making decisions;
3 therefore, the jurisdiction of the commission includes all of
4 the matters that are within the jurisdiction of the department.

5
6 Amendments to §1.4 change the word "commission" to "department"
7 in subsections (c)(2) and (d)(1) as required by the statutory
8 change. The change to subsection (c)(2) authorizes the chair to
9 place an item on a commission meeting agenda if the chair
10 determines that the proposed item is within the jurisdiction of
11 the department and concerns a matter with sufficient public
12 interest to justify its placement on the agenda. The change to
13 subsection (d)(1) provides that at each regular business meeting
14 after consideration of the posted agenda, the commission will
15 receive public comment on any other matter that is under the
16 jurisdiction of the department.

17
18 Amendments to §1.5 change the word "commission" to "department"
19 in subsection (a)(8). The change authorizes the commission to
20 hold public hearings to accept public comment on any issue under
21 the jurisdiction of the department if acceptance of the public
22 comment is required by law or considered appropriate by the
23 commission.

24
25 After the publication of these proposed rules, the department

1 determined that additional non-substantive changes to §1.5 are
2 necessary to provide accurate statutory and rule citations
3 within the section. Amendments to §1.5(a)(2) provide a
4 reference to the specific statutory authority for a Gulf
5 Intracoastal Waterway (GIWW) hearing by changing the citation
6 from Transportation Code, Chapter 51, to Transportation Code,
7 §51.006, and add a cross-reference to Chapter 2 of the
8 department rules which apply to the holding of a GIWW hearing.
9 Amendments to §1.5(a)(3), which concerns hearings relating to
10 proposed transportation projects, add a cross-reference to
11 Chapter 2 of the department rules to correct inaccuracies in the
12 references to rule sections that were caused by the recent
13 reorganization of that chapter.

14

15 COMMENTS

16 No comments on the proposed amendments were received.

17

18 STATUTORY AUTHORITY

19 The amendments are adopted under Transportation Code, §201.101,
20 which provides the commission with the authority to establish
21 rules for the conduct of the work of the department.

22

23 CROSS REFERENCE TO STATUTE

24 Transportation Code, §201.802.

1 SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

2 §1.4. Public Access to Commission Meetings.

3 (a) Purpose. This section provides policies and procedures
4 governing public access to the commission in order to facilitate
5 that access and maximize public participation in the decision-
6 making process, while ensuring orderly and effective conduct of
7 meetings.

8 (b) Posted agenda items. A person may speak before the
9 commission on any matter on a posted agenda by submitting a
10 request, in a form and manner as prescribed by the department,
11 prior to the matter being taken up by the commission. A person
12 speaking before the commission on an agenda item will be allowed
13 an opportunity to speak:

14 (1) prior to a vote by the commission on the item; and

15 (2) for a maximum of three minutes, except as provided in
16 subsection (g)(6) of this section.

17 (c) New agenda items.

18 (1) A person may request the addition of an item to the
19 commission agenda by submitting, no less than 20 days prior to
20 the date which has been set for the next meeting, the following
21 information:

22 (A) the name and address of the person making the
23 request;

1 (B) a clear and concise statement of the subject of the
2 proposed agenda item; and

3 (C) a brief summary of the action sought.

4 (2) If the chair determines that the proposed item is
5 within the jurisdiction of the department [~~commission~~] and that
6 the proposed item concerns a matter in which there is sufficient
7 public interest to warrant consideration by the commission as an
8 agenda item, the chair may place the matter on the posted agenda
9 for the next or a subsequent meeting, consistent with available
10 time.

11 (d) Open comment period.

12 (1) At the conclusion of the posted agenda of each
13 regular business meeting the commission will allow an open
14 comment period, not to exceed one hour, to receive public
15 comment on any other matter that is under the jurisdiction of
16 the department [~~commission~~].

17 (2) A person desiring to appear under this subsection
18 must complete a registration form, as provided by the
19 department, prior to the beginning of the open comment period.

20 (3) Except as provided in subsection (g)(6) of this
21 section, each person will be allowed to speak for a maximum of
22 three minutes for each presentation in the order in which he or
23 she registered.

1 (e) Disability accommodation. Persons with disabilities
2 who have special communication or accommodation needs and who
3 plan to attend a meeting may contact the office of the secretary
4 to the commission in Austin. Requests should be made at least
5 two days before a meeting. The department will make every
6 reasonable effort to accommodate these needs.

7 (f) Notice. For each commission meeting an agenda will be
8 filed with the Office of the Secretary of State in accordance
9 with the requirements of the Open Meetings Act, Government Code,
10 Chapter 551.

11 (g) Conduct and decorum. The commission will receive
12 public input as authorized by this section, subject to the
13 following guidelines.

14 (1) Questioning of those making presentations will be
15 reserved to commissioners and the department's administrative
16 staff.

17 (2) Organizations, associations, or groups are encouraged
18 to present their commonly held views, and same or similar
19 comments, through a representative member where possible.

20 (3) Presentations shall remain pertinent to the issue
21 being discussed.

22 (4) A person who disrupts a meeting must leave the
23 meeting room if ordered to do so by the chair.

1 (5) Time allotted to one speaker may not be reassigned to
2 another speaker.

3 (6) The time allotted for presentations or comments under
4 this section may be increased or further limited by the chair,
5 or, in the chair's absence, the acting chair, as may be
6 appropriate to assure opportunity for the maximum number of
7 persons to appear.

8 (h) Waiver. Subject to the approval of the chair, a
9 requirement of this section may be waived in the public interest
10 if necessary for the performance of the responsibilities of the
11 commission or the department.

12

13 §1.5. Public Hearings.

14 (a) Subject of hearings. The commission may hold public
15 hearings to:

16 (1) consider the adoption of rules, in accordance with
17 the Administrative Procedure Act, Government Code, Chapter 2001;

18 (2) receive evidence and testimony concerning the
19 desirability of—acquiring dredge material disposal sites and of
20 any widening, relocation, or alteration of the main channel of
21 the Gulf Intracoastal Waterway, in accordance with
22 Transportation Code, §51.006 [Chapter 51] and Chapter 2 of this
23 title (relating to Environmental Review of Transportation

1 Projects);

2 (3) provide for public input regarding the design,
3 schematic layout, and environmental impact of transportation
4 projects, in accordance with Transportation Code, §203.021, and
5 Chapter 2 of this title [~~§2.42 of this title (relating to~~
6 ~~Federal Aid Transportation Projects) and §2.43 of this title~~
7 ~~(relating to Non-Federal Aid Transportation Projects)];~~

8 (4) consider maximum prima facie speed limits on highways
9 in the state highway system that are near public or private
10 elementary or secondary schools or institutions of higher
11 education, in accordance with Transportation Code, §545.357;

12 (5) annually receive public input on the commission's
13 highway project selection process and the relative importance of
14 the various criteria on which the commission bases its project
15 selection decisions, in accordance with Transportation Code,
16 §201.602;

17 (6) receive comments from interested persons prior to
18 converting a segment of the non-tolled state highway system to a
19 toll project under Transportation Code, §228.203;

20 (7) receive comments from interested parties prior to
21 approving any financial assistance under Transportation Code,
22 §21.111, relating to aviation facilities development; and

23 (8) provide, when deemed appropriate by the commission or

1 when otherwise required by law, for public input regarding any
2 other issue under the jurisdiction of the department
3 [~~commission~~].

4 (b) Authorized representative. The executive director or
5 an employee of the department designated by the executive
6 director may conduct public hearings held under subsection
7 (a)(1), (3), (7), and (8) of this section.

8 (c) Conduct and decorum. Public hearings will be conducted
9 in a manner that maximizes public access and input while
10 maintaining proper decorum and orderliness, and will be governed
11 by the following guidelines.

12 (1) Questioning of those making presentations will be
13 reserved to commissioners, the executive director, or, if
14 applicable, the presiding officer.

15 (2) Organizations, associations, or groups are encouraged
16 to present their commonly held views and same or similar
17 comments through a representative member where possible.

18 (3) Presentations shall remain pertinent to the issue
19 being discussed.

20 (4) A person who disrupts a public hearing must leave the
21 hearing room if ordered to do so by the chair or the presiding
22 officer.

23 (5) Time allotted to one speaker may not be reassigned to

1 another speaker.

2 (d) Disability accommodation. Persons with disabilities
3 who have special communication or accommodation needs and who
4 plan to attend a hearing to be held by the commission may
5 contact the office of the secretary to the commission in Austin.
6 In the case of a hearing to be conducted by the department,
7 those persons may contact the public affairs officer whose
8 address and telephone number appear in the public notice for
9 that hearing. Requests should be made at least two days before
10 the hearing. The department will make every reasonable effort
11 to accommodate these needs.

12 (e) Language accommodation. For a hearing held in an area
13 with a substantial Spanish speaking population, the department
14 will provide:

15 (1) notice of the hearing in both English and Spanish;

16 and

17 (2) upon request, Spanish translation.