

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

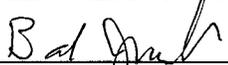
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §1.4 and §1.5 relating to public meetings and hearings to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the 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 §1.4 and §1.5 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

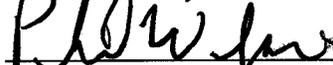
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



General Counsel

Recommended by:



Executive Director

112966 JAN 26 12

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §1.4, Public Access to Commission Meetings and
4 §1.5, Public Hearings, both concerning public comment.

5

6 EXPLANATION OF PROPOSED AMENDMENTS

7 S.B. No. 1420, 82nd Legislature, Regular Session, 2011, the
8 department's sunset bill, amended Transportation Code,
9 §201.802(a), to require the Texas Transportation Commission
10 (commission) to develop and implement policies that provide the
11 public with a reasonable opportunity to appear before the
12 commission and speak on any issue under the jurisdiction of the
13 department, rather than under the jurisdiction of the
14 commission, as required before the amendment. The commission
15 previously implemented the policies that were required under the
16 previous statute. This rule amends the current rules to clarify
17 that the commission will hear public comment on an issue within
18 the jurisdiction of the department. The change will have
19 little, if any, effect on the commission's operations. The
20 commission is ultimately responsible for the operation of the
21 department and for the related policy-making decisions;
22 therefore, the jurisdiction of the commission includes all of
23 the matters that are within the jurisdiction of the department.

24

25 Amendments to §1.4 change the word "commission" to "department"

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

11
12 Amendments to §1.5 change the word "commission" to "department"
13 in subsection (a)(8). The change authorizes the commission to
14 hold public hearings to accept public comment on any issue under
15 the jurisdiction of the department if acceptance of the public
16 comment is required by law or considered appropriate by the
17 commission.

18
19 FISCAL NOTE

20 James Bass, Chief Financial Officer, has determined that for
21 each of the first five years in which the amendments as proposed
22 are in effect, there will be no fiscal implications for state or
23 local governments as a result of enforcing or administering the
24 amendments.

25

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

4

5 PUBLIC BENEFIT AND COST

6 Mr. Jackson has also determined that for each year of the first
7 five years in which the sections are in effect, the public
8 benefit anticipated as a result of enforcing or administering
9 the amendments will be that the current practices and statutory
10 requirements are accurately reflected in the rules of the
11 department and commission. There are no anticipated economic
12 costs for persons required to comply with the sections as
13 proposed. There will be no adverse economic effect on small
14 businesses.

15

16 SUBMITTAL OF COMMENTS

17 Written comments on the proposed amendments to §1.4 and §1.5 may
18 be submitted to Bob Jackson, General Counsel, Texas Department
19 of Transportation, 125 East 11th Street, Austin, Texas 78701-
20 2483. The deadline for receipt of comments is 5:00 p.m. on
21 March 12, 2012.

22

23 STATUTORY AUTHORITY

24 The amendments are proposed under Transportation Code, §201.101,
25 which provides the commission with the authority to establish

1 rules for the conduct of the work of the department.

2

3 CROSS REFERENCE TO STATUTE

4 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, Chapter 51;

23 (3) provide for public input regarding the design,

1 schematic layout, and environmental impact of transportation
2 projects, in accordance with Transportation Code, §203.021, and
3 §2.42 of this title (relating to Federal-Aid Transportation
4 Projects) and §2.43 of this title (relating to Non Federal-Aid
5 Transportation Projects);

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

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

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

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

21 (8) provide, when deemed appropriate by the commission or
22 when otherwise required by law, for public input regarding any
23 other issue under the jurisdiction of the department

1 [~~commission~~].

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

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

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

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

16 (3) Presentations shall remain pertinent to the issue
17 being discussed.

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

21 (5) Time allotted to one speaker may not be reassigned to
22 another speaker.

23 (d) Disability accommodation. Persons with disabilities

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

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

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

14 and

15 (2) upon request, Spanish translation.