

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 §15.90, Reports and Audits, relating to Transportation Corporations, 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 §15.90 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:

James M Bass
Chief Financial Officer

Recommended by:

Richard W. ...
Executive Director

113112 MAY 31 12

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §15.90, Reports and Audits, concerning
4 Transportation Corporations.

5
6 EXPLANATION OF PROPOSED AMENDMENTS

7 Under §§15.94 and 15.95 of the department's rules concerning
8 transportation corporations, the Texas Transportation Commission
9 (commission) is authorized to create a transportation
10 corporation for the purpose of (1) issuing private activity
11 bonds for transportation projects developed or to be developed
12 under comprehensive development agreements entered into by the
13 department, and (2) developing, financing, designing,
14 constructing, reconstructing, expanding, operating, or
15 maintaining a department toll project. The directors of those
16 corporations are full-time, permanent employees of the
17 department.

18
19 Section 15.90(c) requires a corporation to submit to the
20 executive director of the department an annual financial audit
21 conducted by an independent certified public accountant in
22 accordance with that subsection.

23
24 The intent of §15.90(c) was to require private corporations to
25 provide audited reports, since those reports would need to be
26 incorporated in the department's annual report. Those reports

1 are not needed for corporations created by the commission. The
2 department's agency wide financials do not typically receive an
3 audit opinion, however significant line items are audited as
4 part of the state's consolidated annual financial report.

5
6 Section 15.90(c) is amended to provide that a corporation that
7 is authorized by the commission under §§15.94 or 15.95 is not
8 required to have an annual audit performed and is not required
9 to submit a report under that subsection.

10

11 FISCAL NOTE

12 James Bass, Chief Financial Officer, has determined that for
13 each of the first five years the amendments are in effect, there
14 will be fiscal implications for state government as a result of
15 enforcing or administering the amendments. The state will save
16 \$28,000 per year for each of the first five years the amendments
17 are in effect, based on the estimated amount the State Auditor's
18 Office would charge the department for performing the annual
19 audit. There will be no fiscal implications for local
20 governments as a result of enforcing or administering the
21 amendments.

22

23 Mr. Bass has certified that there will be no significant impact
24 on local economies or overall employment as a result of
25 enforcing or administering the amendments.

26

1 PUBLIC BENEFIT AND COST

2 Mr. Bass has also determined that for each year of the first
3 five years the amendments are in effect, the public benefit
4 anticipated as a result of enforcing or administering the
5 amendments will be to remove the need to expend limited state
6 highway funds on the performance of obligations not intended to
7 apply to certain transportation corporations. There are no
8 anticipated economic costs for persons required to comply with
9 the sections as proposed. There will be no adverse economic
10 effect on small businesses.

11

12 SUBMITTAL OF COMMENTS

13 Written comments on the proposed amendments to §15.90 may be
14 submitted to James Bass, Chief Financial Officer, Texas
15 Department of Transportation, 125 East 11th Street, Austin,
16 Texas 78701-2483. The deadline for receipt of comments is 5:00
17 p.m. on July 16, 2012. In accordance with Transportation Code,
18 §201.811(a)(5), a person who submits comments must disclose, in
19 writing with the comments, whether the person does business with
20 the department, may benefit monetarily from the proposed repeal,
21 or is an employee of the department.

22

23 STATUTORY AUTHORITY

24 The amendments are proposed under Transportation Code, §201.101,
25 which provides the commission with the authority to establish
26 rules for the conduct of the work of the department, and more

1 specifically, Transportation Code, §431.023, which authorizes
2 the commission to approve the creation of a transportation
3 corporation.

4

5 CROSS REFERENCE TO STATUTE

6 Transportation Code, Chapter 431.

1 SUBCHAPTER H. TRANSPORTATION CORPORATIONS

2 §15.90. Reports and Audits.

3 (a) Written reports.

4 (1) Project status report. Except as provided in
5 paragraph (3) of this subsection, for each transportation
6 project, the corporation shall submit a quarterly project status
7 report after the end of each of the state's fiscal quarters
8 during the construction of the project, that must include, at a
9 minimum:

10 (A) the scope of work authorized by the commission;

11 (B) the work that has been accomplished in that
12 quarter;

13 (C) the anticipated completion date of the project, as
14 well as anticipated completion dates for various segments of the
15 project, if applicable;

16 (D) the status of coordinating activities with other
17 governmental entities and with railroads, utilities and others;

18 (E) project fiscal data, including funds received,
19 expended, available, and projected completion costs; and

20 (F) comments on significant accomplishments, problems,
21 and concerns of the corporation.

22 (2) Certification. Reports submitted under this
23 subsection must be approved by official action of the board and

1 certified as correct by the president of the corporation.

2 (3) Inactivity. If the project status has not changed in
3 the preceding period, the corporation may submit, in lieu of the
4 quarterly project status report, a certification stating that no
5 activity has taken place.

6 (4) Submission dates. Reports or the certification
7 required by this subsection must be submitted to the executive
8 director within 60 days after the end of each of the state's
9 fiscal quarter.

10 (b) Annual commission report. Every 12 months, the
11 corporation shall submit to the commission a report on its
12 current condition, status of projects, and activities undertaken
13 the preceding 12 months, and shall be available to appear before
14 the commission, at the commission's discretion, to discuss the
15 report.

16 (c) Annual audits. The corporation shall submit reports of
17 an annual financial audit in accordance with this subsection. A
18 corporation that is authorized by the commission under §15.94 or
19 §15.95 of this subchapter (relating to CDA Projects Corporation
20 and Toll Project Corporations, respectively) is not required to
21 have an annual audit performed and is not required to submit a
22 report under this subsection.

23 (1) Submission date. The annual audit shall be submitted

1 to the executive director within 120 days after the end of the
2 state's fiscal year (August 31).

3 (2) Certification. The audit must be conducted by an
4 independent certified public accountant in accordance with
5 generally accepted auditing standards. The accompanying
6 financial report shall be prepared according to pronouncements
7 by the Government Accounting Standards Board.

8 (3) Content. The audit shall include, at a minimum:

9 (A) an evaluation of the corporation's internal
10 accounting system and controls;

11 (B) a statement regarding the corporation's compliance
12 with the guidelines established by the commission for its
13 operation, including both the positive and negative compliance
14 (summary of all instances of noncompliance, if any, must be
15 included);

16 (C) a statement regarding the corporation's compliance
17 with the Public Funds Investment Act, Government Code, Chapter
18 2256, as applicable;

19 (D) a complete recapitulation of the corporation's
20 income and expenditures as well as assets and liabilities; and

21 (E) an unqualified certification by the certified
22 public accountant.

23 (4) Paperwork retention period. All work papers and

1 reports shall be retained for a minimum of four years from the
2 date of the audit report, unless the certified public accountant
3 is notified by the department in writing, to extend the
4 retention period.

5 (5) Availability of audit work papers. If requested by
6 the department, audit work papers shall be made available to the
7 executive director at the completion of the audit.

8 (d) Other reports. The corporation will provide other
9 reports and information regarding the corporation promptly when
10 requested by the executive director.