

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 §2.1, relating to the applicability of the Texas Department of Transportation's environmental review and public involvement requirements to certain transportation projects that are not on the state highway system, 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*.

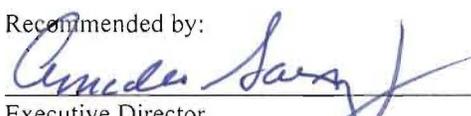
IT IS THEREFORE ORDERED by the commission that the amendments to §2.1 are adopted and are authorized for filing with the Office of the Secretary of State.

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:

  
\_\_\_\_\_  
Director, Environmental Affairs Division

Recommended by:

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

**111668 JAN 29 09**

Minute  
Number

Date  
Passed

Adoption Preamble

The Texas Department of Transportation (department) adopts amendments to §2.1, concerning the applicability of the department's environmental review and public involvement requirements to transportation projects that are not on the state highway system. The amendments to §2.1 are adopted without changes to the proposed text as published in the December 5, 2008 issue of the *Texas Register* (33 TexReg 9954) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Transportation Code, §228.012 requires the department to create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement (CDA), the surplus revenue of a toll project or system, and payments received under Transportation Code, §228.0111(g)(2) and (i)(2). The department is required to create subaccounts in the account for each project, system, or region, and to hold money in a subaccount in trust for the benefit of the region in which a project or system is located. The department may assign the responsibility for allocating money in a subaccount to a metropolitan planning organization (MPO) in which the region is located.

Money in a subaccount must be allocated to projects authorized

1 by Transportation Code, §228.0055 or §228.006 or, for money  
2 deposited into a subaccount in connection with a project for  
3 which a county acting under Transportation Code, Chapter 284 has  
4 the first option, to transportation projects located in the  
5 county and the counties contiguous to that county. The projects  
6 for which money in a subaccount may be allocated include  
7 transportation projects that are not on the state highway  
8 system.

9  
10 The department has created subaccounts in the state highway fund  
11 to hold the payments received from the North Texas Tollway  
12 Authority (NTTA) for the right to develop, finance, design,  
13 construct, operate, and maintain the SH 121 toll project from  
14 Business SH 121 in Denton County to US 75 in Collin County  
15 (SH 121 subaccounts). Responsibility for allocating money in  
16 the SH 121 subaccounts has been assigned to the Regional  
17 Transportation Council (RTC), the transportation policy council  
18 of the North Central Texas Council of Governments (NCTCOG),  
19 under an agreement which provides that the selection of projects  
20 to be financed using those funds shall be made by the RTC,  
21 subject to Texas Transportation Commission (commission)  
22 concurrence.

23  
24 The commission has authorized the executive director of the  
25 department to enter into an agreement with the NCTCOG under

1 which the department will transfer funds from the SH 121  
2 subaccounts to pay for the costs of projects that are not on the  
3 state highway system. The department may create additional  
4 subaccounts and may enter into agreements under which funds in  
5 those subaccounts are used to pay the costs of projects.

6  
7 For some projects to be funded with money in the SH 121  
8 subaccounts, the local governmental entities implementing those  
9 projects have been complying with environmental review,  
10 permitting, and other approval and public notice requirements  
11 applicable to those entities. The environmental review and  
12 public involvement for those projects may need to recommence if  
13 those projects are subject to the requirements of 43 TAC Chapter  
14 2, Subchapter A. Other projects to be funded with money in the  
15 SH 121 subaccounts are anticipated to require a more limited  
16 environmental review focused on permitting and other approvals.  
17 All of the approved projects were selected by the RTC using a  
18 competitive evaluation process, resulting in the selection of  
19 projects that need to be built quickly. The RTC has determined  
20 that the approved projects will mitigate or prevent air  
21 pollution caused by the construction, maintenance, or use of  
22 other proposed or existing public roads in the area.

23  
24 Amendments to §2.1, General; Emergency Action Procedures,  
25 provide that the environmental review and public involvement

1 requirements of 43 TAC Chapter 2, Subchapter A do not apply to a  
2 project that is not on the state highway system the department  
3 funds solely with money held in a project subaccount created  
4 under Transportation Code, §228.012. The amendments require a  
5 project agreement entered into by the department ensure that the  
6 entity responsible for implementing such a project complies with  
7 all environmental review and public involvement requirements  
8 applicable to that entity under state and federal law in  
9 connection with the project.

10

11 COMMENTS

12 No comments on the proposed amendments were received.

13

14 STATUTORY AUTHORITY

15 The amendments are adopted under Transportation Code, §201.101,  
16 which provides the commission with the authority to establish  
17 rules for the conduct of the work of the department, and more  
18 specifically, Transportation Code, §201.604, which requires the  
19 commission by rule to provide for the commission's environmental  
20 review of the department's transportation projects that are not  
21 subject to review under the National Environmental Policy Act  
22 (42 U.S.C. §4321 et seq.).

23

24 CROSS REFERENCE TO STATUTE

25 Transportation Code, §201.604 and Transportation Code, §228.012.

1 SUBCHAPTER A. ENVIRONMENTAL REVIEW AND PUBLIC INVOLVEMENT FOR  
2 TRANSPORTATION PROJECTS

3 §2.1. General; Emergency Action Procedures.

4 (a) Policy. The Texas Transportation Commission  
5 (commission) and the Texas Department of Transportation  
6 (department) will protect, preserve and, when practicable,  
7 enhance the environment. The focus shall be on the human  
8 environment including the earth's systems, consisting of water,  
9 air, land, plants, people, and animals and the  
10 interrelationships that exist among these, including ecological,  
11 socio-economic, and archeological/cultural resources.

12 Particular emphasis will be placed on avoidance, minimization,  
13 and compensation for adverse environmental impacts. Social and  
14 environmental concerns will be balanced with economic growth.

15 The commission and the department will fully integrate  
16 environmental and public involvement considerations into  
17 department policies, procedures, and decision-making practices,  
18 and will do so in a systematic, interdisciplinary manner.

19 (b) Applicability; Exception.

20 (1) This subchapter prescribes the environmental review  
21 and public involvement requirements for:

22 (A) a department transportation project;

23 (B) a transportation project of a private or public

1 entity in which the project is funded in whole or in part by the  
2 department; or

3 (C) a transportation project of a private or public  
4 entity when the project requires commission or department  
5 approval.

6 (2) Transportation project. A transportation project is  
7 a highway improvement, rest area, aviation, toll project, public  
8 transportation, rail transportation project, ferry landing  
9 project, ferry maintenance, transportation enhancement, or a  
10 project for the construction or operation of a facility that is  
11 a part of the Trans-Texas Corridor. A highway improvement  
12 project is a highway construction or maintenance project under  
13 one or more of Transportation Code, Chapters 201, 203, 221, 223,  
14 227, or 228.

15 (3) Exception. Notwithstanding paragraph (1) of this  
16 subsection, the requirements of this subchapter do not apply to  
17 a project that is not on the state highway system and that the  
18 department funds solely with money held in a project subaccount  
19 created under Transportation Code, §228.012. A project  
20 agreement entered into by the department shall ensure that the  
21 entity responsible for implementing such a project complies with  
22 all environmental review and public involvement requirements  
23 applicable to that entity under state and federal law in

1 connection with the project.

2 (c) - (h) (No change.)