

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

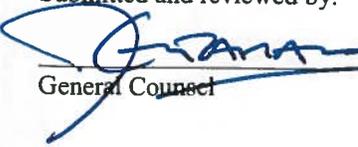
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §1.4, Public Access to Commission Meetings, and §1.5, Public Hearings, relating to Public Meetings and Hearings, and §1.11, Petition, relating to Procedure for Adoption of Rules, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A – C, 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, 1.5, and 1.11 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

154558 APR 28 06

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, §1.5,  
4 Public Hearings, and §1.11, Petition, concerning management of  
5 the department.

6

7 EXPLANATION OF PROPOSED AMENDMENTS

8 Government Code, §2001.039 requires a state agency to review  
9 each of its rules every four years or more frequently and, as  
10 the result of the review, to decide whether to readopt, amend,  
11 or repeal the rule. In the course of reviewing 43 TAC Chapter  
12 1, the department identified several changes that need to be  
13 made as technical corrections of the rules or to accurately  
14 reflect procedures currently being followed by the department.

15

16 Amendments to §1.4, Public Access to Commission Meetings,  
17 correct information related to special accommodations.  
18 Subsection (e) is amended to clarify that requests for  
19 disability accommodations should be made to the person or office  
20 specified in the notice of the hearing and to extend the period  
21 of prior notice to the department, so that appropriate  
22 arrangements can be made for such a request. Each notice  
23 contains information for making a request for a disability  
24 accommodation.

25

1 Amendments to §1.5, Public Hearings, correct the listing of  
2 reasons for which the commission may hold public hearings.  
3 Currently, subsection (a)(6) provides that the commission may  
4 hold hearings to receive comments before converting a segment of  
5 the non-tolled state highway system to a toll project under  
6 Transportation Code, §228.203. Section 228.203 was repealed by  
7 S.B. No. 1029, Acts of the 83rd Legislature, Regular Session,  
8 2013; therefore, subsection (a)(6) is deleted, the paragraphs of  
9 subsection (a) are redesignated accordingly, and references to  
10 the redesignated paragraphs are changed.

11  
12 The amendments also change subsection (e) relating to disability  
13 accommodations to correspond to the changes made to §1.4(e).  
14 The changes relate to where requests for accommodations should  
15 be directed and the period for making such a request.

16  
17 Amendments to §1.11, Petition, clarify the term "interested  
18 person" is subject to the limitations provided by Government  
19 Code, §2001.021, the provision in the Administrative Procedure  
20 Act relating to a petition to a state agency to request the  
21 adoption of a rule. Under §2001.021, an interested person must  
22 be a Texas resident or a business entity, governmental  
23 subdivision, or public or private organization located in this  
24 state. The amendments also correct the term used for the  
25 administrative head of the department.

1

2 FISCAL NOTE

3 Brian Ragland, Chief Financial Officer, has determined that for  
4 each of the first five years in which the amendments as proposed  
5 are in effect, there will be no fiscal implications for state or  
6 local governments as a result of enforcing or administering the  
7 amendments.

8

9 Mr. Jeff Graham, General Counsel, has certified that there will  
10 be no significant impact on local economies or overall  
11 employment as a result of enforcing or administering the  
12 amendments.

13

14 PUBLIC BENEFIT AND COST

15 Mr. Graham has also determined that for each year of the first  
16 five years in which the sections are in effect, the public  
17 benefit anticipated as a result of enforcing or administering  
18 the amendments will be increased efficiency and transparency  
19 resulting from the accuracy of the rules. There are no  
20 anticipated economic costs for persons required to comply with  
21 the sections as proposed. There will be no adverse economic  
22 effect on small businesses.

23

24 SUBMITTAL OF COMMENTS

25 Written comments on the proposed amendments to §§1.4, 1.5, and

1 1.11 may be submitted to Rule Comments, Office of General  
2 Counsel, Texas Department of Transportation, 125 East 11th  
3 Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov  
4 with the subject line "Chapter 1 rule changes." The deadline  
5 for receipt of comments is 5:00 p.m. on June 13, 2016. In  
6 accordance with Transportation Code, §201.811(a)(5), a person  
7 who submits comments must disclose, in writing with the  
8 comments, whether the person does business with the department,  
9 may benefit monetarily from the proposed amendments, or is an  
10 employee of the department.

11

12 STATUTORY AUTHORITY

13 The amendments are proposed under Transportation Code, §201.101,  
14 which provides the Texas Transportation Commission (commission)  
15 with the authority to establish rules for the conduct of the  
16 work of the department.

17

18 CROSS REFERENCE TO STATUTE

19 Government Code, Chapter 2001, Subchapter B. Transportation  
20 Code, Sec. 228.204.

1                   SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

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  
16 in subsection (g)(6) of this section.

17           (c) New agenda items.

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

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

1 (B) a clear and concise statement of the subject  
2 of the 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 and that the proposed  
6 item concerns a matter in which there is sufficient public  
7 interest to warrant consideration by the commission as an agenda  
8 item, the chair may place the matter on the posted agenda for  
9 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.

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 person or  
4 office specified in the notice of the meeting [~~of the secretary~~  
5 ~~to the commission in Austin~~]. Requests should be made at  
6 least three working [~~two~~] days before a meeting. The department  
7 will make every reasonable effort to accommodate these needs.

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

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

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

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

22                 (3) Presentations shall remain pertinent to the issue  
23 being discussed.

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

3           (5) Time allotted to one speaker may not be reassigned  
4 to another speaker.

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

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

14

15 §1.5. Public Hearings.

16          (a) Subject of hearings. The commission may hold public  
17 hearings to:

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

20           (2) receive evidence and testimony concerning the  
21 desirability of acquiring dredge material disposal sites and of  
22 any widening, relocation, or alteration of the main channel of  
23 the Gulf Intracoastal Waterway, in accordance with

1 Transportation Code, §51.006 and Chapter 2 of this title  
2 (relating to Environmental Review of Transportation Projects);

3 (3) provide for public input regarding the design,  
4 schematic layout, and environmental impact of transportation  
5 projects, in accordance with Transportation Code, §203.021, and  
6 Chapter 2 of this title;

7 (4) consider maximum prima facie speed limits on  
8 highways in the state highway system that are near public or  
9 private elementary or secondary schools or institutions of  
10 higher education, in accordance with Transportation Code,  
11 §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 (6) [~~(7)~~] receive comments from interested parties  
21 prior to approving any financial assistance under Transportation  
22 Code, §21.111, relating to aviation facilities development; and

23 (7) [~~(8)~~] provide, when deemed appropriate by the

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

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), (6), and (7) [~~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  
16 encouraged to present their commonly held views and same or  
17 similar 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  
21 the hearing room if ordered to do so by the chair or the  
22 presiding officer.

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

1 to 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 person or office specified in the notice of the  
6 hearing [~~of the secretary to the commission in Austin~~]. In the  
7 case of a hearing to be conducted by the department, those  
8 persons may contact the public affairs officer whose address and  
9 telephone number appear in the public notice for that hearing.  
10 Requests should be made at least three working [~~two~~] days before  
11 the hearing. The department will make every reasonable effort  
12 to accommodate these needs.

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

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

17 and

18 (2) upon request, Spanish translation.

1 SUBCHAPTER D. PROCEDURE FOR ADOPTION OF RULES

2 §1.11. Petition. Any interested person, as described by  
3 Government Code, Sec. 2001.021, may petition the department  
4 requesting the adoption of a rule. Such petition must be in  
5 writing directed to the executive director [~~engineer-director~~]  
6 at the department's headquarters building in Austin and shall  
7 contain a clear and concise statement of the substance of the  
8 proposed rule, together with a brief explanation of the purpose  
9 to be accomplished through such adoption. Within 60 days after  
10 receipt, the department will either deny the petition in  
11 writing, stating its reasons therefor, or will initiate  
12 rulemaking proceedings in accordance with the Administrative  
13 Procedure Act (Government Code, Chapter 2001, Subchapter B).