

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt new §§12.351-12.355, relating to Acknowledgment Program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new sections, 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 new §§12.351-12.355 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:

Carolyn Dill, P.E.
Director, Maintenance Division

Recommended by:

[Signature]
Executive Director

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Minute Number Date Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts new
3 Subchapter K, Acknowledgment Program, §§12.351 - 12.355. New
4 §§12.351 - 12.355 are adopted without changes to the proposed
5 text as published in the November 9, 2012 issue of the *Texas*
6 *Register* (37 TexReg 8952) and will not be republished.

7

8 EXPLANATION OF ADOPTED NEW SECTIONS

9 New Subchapter K provides for a state acknowledgement program
10 that will allow the department to place signs to acknowledge the
11 acceptance of donations under Transportation Code, §201.206 for
12 transportation services, such as mowing, litter and debris pick-
13 up on the state's right of way, maintenance services for safety
14 rest areas, toll gantry facilities, and Travel Information
15 Centers.

16

17 Federal law generally prohibits advertisement in the state right
18 of way. However, the Federal Highway Administration (FHWA)
19 released new guidelines on March 13, 2012 allowing the use of
20 sponsorship acknowledgement signs on state right of way. The
21 new guidelines allow the use of business logos and emblems that
22 were not originally allowed under the Adopt-a-Highway program.
23 Through the new guidelines, FHWA has recognized a distinction
24 between advertisements and acknowledgement signs. The
25 guidelines provide the state the opportunity to acknowledge

1 donations made by business entities through acknowledgement
2 signs. The new guidelines limit the sign to recognition of the
3 donation of a transportation service and prohibit the inclusion
4 of any contact or location information.

5
6 The department may solicit proposals for one or more
7 professional service vendors to market, administer, recruit, and
8 secure sponsors for the program at no cost to the department.

9 Under the program a participating sponsor will be recognized
10 with an acknowledgment sign near the location for which the
11 services are being provided.

12
13 New §12.351, Purpose, states that the new subchapter authorizes
14 the acknowledgement program and provides the general information
15 about the program.

16
17 New §12.352, Definitions, provides the definitions for terms
18 used within the subchapter. The terms are defined to provide a
19 clear understanding of their usage within the subchapter.

20
21 New §12.353, Acknowledgement Program, authorizes the department
22 to develop an acknowledgement program. The program will allow
23 the recognition of monetary donations for highway-related
24 purposes, as determined by the department and as required by the
25 applicable federal guidelines. The section provides the basic

1 program requirements, which comply with FHWA guidelines.

2

3 New §12.353 provides that the department may contract under
4 §12.354 with one or more vendors to provide the marketing
5 services and if so, the department will continue to provide the
6 transportation service and sign installation. This allows the
7 department to use an outside source for the parts of the program
8 for which the department has limited expertise but to maintain
9 control over the services that the department routinely handles.
10 This will allow the greatest part of the funds to go toward the
11 service by reducing administrative costs of the vendor.

12

13 New §12.353(g) prohibits the acceptance of donations from
14 entities that are regulated by the department or that are
15 involved in a contract, purchase, payment, or claim. This
16 language allows for consistency with the current donation
17 program. Subsection (h) prohibits an acknowledgement sign's
18 reference to an alcoholic beverage, tobacco product, or
19 sexually-oriented business. This maintains consistency with
20 other department programs as these restrictions are also placed
21 on advertisement in the *Texas Highways* magazine.

22

23 New §12.354, Acknowledgement Program Vendor Contract; Program
24 Agreement, provides the requirements for the contract with the
25 vendor. The section allows the department to contract with one

1 or more vendors to provide the marketing services. It places
2 specific requirements on the vendor's contract with the
3 participating sponsors. These requirements ensure that the
4 program complies with the federal guidelines. The vendor must
5 maintain sponsor information and provide monthly and annual
6 reports to the department. This will eliminate duplicative work
7 by allowing the department to rely on the vendor's data. The
8 vendor is responsible for notifying the participating sponsor if
9 the sign must be relocated due to the need for a regulatory,
10 warning, or guide sign. A delay in relocating the sign may
11 result in the extension of the associated participation
12 agreement, so that the participating sponsor receives a posted
13 sign for the full time authorized by the agreement.

14

15 New §12.355, Acknowledgement Sign, provides the requirements for
16 the acknowledgement signs. The sign must comply with the Texas
17 Manual on Uniform Traffic Control Devices (TMUTCD), which
18 regulates the size and format of the sign. The section also
19 states that regulatory, warning, and guidance signs have
20 priority over an acknowledgement sign. The TMUTCD has been
21 adopted by the Texas Transportation Commission. The TMUTCD
22 expressly provides requirements for acknowledgement signs, which
23 cannot be changed without amendment of the manual by commission
24 rule. Restatement of the specific sign requirements in this
25 subchapter is unnecessary.

1
2 To comply with FHWA guidelines §12.355 requires that the sign be
3 placed near the site for which the donation was offered, and
4 prohibits the location of an acknowledgment sign within one mile
5 of another acknowledgment sign if the signs are facing the same
6 direction and associated with the same highway-related purpose.
7 The section also gives specific guidance for signs in the rest
8 area and travel information centers. The requirements of this
9 section mirror FHWA guidelines, which must be included in the
10 department's program.

11
12 COMMENTS

13 No comments on the proposed new sections were received.

14
15 STATUTORY AUTHORITY

16 The new sections are adopted under Transportation Code,
17 §201.101, which provides the Texas Transportation Commission
18 with the authority to establish rules for the conduct of the
19 work of the department.

20
21 CROSS REFERENCE TO STATUTE

22 Transportation Code, §201.206.

1 SUBCHAPTER K. ACKNOWLEDGMENT PROGRAM

2 §12.351. Purpose. The purpose of this subchapter is to provide
3 for a state acknowledgment program that allows the department to
4 acknowledge donations for certain highway-related services such
5 as ground maintenance identified as mowing, litter and debris
6 pick-up on the state's right-of-way, and maintenance services
7 for safety rest areas, Travel Information Centers, and toll
8 gantry facilities with federally approved acknowledgment signs
9 in the state right-of-way.

10

11 §12.352. Definitions. The following words and terms, when used
12 in this subchapter, have the following meanings, unless the
13 context clearly indicates otherwise.

14 (1) Acknowledgment sign--A sign that is intended only to
15 inform the traveling public that a highway-related service is
16 sponsored by a participating sponsor.

17 (2) Department--The Texas Department of Transportation.

18 (3) Participating sponsor--An individual, corporation,
19 business, firm, group, or association that contributes towards a
20 highway-related service.

21 (4) TMUTCD--Texas Manual on Uniform Traffic Control Devices
22 issued by the department.

23 (5) Vendor--An individual or business that acts as the

1 authorized agent of the department in the marketing,
2 administration, and soliciting of a participating sponsor for
3 the acknowledgment program.

4

5 §12.353. Acknowledgment Program.

6 (a) The department may develop an acknowledgment program to
7 recognize monetary donations provided to benefit a highway-
8 related service.

9 (b) A donation may be used only for the highway-related
10 purpose for which it is made.

11 (c) The acknowledgment program is applicable to all state
12 highways.

13 (d) Chapter 1, Subchapter M of this title (relating to
14 Donations) does not apply to a donation accepted under this
15 program.

16 (e) The department may contract with a vendor under §12.354
17 of this subchapter (relating to Acknowledgment Program Vendor
18 Contract; Program Agreement) for services related to the
19 program. If a vendor is used, the department will continue to
20 manage and provide the highway-related services funded by the
21 donations.

22 (f) The department will install and maintain the
23 acknowledgment signs erected under this program.

1 (g) The department may not accept donations from an
2 individual or entity that is regulated by the department or that
3 is involved with the department through a contract, purchase,
4 payment, or claim, and such an individual or entity may not
5 participate in the acknowledgment program.

6 (h) The department may not place an acknowledgment sign
7 that references:

8 (1) an alcoholic beverage;

9 (2) tobacco product; or

10 (3) sexually oriented business, product, or service.

11

12 §12.354. Acknowledgment Program Vendor Contract; Program
13 Agreement.

14 (a) The department may contract with one or more
15 individuals or businesses for professional services to market,
16 administer, recruit, or secure sponsors for the acknowledgment
17 program.

18 (b) The department will require a vendor to enter into an
19 agreement prescribed by the department with each participating
20 sponsor.

21 (c) The agreement must:

22 (1) be for a term of not less than two years;

23 (2) require that the participating sponsor comply with

1 state law, including laws prohibiting discrimination based on
2 race, religion, color, age, sex, or national origin;

3 (3) include a termination clause based on safety
4 concerns, interference with the free and safe flow of traffic,
5 or a determination that the sponsorship agreement is not in the
6 public interest;

7 (4) provide the specific amount of the donation;

8 (5) state the fee or fees charged by the vendor to
9 administer the program (directly or indirectly paid by the
10 participating sponsor);

11 (6) state the specific service being sponsored;

12 (7) provide the location of the acknowledgment sign, to
13 include roadway, exit number or crossroad, and county; and

14 (8) state the date of expiration of agreement.

15 (d) The vendor shall notify the department within three
16 calendar days of receipt of a donation from a participating
17 sponsor. The notification must include:

18 (1) the name of the participating sponsor;

19 (2) the transportation service for which the donation was
20 made;

21 (3) the general location for the acknowledgment sign;

22 (4) the name, logo, or emblem requested by the
23 participating sponsor to be placed on the sign; and

1 (5) the date on which the sponsorship agreement expires.

2 (e) The department will determine the location of each
3 acknowledgment sign and promptly will provide the determination
4 to the vendor. The vendor shall maintain the location
5 information in the participating sponsor's file.

6 (f) The vendor shall furnish an annual report to the
7 department. The annual report must include a listing of all
8 participating sponsors for which the vendor has accepted a
9 donation under an existing agreement, administrative fees
10 collected, and the annual revenue submitted to the department
11 for each program category. The department, in its discretion,
12 may require one or more other reports from a vendor.

13 (g) The vendor shall furnish, in a format prescribed by the
14 department, a monthly electronic inventory to the department.
15 The inventory shall include:

16 (1) a list of all participating sponsors in the program
17 for which the vendor is responsible;

18 (2) contact information on each participating sponsor
19 including address and key contact name and telephone numbers;

20 (3) the location information for each acknowledgment
21 sign, as provided at the time of installation by the department;
22 and

23 (4) the date of expiration of the agreement for each

1 participating sponsor.

2 (h) If the department determines that a regulatory,
3 warning, or guide sign is needed at a location, an
4 acknowledgment sign at or planned for that location will be
5 removed or relocated. The vendor, as directed by the
6 department, will notify the participating sponsor of the change.
7 If an acknowledgment sign is removed and not relocated within 24
8 hours of the time of removal, the vendor may extend the
9 participation agreement for a period equal to the number of days
10 in which the acknowledgment sign was not posted.

11 (i) The department may award one or more contracts for
12 professional services to market, administer, recruit, and secure
13 sponsors for the acknowledgment program.

14

15 §12.355. Acknowledgment Sign.

16 (a) An acknowledgment sign must comply with the
17 requirements of the TMUTCD, including the size and format
18 requirement.

19 (b) Regulatory, warning, and guidance signs take precedence
20 over an acknowledgment sign.

21 (c) An acknowledgment sign will be placed near the site for
22 which the associated donation was offered.

23 (d) Except as provided in subsection (f) of this section,

1 acknowledgment signs will be placed at least 1 mile apart from
2 each other if facing in the same direction and associated with
3 the same highway related purpose.

4 (e) An acknowledgment sign may not be appended to any other
5 sign, sign assembly, or other traffic control device.

6 (f) If a donation is made for a rest area or travel
7 information center the department:

8 (1) will install one acknowledgment sign for each
9 direction of travel on the highway mainline; and

10 (2) may install an acknowledgment sign in the rest area
11 or travel information center if that sign is not visible to the
12 highway mainlane traffic and does not pose a safety risk to the
13 rest area or travel information center users.