

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

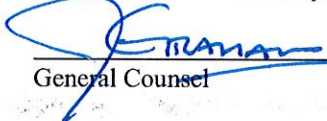
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §2.12 and §2.103, both relating to environmental review of transportation projects, to be codified under Title 43, Texas Administrative Code, Part 1.

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*.

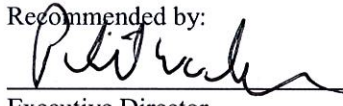
IT IS THEREFORE ORDERED by the commission that the amendments to §§2.12 and 2.103 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

113435 JAN 31 13

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §2.12, Project Coordination and §2.103, Public
4 Participation for an Environmental Impact Statement or
5 Supplemental Environmental Impact Statement.

6

7 EXPLANATION OF PROPOSED AMENDMENTS

8 Transportation Code, §201.607 requires the department to adopt a
9 memorandum of understanding (MOU) with each state agency that
10 has responsibilities for the protection of the natural
11 environment or for the preservation of historic or archeological
12 resources. Transportation Code, §201.607 also requires the
13 department to adopt the MOU and all revisions to it by rule, and
14 to periodically evaluate and revise the MOU. In order to meet
15 the legislative intent and to ensure that natural resources are
16 given full consideration in accomplishing the department's
17 activities, the department is repealing existing Subchapter B
18 and simultaneously adopting new Subchapters G, H, and I,
19 relating to Memorandum of Understanding with the Texas Parks and
20 Wildlife Department, Memorandum of Understanding with the Texas
21 Historical Commission, and Memorandum of Understanding with the
22 Texas Commission on Environmental Quality, respectively.

23

24 The amendments change the current references to 43 TAC Chapter
25 2, Subchapter B in the department's rules so that the sections

1 will reference the appropriate new provisions that are replacing
2 Subchapter B. The amendments to §2.12(b) change the reference
3 in that section from Subchapter B to new Subchapters G, H, and
4 I. The amendments to §2.103(d)(2)(B) and (g)(2) change the
5 references in those subsections from Subchapter B to new
6 Subchapters G, H, and I.

7

8 FISCAL NOTE

9 James Bass, Chief Financial Officer, has determined that for
10 each of the first five years in which the amendments as proposed
11 are in effect, there will be no fiscal implications for state or
12 local governments as a result of enforcing or administering the
13 amendments.

14

15 Jeff Graham, General Counsel, has certified that there will be
16 no significant impact on local economies or overall employment
17 as a result of enforcing or administering the amendments.

18

19 PUBLIC BENEFIT AND COST

20 Mr. Graham has also determined that for each year of the first
21 five years in which the sections are in effect, the public
22 benefit anticipated as a result of enforcing or administering
23 the amendments will be accuracy in the department's rules
24 related to memoranda of understand with other state agencies
25 concerning environmental review of transportation projects.

1 There are no anticipated economic costs for persons required to
2 comply with the sections as proposed. There will be no adverse
3 economic effect on small businesses.

4

5 SUBMITTAL OF COMMENTS

6 Written comments on the proposed amendments to §2.12 and §2.103
7 may be submitted to Robin Carter, Office of General Counsel,
8 Texas Department of Transportation, 125 East 11th Street,
9 Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the
10 subject line "§2.12 and §2.103." The deadline for receipt of
11 comments is 5:00 p.m. on March 18, 2013. In accordance with
12 Transportation Code, §201.811(a)(5), a person who submits
13 comments must disclose, in writing with the comments, whether
14 the person does business with the department, may benefit
15 monetarily from the proposed amendments, or is an employee of
16 the department.

17

18 STATUTORY AUTHORITY

19 The amendments are proposed under Transportation Code, §201.101,
20 which provides the Texas Transportation Commission with the
21 authority to establish rules for the conduct of the work of the
22 department.

23

24 CROSS REFERENCE TO STATUTE

25 Transportation Code, §201.607.

1 SUBCHAPTER A. GENERAL PROVISIONS

2 §2.12. Project Coordination.

3 (a) Participating agencies. A participating agency is any
4 agency, department, or other unit of federal, state, local, or
5 Indian tribal government, including a local flood control
6 authority, that may have an interest in a transportation
7 project, or that is a regulatory agency with jurisdiction over
8 an aspect of the project. The project sponsor and department
9 delegate will, in collaboration, identify the participating
10 agencies for a project.

11 (b) Identification of participating agencies. The
12 identification of participating agencies for a project will take
13 into account the nature and extent of the project, the
14 jurisdiction and interests of the agencies, whether the agencies
15 have previously expressed interest in similar projects, and any
16 laws requiring coordination with specific agencies. At a
17 minimum, participating agencies will include the Texas
18 Commission on Environmental Quality, the Texas Historical
19 Commission, and the Texas Parks and Wildlife Department to the
20 extent provided for in the [~~respective~~] memoranda of
21 understanding under Subchapters G, H, and I, as appropriate,
22 [~~Subchapter B~~] of this chapter (relating to Memorandum of

1 Understanding with the Texas Parks and Wildlife Department,
2 Memorandum of Understanding with the Texas Historical
3 Commission, and Memorandum of Understanding with the Texas
4 Commission on Environmental Quality, respectively [~~Memoranda of~~
5 ~~Understanding with Natural Resource Agencies~~]).

6 (c) - (g) (No change.)

1 SUBCHAPTER E. PUBLIC PARTICIPATION

2 §2.103. Public Participation for an Environmental Impact
3 Statement or Supplemental Environmental Impact Statement.

4 (a) - (c) (No change.)

5 (d) Notice of availability of DEIS. Notice of availability
6 of the DEIS will be made under this subsection after the DEIS is
7 approved under §2.84(d) of this chapter (relating to
8 Environmental Impact Statements).

9 (1) The department delegate will publish in the *Texas*
10 *Register* a notice of availability that describes a circulation
11 and comment period of not less than 45 days and that specifies
12 where comments may be sent.

13 (2) The project sponsor will:

14 (A) transmit the DEIS directly to participating
15 agencies;

16 (B) coordinate directly with participating agencies in
17 accordance with the memoranda of understanding under Subchapters
18 G, H, and I, [~~Subchapter B~~] of this chapter (relating to
19 Memorandum of Understanding with the Texas Parks and Wildlife
20 Department, Memorandum of Understanding with the Texas
21 Historical Commission, and Memorandum of Understanding with the
22 Texas Commission on Environmental Quality, respectively

1 [~~Memoranda of Understanding with Natural Resource Agencies~~]), if
2 applicable, memoranda of agreement, or other formal and informal
3 agreements with those entities;

4 (C) publish in local newspapers a notice of
5 availability that describes a circulation and comment period of
6 not less than 45 days and that specifies where comments may be
7 sent, unless there is no local newspaper in the area affected by
8 the project, in which event the project sponsor will publish the
9 notice of availability in a newspaper having general circulation
10 in the area affected by the project; and

11 (D) coordinate directly with local agencies, including
12 the appropriate metropolitan planning organization.

13 (e) - (f) (No change.)

14 (g) Notice of availability of FEIS. Notice of availability
15 will be made under this subsection after the FEIS is approved
16 under §2.84 of this chapter.

17 (1) The department delegate will publish notice of
18 availability of the FEIS in the *Texas Register*. The project
19 sponsor will provide, at a minimum, notice of availability of
20 the FEIS to the metropolitan planning organization, publish the
21 notice in a local newspaper having general circulation in the
22 area affected by the project, and provide the notice to the

1 local media through press release. If there is no local
2 newspaper in the area affected by the project, the project
3 sponsor will publish the notice in a newspaper having general
4 circulation in the area affected by the project. The notice
5 will:

6 (A) include information on obtaining copies; and

7 (B) state that the public will have not less than 30
8 days after the date of the publication of the notice in the
9 *Texas Register* to submit comments, and explain how the public
10 may submit comments.

11 (2) The project sponsor will coordinate directly with
12 other governmental entities in accordance with memoranda of
13 understanding under Subchapters G, H, and I, respectively
14 [~~Subchapter B~~] of this chapter, if applicable, memoranda of
15 agreement, or other formal and informal agreements with those
16 entities.

17 (h) - (j) (No change.)