

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 §26.2, Definitions, and new §26.36, Projects of Another Governmental Entity, relating to the planning, design, construction, maintenance, repair, or operation of a transportation project by a regional mobility authority, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble, and the proposed amendments and new section, 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 §26.2 and new §26.36 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 W. Koch, Jr.  
Director of Transportation Planning and Programming

Recommended by:

[Signature]  
Executive Director

**114006 JUL 31 04**

Minute Number      Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes  
3 amendments to §26.2 and new §26.36, concerning Regional Mobility  
4 Authorities.

5

6 EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

7 Senate Bill 1489, 83rd Legislature, Regular Session, 2013,  
8 expanded the definition of a transportation project a regional  
9 mobility authority (RMA) is authorized to acquire, plan, design,  
10 construct, maintain, repair, or operate, and authorized an RMA  
11 to enter into an agreement under which the RMA may acquire,  
12 plan, design, construct, maintain, repair, or operate a  
13 transportation project on behalf of another governmental entity  
14 in this state.

15

16 Under Transportation Code, §370.033(f), except as for a  
17 transportation project described in Transportation Code,  
18 §370.033(f)(1) and (2), the department must approve an RMA's  
19 acquisition, planning, design, construction, maintenance,  
20 repair, or operation of a transportation project on behalf of  
21 another governmental entity. The amendments and new section  
22 implement the changes in the definition of transportation  
23 project, and prescribe the procedures by which the commission  
24 will consider approval of a transportation project.

25

1 The amendments to §26.2 amend the definition of a transportation  
2 project an RMA is authorized to acquire, plan, design,  
3 construct, maintain, repair, or operate.

4  
5 In order to ensure the commission has the information necessary  
6 to make an informed decision on whether to approve an RMA's  
7 acquisition, planning, design, construction, maintenance,  
8 repair, or operation of a transportation project on behalf of  
9 another governmental entity, new §26.36 requires an RMA to  
10 submit a request to the department's executive director.

11  
12 The request must include an overview of the transportation  
13 project for which the request is made, including total costs and  
14 a description of the work to be performed by the RMA, a  
15 description of the need for the project and the benefits  
16 anticipated to result from completion of the project, a proposed  
17 project funding plan, anticipated department participation in  
18 the project, written approval of the project by the board of the  
19 RMA and the governing body of the governmental entity, a  
20 description of local public support for the project and any  
21 local public opposition, a preliminary project development and  
22 implementation schedule, a description of the RMA's experience  
23 in developing comparable transportation projects, information  
24 concerning how the project will be consistent with applicable  
25 transportation plans, a preliminary identification of known

1 environmental issues, and a binding commitment to fully consider  
2 the environmental consequences of the proposed project and  
3 comply with applicable environmental laws and requirements.

4

5 New §26.36 provides that the commission may approve a request if  
6 the RMA commits to comply with all applicable federal, state,  
7 and, if applicable, department requirements. In determining  
8 whether to approve a request, the commission will consider the  
9 ability of the RMA to complete the work to be performed by the  
10 RMA, the need for the project and whether the project is ready  
11 for development, the anticipated benefit of the project, and  
12 evidence of local support.

13

14 New §26.36 provides that the commission may approve a request if  
15 it finds that the project will be consistent with applicable  
16 statewide and metropolitan transportation plans, the RMA's  
17 participation in the project will facilitate the ability of the  
18 governmental entity to complete the project and achieve the  
19 benefits anticipated to be derived from the project, the project  
20 will neither duplicate nor conflict with the operations of  
21 the department, the project is supported by the RMA, the  
22 governmental entity, the metropolitan planning organization  
23 (MPO) with jurisdiction over the project, and each other entity  
24 affected by the project, and the project is in the best interest  
25 of the region.

1  
2 The information submitted with a request, and the criteria  
3 considered by the commission in determining whether to approve a  
4 request, and the findings that must be made by the commission in  
5 approving a request, are intended to enable the commission to  
6 conclude that the transportation project is a needed project,  
7 and will be completed, and the benefits anticipated from project  
8 completion will be achieved, in a timely manner.

9

10 FISCAL NOTE

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

16

17 James Koch, P.E., Director of Transportation Planning and  
18 Programming, has certified that there will be no significant  
19 impact on local economies or overall employment as a result of  
20 enforcing or administering the amendments and new section.

21

22 PUBLIC BENEFIT AND COST

23 Mr. Koch has also determined that for each year of the first  
24 five years in which the sections are in effect, the public  
25 benefit anticipated as a result of enforcing or administering

1 the amendments and new section will be to facilitate the ability  
2 of governmental entities to complete needed transportation  
3 projects and achieve the benefits anticipated to be derived from  
4 the projects. There are no anticipated economic costs for  
5 persons required to comply with the sections as proposed. There  
6 will be no adverse economic effect on small businesses.

7

8 PUBLIC HEARING

9 Pursuant to the Administrative Procedure Act, Government Code,  
10 Chapter 2001, the Texas Department of Transportation will  
11 conduct a public hearing to receive comments concerning the  
12 proposed rules. The public hearing will be held at 9:00 a.m. on  
13 August 26, 2014, in the Ric Williamson Hearing Room, First  
14 Floor, Dewitt C. Greer State Highway Building, 125 East 11th  
15 Street, Austin, Texas and will be conducted in accordance with  
16 the procedures specified in 43 TAC §1.5. Those desiring to make  
17 comments or presentations may register starting at 8:30 a.m.  
18 Any interested persons may appear and offer comments, either  
19 orally or in writing; however, questioning of those making  
20 presentations will be reserved exclusively to the presiding  
21 officer as may be necessary to ensure a complete record. While  
22 any person with pertinent comments will be granted an  
23 opportunity to present them during the course of the hearing,  
24 the presiding officer reserves the right to restrict testimony  
25 in terms of time and repetitive content. Organizations,

1 associations, or groups are encouraged to present their commonly  
2 held views and identical or similar comments through a  
3 representative member when possible. Comments on the proposed  
4 text should include appropriate citations to sections,  
5 subsections, paragraphs, etc. for proper reference. Any  
6 suggestions or requests for alternative language or other  
7 revisions to the proposed text should be submitted in written  
8 form. Presentations must remain pertinent to the issues being  
9 discussed. A person may not assign a portion of his or her time  
10 to another speaker. Persons with disabilities who plan to  
11 attend this meeting and who may need auxiliary aids or services  
12 such as interpreters for persons who are deaf or hearing  
13 impaired, readers, large print or Braille, are requested to  
14 contact Office of General Counsel, 125 East 11th Street, Austin,  
15 Texas 78701-2483, (512) 463-8630 at least five working days  
16 before the date of the hearing so that appropriate services can  
17 be provided.

18

19 SUBMITTAL OF COMMENTS

20 Written comments on the proposed amendments to §26.2 and new  
21 §26.36 may be submitted to Rule Comments, Office of General  
22 Counsel, Texas Department of Transportation, 125 East 11th  
23 Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov  
24 with the subject line "RMA Projects." The deadline for receipt  
25 of comments is 5:00 p.m. on September 15, 2014. In accordance

1 with Transportation Code, §201.811(a)(5), a person who submits  
2 comments must disclose, in writing with the comments, whether  
3 the person does business with the department, may benefit  
4 monetarily from the proposed amendments, or is an employee of  
5 the department.

6

7 STATUTORY AUTHORITY

8 The amendments and new section are proposed under Transportation  
9 Code, §201.101, which provides the Texas Transportation  
10 Commission with the authority to establish rules for the conduct  
11 of the work of the department, and more specifically,  
12 Transportation Code, §370.038, which requires the Texas  
13 Transportation Commission to adopt rules that govern commission  
14 approvals required by Transportation Code, Chapter 370.

15

16 CROSS REFERENCE TO STATUTE

17 Transportation Code, Chapter 370.

1 SUBCHAPTER A. GENERAL PROVISIONS

2 §26.2. Definitions. The following words and terms, when used  
3 in this chapter, shall have the following meanings, unless the  
4 context clearly indicates otherwise.

5 (1) AASHTO--The American Association of State Highway and  
6 Transportation Officials.

7 (2) Board--The board of directors of a regional mobility  
8 authority.

9 (3) Commission--The Texas Transportation Commission.

10 (4) County--Includes the cities of El Paso, Laredo,  
11 Brownsville, McAllen, and Port Aransas.

12 (5) Director--A director of a board.

13 (6) Department--The Texas Department of Transportation.

14 (7) Environmental Permits, Issues, and Commitments  
15 (EPIC)--Any permit, issue, coordination, commitment, or  
16 mitigation obtained to satisfy social, economic, or  
17 environmental impacts of a transportation project, including,  
18 but not limited to, sole source aquifer coordination, wetland  
19 permits, stormwater permits, traffic noise abatement, threatened  
20 or endangered species coordination, archeological permits, and  
21 any mitigation or other commitment associated with any of those  
22 issues.

23 (8) Executive director--The executive director of the

1 department or the executive director's designee not below  
2 district engineer, division director, or office director.

3 (9) Fiscal year--An accounting period of 12 months that  
4 is consistent, to the extent feasible, with the fiscal year of  
5 an RMA's member counties.

6 (10) Governmental entity--A municipality, county, the  
7 department, or other public entity authorized to construct,  
8 maintain, and operate a transportation project within the region  
9 of a regional mobility authority.

10 (11) Metropolitan planning organization--An organization  
11 designated to carry out the transportation planning process in  
12 prescribed urbanized areas as required by 23 U.S.C. §134.

13 (12) Nonattainment area--An area designated by the U.S.  
14 Environmental Protection Agency as not meeting the air quality  
15 standards outlined in the Clean Air Act.

16 (13) Petitioner--The county or counties petitioning for  
17 the creation of a regional mobility authority.

18 (14) Public utility facility--Means:

19 (A) a water, wastewater, natural gas, or petroleum  
20 pipeline or associated equipment;

21 (B) an electric transmission or distribution line or  
22 associated equipment; or

23 (C) telecommunications information services, or cable

1 television infrastructure or associated equipment, including  
2 fiber optic cable, conduit, and wireless communications  
3 facilities.

4 (15) RMA--A regional mobility authority.

5 (16) Revenue--Fares, fees, rents, tolls, and other money  
6 received by an authority from the ownership or operation of a  
7 transportation project.

8 (17) State Implementation Plan--The plan prepared by the  
9 Texas Commission on Environmental Quality as required by 42 USC  
10 §7410 to attain and maintain air quality standards.

11 (18) Surplus revenue--Revenue that exceeds:

12 (A) the regional mobility authority's debt service  
13 requirements for a transportation project, including the  
14 redemption or purchase price of bonds subject to redemption or  
15 purchase as provided in the applicable bond proceedings;

16 (B) coverage requirements of a bond indenture for a  
17 transportation project;

18 (C) costs of operation and maintenance for a  
19 transportation project;

20 (D) cost of repair, expansion, or improvement of a  
21 transportation project;

22 (E) funds allocated for feasibility studies; and

23 (F) necessary reserves as determined by the regional

1 mobility authority.

2 (19) Transportation project--Means:

3 (A) a turnpike project;

4 (B) a system designated under Transportation Code,  
5 §370.034;

6 (C) a passenger or freight rail facility, including:

7 (i) tracks;

8 (ii) a rail line;

9 (iii) switching, signaling, or other operating  
10 equipment;

11 (iv) a depot;

12 (v) a locomotive;

13 (vi) rolling stock;

14 (vii) a maintenance facility; and

15 (viii) other real and personal property associated  
16 with a rail operation;

17 (D) a roadway with a functional classification greater  
18 than a local road or rural minor collector;

19 (E) a bridge;

20 (F) [~~(E)~~] a ferry;

21 (G) [~~(F)~~] an airport, other than an airport that on

22 September 1, 2005 was served by one or more air carriers engaged  
23 in scheduled interstate transportation, as those terms were

1 defined by 14 C.F.R. §1.1 on that date;

2 (H) [~~(G)~~] a pedestrian or bicycle facility;

3 (I) [~~(H)~~] an intermodal hub;

4 (J) [~~(I)~~] an automated conveyor belt for the movement  
5 of freight;

6 (K) [~~(J)~~] a border crossing inspection station,  
7 including an inspection station located at or near an  
8 international border crossing or a border crossing from another  
9 state of the United States that is not more than 50 miles from  
10 an international border;

11 (L) [~~(K)~~] an air quality improvement initiative;

12 (M) [~~(L)~~] a public utility facility;

13 (N) [~~(M)~~] a transit system; [~~and~~]

14 (O) a parking area, structure, or facility, or a  
15 collection device for parking fees;

16 (P) [~~(N)~~] if applicable, projects and programs listed  
17 in the most recently approved state implementation plan for the  
18 area covered by the RMA, including an early action compact;

19 (Q) improvements in a transportation reinvestment zone  
20 designated under Transportation Code, Chapter 222, Subchapter E;  
21 and

22 (R) port security, transportation, or facility projects  
23 eligible for funding under Transportation Code, §55.002.

1           (20) Turnpike project--A highway of any number of lanes,  
2 with or without grade separations, owned or operated by an RMA  
3 under this chapter and any improvement, extension, or expansion  
4 to that highway, including:

5           (A) an improvement to relieve traffic congestion and  
6 promote safety;

7           (B) a bridge, tunnel, overpass, underpass, interchange,  
8 entrance plaza, approach, toll house, service road, or ramp;

9           (C) an administration, storage, or other building the  
10 RMA considers necessary for the operation of a turnpike project;

11           (D) a property right, easement, or interest the RMA  
12 acquires to construct or operate the turnpike project; and

13           (E) a parking area or structure, rest stop, park, and  
14 any other improvement or amenity the RMA considers necessary,  
15 useful, or beneficial for the operation of a turnpike project.

1 SUBCHAPTER D. APPROVAL OF A TRANSPORTATION PROJECT

2 §26.36. Projects of Another Governmental Entity.

3 (a) Purpose. Except as for a transportation project  
4 described in Transportation Code, §370.033(f)(1) or (2), the  
5 department must approve an RMA's acquisition, planning, design,  
6 construction, maintenance, repair, or operation of a  
7 transportation project on behalf of another governmental entity.  
8 Feasibility analysis, including preliminary design, is not  
9 subject to the approval requirements of this section. This  
10 section prescribes the procedures by which the commission will  
11 consider approval.

12 (b) Request. An RMA seeking commission approval under this  
13 section must submit a request to the executive director.

14 The request must include:

15 (1) an overview of the transportation project for which  
16 the request is being made, including a description of the  
17 project, the total estimated cost of the project, and a  
18 description of the work to be performed by the RMA and by the  
19 governmental entity;

20 (2) a description of the need for the project and the  
21 benefits anticipated to result from completion of the project,  
22 including any anticipated:

23 (A) impacts on the economic development potential in

1 the area;

2 (B) reductions in congestion;

3 (C) improvements in efficiency on the region's  
4 transportation system;

5 (D) enhancements to safety; and

6 (E) improvements to air quality in the region;

7 (3) a proposed project funding plan that includes amounts  
8 proposed for each of the project cost categories, including  
9 design, development, financing, construction, maintenance, and  
10 operation;

11 (4) department contributions and participation  
12 anticipated to be requested for the project;

13 (5) official written approval of the project by the board  
14 of the RMA and the governing body of the governmental entity  
15 with jurisdiction over the project;

16 (6) a description of and any documentation evidencing  
17 local public support for the project and any local public  
18 opposition;

19 (7) a preliminary project development and implementation  
20 schedule, including an estimated date when the project will be  
21 completed;

22 (8) a description of the RMA's experience in developing  
23 transportation projects comparable to the project for which the

1 request is being made;

2 (9) if applicable, given the nature of the project,  
3 information explaining how the project will be consistent with  
4 the Statewide Transportation Plan and, if appropriate, with the  
5 metropolitan transportation plan developed by the metropolitan  
6 planning organization with jurisdiction over the project;

7 (10) a preliminary identification of any known  
8 environmental, social, economic, or cultural resource issues,  
9 such as hazardous material sites, impacts on wetlands and other  
10 water resources, endangered species, parks, neighborhoods,  
11 businesses, historic buildings or bridges, and archeological  
12 sites;

13 (11) a binding commitment that the environmental  
14 consequences of the proposed project will be fully considered in  
15 accordance with, and that the proposed project will comply with,  
16 all applicable local, state, and federal environmental laws,  
17 regulations, and requirements; and

18 (12) a binding commitment to implement all EPIC.

19 (c) Commission approval.

20 (1) Compliance with applicable requirements. The  
21 commission may approve a request submitted under this section if  
22 the RMA commits to the department and in the agreement with the  
23 governmental entity that the RMA will comply with all applicable

1 federal, state, and, if applicable, department requirements.

2 (2) Considerations. In determining whether to approve a  
3 request submitted under this section, the commission will  
4 consider:

5 (A) the ability of the RMA to award, manage, and  
6 complete the work to be performed by the RMA for the project;

7 (B) the need for the project and whether the project is  
8 ready for development;

9 (C) the anticipated benefit of the project to the  
10 governmental entity and the region; and

11 (D) evidence of local support in the area in which the  
12 project is located.

13 (3) Findings. The commission may approve a request  
14 submitted under this section if it finds that:

15 (A) if applicable, given the nature of the project, the  
16 project is consistent with the appropriate policies, strategies,  
17 and actions of the statewide transportation plan and, if  
18 appropriate, with the regional transportation plan developed by  
19 the metropolitan planning organization with jurisdiction over  
20 the project;

21 (B) the RMA's participation in the project will  
22 facilitate the ability of the governmental entity to construct  
23 the project and achieve the benefits anticipated to be derived

1 from the project;

2 (C) the project will neither duplicate nor conflict

3 with the operations of the department;

4 (D) the project is supported by the RMA, the

5 governmental entity and metropolitan planning organization with

6 jurisdiction over the project, and each other governmental

7 entity affected by the project; and

8 (E) the project is in the best interest of the region.