Proposed Rules

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [Square brackets and strikethrough] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

Title 1. Administration

Part 12. Commission on State Emergency Communications

Chapter 252. Administration

1 TAC §252.8

The Commission on State Emergency Communications (CSEC) proposes for comment amendments to 1 TAC §252.8, Emergency Communications Advisory Committee.

Background and Purpose

CSEC proposes amendments to §252.8 (Title 1, Part 12, Texas Administrative Code, Chapter 252) relating to CSEC’s Emergency Communications Advisory Committee (ECAC).

Section-by-Section Explanation

Section 252.8(a) is amended to reflect CSEC’s modified approach toward the development, implementation, and management of an interconnected, state-level emergency services Internet Protocol network (ESInet) as authorized and provided in Health and Safety Code §771.0511(b). The primary substantive amendment is to reflect and acknowledge that interconnected, interoperable ESInets providing Next Generation Core Services covering all of Texas constitute the State-level ESInet.

Section 252.8(b) is amended to extend to ECAC CSEC’s modified approach to the State-level ESInet, including alignment with CSEC’s Next Generation 9-1-1 Master Plan.

Section 252.8(c) is amended to clarify the training, experience, and skills of committee members, and extend the requirements to members representing emergency services other than 9-1-1 services.

Section 252.8(g) is amended to align with CSEC’s modified approach to the State-level ESInet, and delete the specific Objectives and Plans required under the prior rule.

Section 252.8(h) is amended to eliminate the reports deleted in subsection (g) and to align ECAC’s annual reporting with the state’s fiscal year.

Section 252.8(i) is amended for clarification regarding ECAC member legislative activity.

Section 252.8(l) is amended to replace the specific requirements for CSEC staff support with a general statement of support.

Section 252.8(p) is amended to extend ECAC’s duration from September 1, 2020, to September 1, 2023.

Section 252.8(q), Definitions of Terms, is deleted in its entirety as no longer necessary given CSEC’s modified approach to the State-level ESInet.

Fiscal Note

Kelli Merriweather, CSEC’s executive director, has determined that for each year of the first five fiscal years (FY) that amended §252.8 is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended section.

Public Benefits and Costs

Ms. Merriweather has determined that for each year of the first five years the amended section is in effect, the public benefits will come from clarifying the membership, training, roles, and responsibilities of CSEC’s Emergency Communications Advisory Committee, whose purpose is to advise and make policy recommendations to CSEC regarding Next Generation 9-1-1 service and, potentially, emergency services other than 9-1-1 services. Ms. Merriweather has also determined that for each year of the first five years the proposed section is in effect there are no probable economic costs to persons required to comply with the section, except for any unreimbursed costs of ECAC members who are not part of CSEC staff; such costs being mitigated if not eliminated by ECAC’s use of communications software and technology to avoid in-person meetings.

Rule Increasing Costs to Regulated Persons

Government Code §2001.0045 precludes a state agency from adopting a proposed rule if the fiscal note imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless on or before the effective date of the rule.

Accordingly, no repeal or amendment of another rule to offset costs is required.

Local Employment Impact Statement

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.
GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, CSEC has determined that during the first five years the amended rule will be in effect it would: 1. neither create nor eliminate a government program; 2. not result in an increase or decrease in the number of full-time equivalent employee needs; 3. not result in an increase or decrease in future legislative appropriations to the agency; 4. not increase or decrease any fees paid to the agency; 5. not create a new regulation; 6. not expand, limit, or repeal an existing regulation; 7. neither increase or decrease the number of individuals subject to regulation; and 8. not positively or adversely affect Texas’ economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a “major environmental rule” as defined by Government Code §2001.0225.

SMALL, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Miss. Merri-weather has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule being amended affects only the membership, roles, and responsibilities of a CSEC advisory committee. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis, nor has it contacted legislators in rural communities regarding this proposal.

TAKINGS IMPACT ASSESSMENT

CSEC has determined that the proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing c/o Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by facsimile to (512) 305-6637, or by email to patrick.tyler@csec.texas.gov. Please include “Rulemaking Comments” in the subject line of your letter, fax, or email. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

STATUTORY AUTHORITY

The amended section is proposed under Health and Safety Code §§771.0511, 771.051(a)(1), (2), (4), (7), (8), (9), (10) and §771.052; and Government Code Chapter 2110.

No other statutes, articles or codes are affected by the proposed section.

§252.8. Emergency Communications Advisory Committee.
(a) Purpose. The purpose of this rule is to establish an Emergency Communications Advisory Committee (Committee) to assist the Commission in coordinating the development, implementation, interoperability, and internetworking of State-level emergency services Internet Protocol networks (ESInets) [network (State-level ESInet)]. Interconnected, interoperable ESInets providing Next Generation Core Services covering all of Texas constitute the State-level ESInet. As defined in Health and Safety Code §771.0511(a)(2), the State-level ESInet is used for communications between and among public safety answering points (PSAPs) and other entities that support or are supported by PSAPs in providing emergency call handling and response, and will be a part of the Texas Next Generation Emergency Communications System.
(b) Policy. It is Commission policy that the development, implementation, interoperability, interconnection, and internetworking of ESInets [the State-level ESInet will] be done on a cooperative basis with the state’s 9-1-1 Entities. It is Commission policy that the Committee:
(1) advise the Commission on matters regarding the interoperability and interconnection of ESInets, specifically including but not limited to Statewide Interoperability & Standards development for planning for interconnectivity, interoperability, and internetworking of ESInets as reflected in the Commission’s Next Generation 9-1-1 Master Plan (Appendix I to the Commission Strategic Plan for Statewide 9-1-1 Service for Fiscal Years 20xx-20xx) [establishment and management of the State-level ESInet]; and
(2) provide for 9-1-1 Entity collaboration on issues regarding ESInets, particularly regarding interoperability and interconnection of ESInets, to ensure [the management of the State-level ESInet, collective decision making, and assurance] that the requirements of the state’s 9-1-1 [9-1-1] Entities are met.
(c) Composition of Committee. Each [The Executive Director] Committee member must have [has] the appropriate training, experience, and knowledge of Next Generation 9-1-1 technology and services and/or emergency services other than 9-1-1 services to effectively advise the Commission [in 9-1-1 systems and network management to assist in the implementation and operation of a complex network].

(1) The Committee is appointed by the Commission and includes, at a minimum, the following members:
(A) the Executive Director of the Commission or designee as an ex-officio, non-voting member [The Executive Director or designee may coordinate with and seek input from a county or other entity not otherwise a member of the Committee];
(B) two representatives from the Regional Planning Commissions (RPCs);
(C) two representatives from the Emergency Communications Districts (ECDs), as that term is defined in Health and Safety Code §771.001(3)(A); and
(D) two representatives from the ECDs, as that term is defined in Health and Safety Code §771.001(3)(B).
(2) No two Committee members may be from the same state 9-1-1 [9-1-1] Entity.
(3) The Commission may add to [amend] the composition of the Committee including members representing [to reflect and include] emergency services other than 9-1-1 service.
(4) In appointing members to the Committee except under paragraph (3) of this subsection, the Commission shall consult with the RPCs and ECDs. RPCs may designate responsibility for consulting with the Commission to the Texas Association of Regional Councils. ECDs defined in Health and Safety Code §771.001(3)(A) and (B) may designate responsibility for consulting with the Commission to the Municipal Emergency Communication Districts Association and the Texas 9-1-1 Alliance, respectively.
(d) Bylaws. Draft bylaws for approval by the Commission. The bylaws shall, at a minimum, provide for the following:
(1) selection from among the members a presiding officer and an assistant presiding officer whose terms may not exceed two years; and

(2) establish standing committees.

(e) Terms of Office for Voting Members. Each member shall be appointed for a term of 3 years, except for the initial member terms under paragraph (4) of this subsection.

(1) Member terms begin on January 1st.

(2) Members shall continue to serve after the expiration of their term until a replacement member is appointed by the Commission.

(3) If a vacancy occurs, a person shall be appointed by the Commission to serve the unexpired portion of the vacating member's term.

(4) Members serve staggered terms. Initial member terms are as follows:

(A) one member from each 9-1-1 Entity represented on the Committee expires on December 31, 2013; and

(B) one member from each 9-1-1 Entity represented on the Committee expires on December 31, 2014.

(f) Committee Meeting Attendance. Members shall attend scheduled Committee meetings.

(1) A member shall notify the presiding officer or Commission staff if the member is unable to attend a scheduled meeting.

(2) The Commission may remove a member if it determines that a member cannot discharge the member’s duties for a substantial part of the member’s appointed term because of illness or disability, is absent from more than half of the Committee meetings during a fiscal year, or is absent from at least three consecutive Committee meetings. The validity of an action of the Committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(g) Committee Roles and Responsibilities. The Committee is to assist the Commission in coordinating the development, implementation, and management of interoperable and interconnected ESInets [the State-level ESInet]. The Committee will seek state 9-1-1 Entity input and collaboration regarding the interoperability and interconnection of ESInets, specifically including but not limited to Statewide Interoperability & Standards development for planning for interconnectivity, interoperability, and internetworking of ESInets as reflected in the Commission's Next Generation 9-1-1 Master Plan (Appendix 1 to the Commission Strategic Plan for Statewide 9-1-1 Service for Fiscal Years 20xx-20xx). [The Committee's roles and responsibilities are based on the functions of the State-level ESInet.] The Committee shall, at a minimum, be responsible for the following:

(1) Objectives.

(A) Provide guidance and assistance for the monitoring and management of the Texas Next Generation Emergency Communications System.

(B) Advise the Commission in developing and managing the following:

(i) managed service contracts with vendors;

(ii) professional service contracts with subcontractors;

(iii) Local Service Provider networks, and application provider interfaces and specifications for State-level ESInet access; and

(h) interlocal agreements between Regional ESInets and the State-level ESInet to bind both to operating standards and requirements consistent with the delivery of service and protection and management of respective networks, services and applications.

(2) Plans. As requested by the Commission, the Committee shall advise and make recommendations to the Commission in a plan(s) regarding the coordinated development, implementation, and management of the State-level ESInet.

(h) Reporting to the Commission. The Committee, through its presiding officer, will submit by September 1 of each year, or according to the schedule established by the Commission, written reports advising the Commission. The reports shall include the following:

[(1) By the date(s) set by the Commission, submit the plan(s) requested by the Commission in subsection (g) of this section.]

(2) By January 1 of each year, or according to the schedule established by the Commission, submit a report that includes the following:

(A) an update on the Committee's work, including:

(B) member attendance records;

(C) description of actions taken by the Committee;

(D) description of how the Committee has accomplished or addressed the tasks and objectives of this section and any other issues assigned to the Committee by the Commission; and

(E) anticipated future activities of the Committee;

(2) description of the usefulness of the Committee's work; and

(3) statement of costs related to the Committee, including the cost of Commission staff time spent in support of the Committee.

(i) Statement by a Member.

(1) The Commission and the Committee shall not be bound in any way by any statement or action by a member except when the statement or action is in pursuit of specific instructions from the Commission.

(2) The Committee and its members may not participate in legislative activity in the name of the Committee or the Committee without Commission approval [except with approval through the Commission's legislative process].

(j) Advisory Committee. The Committee is an advisory committee in that it does not supervise or control public business or policy. As an advisory committee, the Committee is not subject to the Open Meetings Act (Government Code, Chapter 551).

(k) Reimbursement for Expenses.

(1) In accordance with the requirements in Government Code, Chapter 2110, a Committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official Committee business if authorized by the General Appropriations Act or budget execution process.

(2) No compensatory per diem shall be paid to Committee members unless required by law.
(3) A Committee member who is an employee of a state agency, other than the Commission, may not receive reimbursement for expenses from the Commission.

(4) A nonmember of the Committee who is appointed to serve on a committee may not receive reimbursement for expenses from the Commission.

(5) Each Committee member whose expenses are reimbursed under this section shall submit to Commission staff the member's receipts for expenses and any required official forms no later than 14 days after conclusion of the member's engagement in official Committee business.

(6) Requests for reimbursement of expenses shall be made on official state travel vouchers.

(I) Commission Staff [Input and Support]. Support for the Committee will be provided by Commission staff. [shall:] [(1) provide administrative support and input to the Committee;

(2) with input and recommendations from the Committee, oversee all administrative activities and Commission policies relating to the implementation, operation, and day-to-day management of the State-level ESInet;

(3) provide administrative support and input to the Committee; and

(4) provide the Committee with the Committee's plan(s) and report, and a staff report regarding the Committee's advice or policy recommendations.]}

(m) Applicable law. The Committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees.

(n) Commission Evaluation. The Commission shall annually evaluate the Committee's work, usefulness, and the costs related to the Committee, including the cost of Commission staff time spent supporting the Committee's activities.

(o) Report to the Legislative Budget Board. The Commission shall report to the Legislative Budget Board the information developed in subsection (n) of this section on a biennial basis as part of the Commission's request for appropriations.

(p) Review and Duration. On or before September 1, 2023 [2020], the Commission will initiate and complete a review of the Committee to determine whether the Committee should be continued or abolished. If the Committee is not continued, it shall be automatically abolished on September 1, 2023 [2020].

(q) Definitions of Terms. Unless the context clearly indicates otherwise, the following terms are defined as provided in this section.

(1) Local IP-enabled network. Local internet protocol enabled networks that when interconnected form regional ESInets.

(2) Regional ESInet. A system of interconnected local IP enabled networks with core functions for emergency services, including but not limited to 9-1-1 service.

(3) State-level ESInet. Defined in Health and Safety Code §771.0511(a)(2) as a private Internet Protocol network or Virtual Private Network that:

(A) is used for communications between and among public safety answering points and other entities that support or are supported by public safety answering points in providing emergency call handling and response; and

(B) will be a part of the Texas Next Generation Emergency Communications System.

(4) Texas Next Generation Emergency Communications System. A system of interconnecting regional and State-level ESInets and other emergency services networks such as poison control and radio dispatch.

(5) Texas NG9-1-1 System. An interconnected and interoperable system of local, regional, and national emergency services networks with advanced capabilities for 9-1-1 call delivery.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2019.

TRD-201900945

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: May 12, 2019

For further information, please call: (512) 305-6915

♦  ♦  ♦

TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 204. FEES

22 TAC §§204.2, 204.4, 204.7

The Texas Funeral Service Commission (Commission) proposes to amend Title 22 Texas Administrative Code, Part 10, §204.2 - Individual Application Fees (Not Refundable); §204.4 - Individual Renewal Fees (Not Refundable); and §204.7 - Establishment Fees for Funeral Homes, Commercial Embalming Facilities, and Crematories (Not refundable).

The Commission's fee structure needs to be amended as a result of action by the Department of Information Resources (DIR) as it relates to the surcharge collected in accordance with Tex. Gov. Code Sec. 2054.252. DIR has instructed agencies to comply with the new surcharge amounts by the end of fiscal year 2019. The agency notes the fees paid by licensees either decrease or stay the same under this rule proposal.

FISCAL NOTE: Janice McCoy, Executive Director, has determined for the first five-year period the amendments are in effect there will be no fiscal implication for local governments, or local economies. The state fiscal impact would be to collect the surcharge in accordance with DIR directives. While the rules decrease the surcharge added to the fee, there is no fiscal impact because the agency is recovering the amount required by DIR.

PUBLIC BENEFIT/COST NOTE. Ms. McCoy has determined that, for each year of the first five years the proposed amendments will be in effect, the public benefit is that the agency is in compliance with DIR directives related to the collection of the surcharge. There will not be any economic cost to any individuals required to comply with the proposed amendments and there is no anticipated negative impact on local employment because the rule only codifies a DIR directive relating to the surcharge the agency collects.
ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The agency has determined that there will be no economic effect on small or micro-businesses or rural communities because the rule only codifies a DIR directive relating to a surcharge the agency collects.

GOVERNMENT GROWTH IMPACT STATEMENT. Ms. McCoy also has determined that, for the first five years the amendments would be in effect: 1. The proposed amendments do not create or eliminate a government program; 2. The proposed amendments will not require a change in the number of employees of the Agency; 3. The proposed amendments will not require additional future legislative appropriations; 4. The proposed amendments will not require an increase in fees paid to the Agency; 5. The proposed amendments will not create a new regulation; 6. The proposed amendments will not expand, limit, or repeal an existing regulation; 7. The proposed amendments will not increase or decrease the number of individuals subject to the rule’s applicability; and 8. The proposed amendments will neither positively nor negatively affect this state’s economy.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT. Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c). The proposed amendments do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government and no new fee is imposed. Therefore, the agency is not required to take any further action under Government Code §2001.0045(c).

TAKINGS AND ENVIRONMENTAL ANALYSIS: The Agency has determined Chapter 2007 of the Texas Government Code does not apply to this proposal because it affects no private real property interests. Accordingly, the Agency is not required to complete a takings impact assessment regarding this proposal. This rule is not a major environmental rule, so an environmental regulatory analysis is not required by Government Code §2001.0225.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at 333 Guadalupe Suite 2-110, Austin, Texas 78701, (512) 479-5064 (fax) or electronically to info@ftsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal in the Texas Register.

This proposal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission’s work, and Texas Occupations Code §651.154, which authorizes the agency to adopt fees to administer the chapter. These amendments are also proposed under the authority of Texas Government Code §2054.252(g), which sets out fee amounts the agency must follow for surcharges collected pursuant to this section.

No other statutes, articles, or codes are affected by this section.

§204.2. Individual Application Fees (Not Refundable).

(a) Generally Applicable Application Fees:

1. Provisional Funeral Director—§93 $95 (Includes a $5 surcharge in accordance with Tex. Occup. Code Sec. 101.307 and a $3 $5 surcharge in accordance with Tex. Gov. Code Sec. 2054.252).
2. Provisional Embalmer—§93 $95 (Includes a $5 surcharge in accordance with Tex. Occup. Code Sec. 101.307 and a $3 $5 surcharge in accordance with Tex. Gov. Code Sec. 2054.252).
3. Individual Funeral Director License—§93 $95 (Includes a $5 surcharge in accordance with Tex. Occup. Code Sec. 101.307 and a $3 $5 surcharge in accordance with Tex. Gov. Code Sec. 2054.252).
4. Individual Embalmer License—§93 $95 (Includes a $5 surcharge in accordance with Tex. Occup. Code Sec. 101.307 and a $3 $5 surcharge in accordance with Tex. Gov. Code Sec. 2054.252).
5. Individual Embalmer License—§93 $95 (Includes a $5 surcharge in accordance with Tex. Occup. Code Sec. 101.307 and a $3 $5 surcharge in accordance with Tex. Gov. Code Sec. 2054.252).
(b) All license application fees payable to the Commission are waived for the following individuals:

1. military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all of the requirements for licensure; and
2. military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

§204.4. Individual Renewal Fees (Not Refundable).

(a) Renewal Fees:

1. Provisionally Licensed Funeral Director—§69 $21 (includes a $1 surcharge in accordance with Tex. Occup. Code Sec. 101.307 and a $2 $4 surcharge in accordance with Tex. Gov. Code Sec. 2054.252).
5. Licensed Funeral Director and Embalmer (Dual)—§330 $332 (includes a $2 surcharge in accordance with Tex. Occup. Code Sec. 101.307 and an $8 [a $10] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).
6. Licensed Funeral Director over the age of 65 or disabled status—§98.50 $104.50 (includes a $2 surcharge in accordance with Tex. Occup. Code Sec. 101.307 and a $4 [a $6] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).
7. Licensed Embalmer over the age of 65 or disabled status—§98.50 $104.50 (includes a $2 surcharge in accordance with Tex. Occup. Code Sec. 101.307 and a $4 [a $6] surcharge in accordance with Tex. Gov. Code Sec. 2054.252)
8. Licensed Funeral Director and Embalmer (Dual) over the age of 65 or disabled status—§168 [§172] (includes a $2 surcharge in accordance with Tex. Occup. Code Sec. 101.307 and a $6 [a $10] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).
§204.7. charge

SUBCHAPTER PART 44

Services

$15

25

The renewal fee shall be waived for active military service members as the term is defined by Chapter 55, Occupations Code.

§204.7. Establishment Fees for Funeral Homes, Commercial Embalming Facilities, and Crematories (Not refundable).

(a) New Establishment License Fee--$462 (Includes a $5 surcharge in accordance with Tex. Occ. Code Sec. 101.307).

(b) Establishment Renewal Fee--$537 (includes a $1 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $16 [§15] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(c) Establishment Late Penalty (added to renewal fee if more than one day late)--$520 [§21].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 29, 2019.
TRD-201900964
Janice McCoy
Executive Director
Texas Funeral Service Commission

Earliest possible date of adoption: May 12, 2019
For further information, please call: (512) 936-2469

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.50

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §133.50, concerning Caregiver Designation, in Texas Administrative Code Title 25, Part 1, Chapter 133, Subchapter C.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 2425, 85th Legislature, Regular Session, 2017, which amended the Texas Health and Safety Code by adding new Chapter 317, regarding Designation of Caregiver for Receipt of Aftercare Instructions.

SECTION-BY-SECTION SUMMARY

Proposed new §133.50 requires that a hospital provide a patient the opportunity to designate a caregiver to receive aftercare instructions on admission or before the patient is discharged or transferred to another facility. Additionally, proposed new §133.50 outlines the hospital's responsibility to document information, in the patient's medical record, regarding the designated caregiver or the patient's declination to designate a caregiver.

FISCAL NOTE

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rule will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will create a new rule;

(6) the proposed rule will expand existing rules (in the sense that those required to comply will be required to do more based on the proposal);

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rule will require hospitals to provide patients the opportunity to designate a caregiver for aftercare instructions, maintain certain medical record documentation, written authorizations, and discharge plans. HHSC lacks sufficient information to determine if one or more of the 643 licensed hospitals would be considered a small business, micro-business, or rural community.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to this rule.

PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved continuity of care and adherence to aftercare instructions that promote healing.

Greta Rymal has also determined that for the first five years the rule is in effect, there are anticipated economic costs to persons who are required to comply with the rule as proposed. Hospitals will be required to collect and maintain certain written documentation which may also require the development of new forms, changes to existing forms, and staff training.

TAKINGS IMPACT ASSESSMENT
HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the HHSC, Mail Code 1065, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HCQRules@hhsc.state.tx.us. Please specify “Comments on Caregiver Designation Rule” in the subject line.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a weekend or a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted.

STATUTORY AUTHORITY

The proposed new rule is authorized by Texas Government Code, §§531.0055, which provides that the Executive Commissioner of HHSC adopt rules for the operation and provision of services by the health and human services agencies.


§133.50. Caregiver Designation.

(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) Aftercare—Assistance provided by a designated caregiver to a person after that person's discharge from a hospital, as described by Health and Safety Code, chapter 317, and this section.

(2) Designated caregiver—An individual designated by a patient, including a relative, partner, friend, or neighbor, who:

(A) is at least 18 years of age;

(B) has a significant relationship with the patient; and

(C) will provide aftercare to the patient.

(3) Surrogate decision-maker—An individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

(b) The hospital shall provide a patient who is at least 18 years of age, a patient who is younger than 18 years of age who has had the disabilities of minority removed, the patient's legal guardian, or the patient's surrogate decision-maker the opportunity to designate a caregiver for receipt of aftercare instructions.

(c) The hospital shall provide the opportunity to designate a caregiver on admission of the patient or before the patient is discharged or transferred to another facility.

(d) If the patient, the patient's legal guardian, or the patient's surrogate decision-maker declines to designate a caregiver, the hospital shall note the fact in the patient's medical record.

(e) If the patient, the patient's legal guardian, or the patient's surrogate decision-maker designates a caregiver, the hospital shall:

1. document in the patient's medical record the designated caregiver's name, telephone number, address, and relationship to the patient; and

2. request written authorization to disclose health care information to the designated caregiver.

(f) If written authorization to disclose health care information to the designated caregiver is obtained, the hospital shall:

1. as soon as possible before the patient's discharge or transfer, notify the designated caregiver of this fact;

2. if the hospital is unable to notify the designated caregiver before the patient's discharge or transfer, notify this in the patient's medical record;

3. before the patient's discharge, provide the designated caregiver a written discharge plan that describes the patient's aftercare needs that includes:

(A) the designated caregiver's name, contact information, and relationship to the patient;

(B) a description of the aftercare tasks that the patient requires, written in a culturally competent manner; and

(C) the contact information for any health care resources necessary to meet the patient's aftercare needs.

4. before the patient's discharge to any setting in which health care services are not regularly provided to others, provide the designated caregiver instruction and training as necessary for the caregiver to perform aftercare tasks.

(g) The patient, the patient's legal guardian, or the patient's surrogate decision-maker may change the designated caregiver at any time and the hospital shall note the change in the patient's medical record.

(h) This section may not be construed to interfere with, delay, or otherwise affect any medical care provided to the patient or the discharge or transfer of the patient.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 29, 2019.
TRD-201900965
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: May 12, 2019
For further information, please call: (512) 834-6651

✿ ✿ ✿

TITLE 30. ENVIRONMENTAL QUALITY
PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER 7. MEMORANDA OF UNDERSTANDING
30 TAC §7.119

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §7.119, concerning Memorandum of Understanding Between the Texas

PROPOSED RULES  April 12, 2019  44 TexReg 1813
Department of Transportation and the Texas Commission on Environmental Quality.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking is proposed to adopt by reference updates to the commission’s memorandum of understanding (MOU) with the Texas Department of Transportation (TxDOT) regarding TCEQ environmental reviews of TxDOT highway (transportation) projects. The updates are required to implement the following statutes and legislation.

Texas Transportation Code, §201.607(a) requires TxDOT and each state agency that is responsible for the protection of the natural environment, which includes the TCEQ, to revise their MOU that relates to the review of the potential environmental effect of a highway project. Texas Transportation Code, §201.607(b) requires TxDOT and the TCEQ to adopt, by rule, all revisions to the MOU. TxDOT and the TCEQ have negotiated updated MOU language. TxDOT adopted the updated MOU in 43 TAC Chapter 2, Subchapter I. This rulemaking adopts by reference 43 TAC §§2.301 - 2.308.

Section Discussion

§7.119, Memorandum of Understanding Between the Texas Department of Transportation and the Texas Commission on Environmental Quality

The commission proposes to amend §7.119 to reflect the most recent date TxDOT adopted its rule governing the MOU.

TxDOT repealed and simultaneously replaced its rules governing the MOU between TxDOT and TCEQ to better explain both agencies’ responsibilities. The changes include modifications to the triggers for coordination, the methods of coordination, and the required content for environmental review documents. The changes simplify and clarify both agencies’ obligations under the coordination process.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The rulemaking is proposed in order to comply with the Texas Transportation Code, §201.607(a). The law requires the TCEQ, as an agency charged with environmental responsibilities, to enter into an MOU with the Texas Department of Transportation relating to the environmental effect of a highway project. This proposed rule adopts the MOU by reference which simplifies the coordination process between the two agencies.

Public Benefits and Costs

Ms. Bearse has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law.

The proposed rule is not expected to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rule does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively on the state’s economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking will add the effective date of TxDOT’s rules governing the MOU between TxDOT and TCEQ. The rulemaking does not meet the definition of "Major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the commission finds that this rulemaking is not a "Major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a state agency’s adoption of a major environmental
rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the rulemaking does not exceed a standard set by federal law; rather, it addresses the process for environmental review performed by the TCEQ for TxDOT, as mandated under state law. Also, the rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. Finally, the rulemaking was not developed solely under the general powers of the agency; but under Texas Transportation Code, §201.607, which requires TxDOT and the TCEQ to update their MOU. Under Texas Government Code, §2001.0225, only a "Major environmental rule" requires a regulatory impact analysis. Because the proposed rulemaking does not constitute a "Major environmental rule," a regulatory impact analysis is not required.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment
The commission performed an assessment of this rule in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to add the effective date of the current MOU between TxDOT and TCEQ. This rule will not constitute either a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens on private real property because the proposed rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

Consistency with the Coastal Management Program
The commission reviewed the proposed rule and found it is neither identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in the Coastal Coordination Act implementation rules, 30 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing
The commission will hold a public hearing on this proposal in Austin on May 9, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-6812 or 1 (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments
Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-008-007-LS. The comment period closes on May 13, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/proposed_adopt.html. For further information, please contact Kathy Humphreys, Office of Legal Services, Environmental Law Division, at (512) 239-3417.

Statutory Authority
The amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; TWC, §5.104, which establishes the authority of the commission to enter memoranda of understanding with any other state agency and adopt by rule the memoranda of understanding; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; Texas Health and Safety Code, §382.035, Memorandum of Understanding, which requires the commission to adopt, by rule, any memorandum of understanding (MOU) between the commission and another state agency in relation to the Texas Clean Air Act; and Texas Transportation Code, §201.607, Environmental, Historical, or Archeological Memorandum of Understanding, which requires the Texas Department of Transportation and the TCEQ to examine and revise their MOU relating to the TCEQ review of highway projects for potential environmental effects.

The proposed amendment implements requirements in Texas Transportation Code, §201.607.

§7.119. Memorandum of Understanding Between the Department of Transportation and the Texas Commission on Environmental Quality.

The commission adopts by reference the rules of the Texas Department of Transportation in 43 TAC §§2.301 - 2.308 (relating to Memorandum of Understanding with the Texas Commission on Environmental Quality) effective March 20, 2019.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 29, 2019.
TRD-201900962
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality

Earliest possible date of adoption: May 12, 2019
For further information, please call: (512) 239-6812

♦ ♦ ♦
TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER B. COASTAL EROSION PLANNING AND RESPONSE

The Commissioner of the General Land Office (Commissioner and GLO) proposes the repeal of §15.41, relating to Evaluation Process for Coastal Erosion Studies and Projects, and §15.42, relating to Funding Projects from the Coastal Erosion Response Account. Sections 15.41 and 15.42 are proposed for repeal to reorganize, streamline, and clarify the same subject matter under proposed new §15.41 and §15.42. The GLO also proposes amendments to §15.44, relating to Beneficial Use of Dredged Materials, to update and clarify the rules.

BACKGROUND

The purpose of the Coastal Erosion Planning and Response Act, Texas Natural Resources Code Sections 33.601 - 33.613 (CEPRA), is to implement coastal erosion response projects, demonstration projects, and related studies to reduce the effects of coastal erosion and to understand the process of coastal erosion as it continues to threaten public beaches, natural resources, coastal development, public infrastructure, and public and private property. Under CEPRA, the GLO expends funds to support these projects. The GLO implements these projects and studies through collaboration and cost sharing partnerships with federal, state, and local governments, non-profit organizations, other entities and individuals.

CEPRA funds are appropriated by the Legislature on a two-year cycle that coincides with the Legislative biennium. The funds are awarded to qualified project partners through a competitive application process in which all Coastal Resources Funding Applications (Applications) are evaluated and scored by the GLO’s CEPRA team. Selected projects are approved by the Commissioner.

The proposed new sections and amendments are necessary to update, reorganize, and streamline §§15.41, 15.42, and 15.44 to increase transparency and clarify the GLO’s review and evaluation process for Applications. The changes modify the Application process to better reflect the GLO’s process for selecting and developing final coastal erosion studies and projects for funding from the coastal erosion response account (Account).

SECTION-BY-SECTION DISCUSSION

Section 15.41, relating to the Evaluation Process for Coastal Erosion Studies and Projects, is proposed for repeal and in its place the GLO proposes a new §15.41 which reorganizes, streamlines, and clarifies the rules addressing the same subject matter.

Proposed new §15.41, relating to the Evaluation Process for Coastal Erosion Studies and Projects, outlines the Coastal Resources Funding Application (Applications) review and evaluation process for entities seeking funding for projects from the CEPRA Account.

Proposed new §15.41(a) generally describes how the GLO will conduct evaluations of Applications for coastal erosion studies and projects. It also describes the GLO’s process for determining which qualifying projects will be selected as a priority project for funding. The subsection also describes the GLO’s goal to work cooperatively with qualified project partners to identify and select preferred erosion response solutions to address identified erosion problems in the Application. Most of the review and evaluation process remains the same in the proposed new subsection, but the process has been streamlined to make the rule simpler and the evaluation process more transparent. Differences between the repealed rules and this proposed rule include removing the description of a “two-stage evaluation process”, replacing the reference to “project goal summaries” with “Coastal Resources Funding Application(s)” or “Application(s)”, and updating the term “Land Office” to “GLO”. Proposed new §15.41(a) also deletes the reference to “preferred alternatives” and replaces this terminology to refer to “preferred erosion response solutions”. A definition is also added for preferred erosion response solutions. Minor edits are made to improve readability, consistency, and to reorganize the section. The proposed new subsection is in conformance with Texas Natural Resources Code, §33.602(c).

Proposed new §15.41(a)(1) establishes a presumption of erosion, which helps establish factors that will be considered for purposes of determining whether an area can be presumed eroding for purposes of qualifying for CEPRA funds. The original language addressing what qualifies as eroding was originally located in §15.44(b) and was based on a determination of the rate of erosion. This language has been incorporated into paragraph (a)(1) and has been expanded because it did not adequately address how GLO would evaluate erosion in the bays and other areas where erosion rates are not regularly tracked. The new language in this subsection provides that erosion is presumed if: a portion of the gulf shoreline is experiencing a historical erosion rate of greater than two feet per year based on the published data of the University of Texas at Austin Bureau of Economic Geology; a portion of the bay area is experiencing documented erosion; a portion of the gulf shoreline or bay area has been the subject of an erosion response project and it has been determined that maintenance is required; or a portion of the gulf shoreline or bay area has been impacted by a storm event and remediation is required to reestablish the preexisting conditions of the site. Proposed new §15.41(a)(1) is in conformance with Texas Natural Resources Code, §33.602(c).

Proposed new §15.41(a)(2) requires a potential project partner seeking funding from the Account to submit an Application to the GLO by the GLO’s established submission deadline. The original rule required submission of the “project goal summary to the Land Office no later than July 1 immediately preceding the state fiscal biennium in which funding is sought.” The term “project goal summary” has been changed to “Application”. The submission deadline date in the proposed rule now allows for more flexibility if the date needs to be adjusted in the future. The Application submission deadline will however be identified in the Coastal Resources Funding Application, on the GLO’s CEPRA website, and in the CEPRA guidance document. Additional modifications include relocating language concerning emergency situations to proposed new §15.41(b) for better subject-matter organization. Proposed new §15.41(a)(2) is in conformance with Texas Natural Resources Code, §33.602(c).

Proposed new §15.41(a)(2)(A) outlines the information that must be included in the Application to be considered complete. Only submitted Applications that include the requested information set out in §15.41(a)(2)(A)(i) - (xvii) will be deemed complete by the GLO and considered for funding from the Account. The
 proposed subparagraph includes most of the same information sought in the original rule but relocates the requirement to submit "a description of an emergency situation the project is intended to address" to proposed new §15.41(b) for better subject-matter organization. A requirement concerning submission of information on "whether a sand source has been identified by the potential project partner for a beach nourishment project" has been deleted because this information is easily obtained through other sources. Additional modifications include clarifying language in proposed new §15.41(a)(2)(A)(ix) which requires information about, "whether any potential or committed sources of funding, other than from the Account, will be provided with a description of the total contribution amount and estimated percentage of the project to be funded". Proposed new §15.41(a)(2)(A)(xii) and (xiii) add two requirements for submission regarding "the feasibility and cost-effectiveness of the project" and "the economic impacts of erosion in the area of the project". These are included in the Application because they are general requirements that are considered by the GLO during the evaluation process. Proposed new §15.41(a)(2)(A)(xiv) also adds clarifying language seeking "identification of the project category for which funding is sought from the Account and a description of the partners proposed cost share." Proposed new §15.41(a)(2)(A)(xvi)(I) adds a definition of "beach nourishment and associated enhancements" and is defined as "activities that include direct placement of beach quality sand to create or maintain a beach. It also includes associated construction or enhancements to the dune system". The proposed new subclause also explains that the shared project cost of the Applicant must be at least 25 percent "if the project includes a beach nourishment and associated enhancements project on a public beach or bay shore". In proposed new §15.41(a)(2)(A)(xvi)(II), new language explains that the shared project cost of the Applicant must be at least 40 percent "if the project includes a marsh restoration project, a bay shoreline protection project other than a beach nourishment and associated enhancements project, or any other coastal erosion response study or project". Proposed new §15.41(a)(2)(A)(xv) requires an Applicant to provide information on "whether there is a permit associated with the project". Additional minor edits are made for clarification, consistency, and overall organization.

Proposed new §15.41(a)(2)(B) lists the general requirements that GLO will consider when evaluating received Applications. In the original rule, the GLO evaluated the Application based on a set of "criteria". Proposed new §15.41(a)(2)(B) replaces the term "criteria" with "general requirements" to make a clearer distinction between the evaluation of the initial review of "general requirements" and subsequent evaluation of "priority criteria". Proposed new §15.41(a)(2)(B)(iii) adds the terms "public property", "private property", and "Coastal Natural Resource Areas," as defined by 31 Texas Administrative Code, Section 501. This clarifies that the GLO will evaluate each project on its effect "on public property, public infrastructure, private property, or coastal natural resource areas threatened by erosion". Additional minor edits delete outdated GLO contact information and a reference to the abolished Coastal Coordination Council. The GLO's current contact information will be available to the public via the GLO's CEPRA website and the Coastal Resources Funding Application.

Proposed new §15.41(a)(2)(C) concerns an evaluation of the priority of proposed projects based on priority criteria after the evaluation of the general requirements is completed. In the original rule, the priority criteria required GLO to consider "whether the proposed project will address an emergency erosion situation in the area". This provision has been relocated to §15.41(b) for better subject-matter organization. Proposed new §15.41(a)(2)(C)(ii) adds a for the GLO's consideration "whether the project will enhance community resiliency". This new provision is in conformance with Texas Natural Resources Code, §33.602(c). Minor revisions are also made for consistency and clarity.

Proposed new §15.41(a)(2)(D) describes the process for GLO's designation of projects as either priority or alternate projects. The process for designating projects remains mostly the same with minor edits for consistency, clarification, and reorganization. The original rule discussed the designation of projects as either a "priority" or "alternate" project. The term "alternative" is replaced with "alternate" in the proposed rule. The designation of a priority project or alternate project will continue to depend on the outcome of the GLO's evaluations under the proposed rule and availability of funding. Language is also added in proposed new §15.41(a)(2)(D)(ii) that provides "if the GLO's evaluation results in a designation of a project as a priority project, the GLO will enter into a project cooperation agreement with the qualified project partner." This language is substantially similar to language found in §15.41(a)(1) and (2) of the original rule.

Proposed new §15.41(a)(2)(E) requires project cooperation agreements to explicitly define all activities and responsibilities for undertaking a priority project between the GLO and a qualified project partner as set out in proposed §15.42. This language is substantially similar to language found in §15.41(a)(2) of the original rule. The new proposed subparagraph is in conformance with Texas Natural Resources Code, §§33.601(9) and 33.602(c).

Proposed new §15.41(a)(3) notes that "as appropriate, the GLO may request the applicant to work cooperatively or participate in a further review to identify and select a preferred erosion response solution to address any erosion problem(s) identified in the Application". The proposed new subparagraph also explains that the preferred erosion response solution may be determined by the GLO through the evaluation of an alternatives analysis and feasibility study, which may include modeling and consideration of long-term results of various methods of design. GLO will select the best erosion response solution to accomplish the goals in the Application based on the alternatives analysis and feasibility study. The term "preferred erosion response solution" replaces the previous reference in the original rule from "preferred alternatives" and should provide more clarity. Aside from the new terminology the process remains the same as the original rule. The proposed new paragraph is in conformance with Texas Natural Resources Code, §33.602(c).

Proposed new §15.41(a)(3)(A) provides that the GLO will evaluate projects on the priority criteria of whether the potential or qualified project partner has already made or received a binding commitment to fund all or a portion of a given project and whether the feasibility and cost-effectiveness of the preferred erosion response solution is meeting the objectives stated in the Application. The proposed new subparagraph is consistent with the §15.41(a)(1)(D) original rule and includes minor edits to streamline and organize the rule.

Proposed new §15.41(a)(3)(B) adds new language to the subparagraph to clarify that the GLO may, at its sole discretion, fund studies or activities that evaluate erosion, identify preferred erosion response solutions, or fund projects that investigate methods to help identify and enhance community resiliency strate-
gies. Minor edits are made for consistency and clarity. This is in conformance with Texas Natural Resources Code, §33.602(c).

Proposed new §15.41(a)(3)(C) generally addresses how the GLO will determine whether a qualified project partner should receive funds from the Account based on the final prioritization of a preferred erosion response solution under §15.41(a)(3)(A). The proposed new subparagraph is almost the same as the original rule but deletes the terms "potential or" and "alternatives". The term "alternatives" is replaced with the phrase "preferred erosion response solution" to clarify the rule. Minor edits are also made to organize and update citations.

Proposed new §15.41(a)(3)(D) provides "that each state fiscal biennium the GLO may determine that at least one project designated as a priority project may be undertaken by the GLO without requiring a qualified project partner to provide a portion of the shared project cost." See, Texas Natural Resources Code, §33.603(f). The subparagraph also provides for "GLO to consider whether to fund erosion response projects without a cost share requirement. For projects without a cost share requirement, GLO will only fund projects that are approved under this section exceeds one-half of the total amount appropriated to the GLO for coastal erosion planning and response for the state fiscal biennium in which funding is sought, the relative amount of funding available to the qualified project partner from sources other than the Account, and the potential impact of the projects on coastal erosion in relation to the total estimated cost of the projects." Most of the proposed new subparagraph is the same as the original rule but includes minor edits for clarification, consistency, and organization.

Proposed new §15.41(b) concerns how the GLO may use §15.41(a) criteria to select a project for funding that will address an emergency situation. Similar to the original rule, the proposed new subsection provides that the GLO may accept an Application for an emergency project at any time during the state fiscal biennium. Applications must include a description of the area that is immediately threatened or impacted by erosion and whether the emergency erosion project will address or resolve the identified erosion problem. All emergency related project funding references in §15.41(a) have been moved to §15.41(b) for better subject matter organization. This new subsection is authorized under Texas Natural Resources Code, §33.602(c).

§15.42, relating to Funding Projects From the Coastal Erosion Response Account

Section 15.42, relating to Funding Projects From the Coastal Erosion Response Account, is proposed for repeal in order to reorganize, streamline, and clarify the rules and add information under proposed new §15.42 concerning the same subject matter.

Proposed new §15.42, relating to Funding Projects From the Coastal Erosion Response Account, clarifies the criteria and process for qualified project partners to obtain priority project funding from the coastal erosion response account (Account). The proposed new subsection reflects the same content and process as the original rule, but the section is reorganized, and additional information is added to clarify the rules. As a result, the subsections are re-labeled throughout this subsection and minor edits are made to improve readability and consistency. The term "GLO" replaces "Land Office" throughout the section. The term "priority" is also added in the subsection to clarify that funding considerations are for priority projects.

Proposed new §15.42(a) generally addresses the process for obtaining funding for priority projects under the Account and requires a project cooperation agreement to be executed between the GLO and a qualified project partner. It also requires "a project cooperation agreement to explicitly define the terms and conditions under which the GLO will fund the project". The original rule requires changes in funding from the Account to be reflected in an amended project cooperation agreement. This requirement is deleted from subsection (a) and incorporated into proposed new §15.42(d). The proposed new subsection is in conformance with Texas Natural Resources Code, §§33.602(c) and 33.603(c)(2).

Proposed new §15.42(b) requires that a project cooperation agreement must provide for management of the project by either the GLO or by the qualified project partner. The subsection further provides GLO the sole discretion to decide whether the project will be managed by the GLO, with payment to the GLO by the qualified project partner of the required percentage of the shared project cost from the Account. Alternatively, the GLO may allow the project to be managed by the qualified project partner with reimbursement from the Account to the qualified project partner for project expenses for work completed in the amount provided in the project cooperation agreement. Most of the proposed new subsection reflects the same subject matter and process as the original rules but includes minor edits for consistency and clarification.

Proposed new §15.42(c) expands and clarifies that a project cooperation agreement must include the terms of the qualified project partner's commitment to provide the required percentage of the shared project cost from the Account, provide the total project budget to the extent this it is known, and identify the funding sources and the amounts that will be used as a partner's cost share or the basis of in-kind services that will be used to offset the authorizations that have been obtained or will be required to construct the project," as specified in subsection (j). This new subsection is consistent with the original rule but incorporates §15.42(g) from the original rule into this subsection for better organization. The subject matter previously located in §15.42(c) is incorporated into proposed new §15.41(e) for better organization.

Proposed new §15.42(d) concerns the requirements for amending a project cooperation agreement to reflect changes to priority project terms or funding from the Account. This provision is consistent with the original rule but was relocated from §15.41(a) into this subsection for reorganization of the section. The original rule provisions in §15.41(d) are now reflected in §15.41(f).

Proposed new §15.42(e) fully describes the cost share requirements for CEPRP projects that are originally referenced to in the description of the application in §15.41(a) and includes the following examples of the types of projects that will require a 40% shared project cost from the Applicant: (A) a marsh restoration or enhancement project; or (B) a bay shoreline protection project other than a beach nourishment project." The required minimum specified percentage for a qualified project partner is the same as the original rule, but the information was previously located in §15.42(c). Proposed new §15.42(e)(1) adds the phrase "and associated enhancements" after the term beach nourishment. Beach nourishment and associated enhancements are defined in proposed new §15.41(a)(2)(A)(xiv)(I). Proposed new §15.42(e)(2) adds clarifying language by replacing the term "including" with the phrase "and includes the following examples:.

Additionally, proposed new §15.42(e)(2)(A) adds the description "or enhancement" after the term marsh restoration.

44 TexReg 1818   April 12, 2019   Texas Register
Proposed new §15.42(f) provides that "the state's portion of the shared project cost for erosion response demonstration projects undertaken or funded pursuant to Texas Natural Resources Code §33.603(g) is limited to one-tenth of the total amount appropriated to the GLO for coastal erosion planning and response during the state fiscal biennium for which funding is sought." This proposed new subsection is the same as the original rule, but the information was previously located in §15.42(d).

Proposed new §15.42(g) fully describes the limited authority of the GLO to fund a project without the required shared project cost which is first referenced to in the description of the application in §15.41(a). It provides that "the GLO may, pursuant to Texas Natural Resources Code §33.603(f), undertake at least one erosion response project each biennium without requiring a qualified project partner to provide a portion of the shared project cost if the total cost of projects that do not have a cost share requirement does not exceed one-half of the total amount appropriated to the GLO for coastal erosion planning and response during the state fiscal biennium." This proposed new subsection is the same as the original rule but was previously located in §15.42(e).

Proposed new §15.42(h) provides that "the GLO may determine the percentage of the shared project cost a qualified project partner must provide for a project undertaken pursuant to Texas Natural Resources Code §33.603(b)(11), (12), or (13) for the removal of debris, removal and relocation of structures from the public beach through reimbursement of expenses or purchase of property, and the acquisition of property necessary for the construction, reconstruction, maintenance, widening, or extension of an erosion response project under this subchapter." This proposed new subsection is identical to the original rule but was previously located in §15.42(f).

Proposed new §15.42(i) prohibits "costs incurred by a potential project partner, before becoming a qualified project partner, to be used for offsetting the cost-sharing requirement from the Account." This proposed new subsection is identical to the original rule but was previously located in §15.42(h).

Proposed new §15.42(j) allows a qualified project partner to provide in-kind goods or services after entering into a project cooperation agreement with the GLO. A qualified project partner may offset the shared project cost if the GLO is provided with a reasonable basis for estimating the monetary value of those goods or services. The GLO has sole discretion on whether to allow any in-kind goods or services to offset the cost-sharing requirement. The project cooperation agreement must reflect any in-kind goods or services approved by the GLO. This proposed new subsection contains the same subject matter in the original rule but was previously located in §15.42(i).

Proposed new §15.42(k) provides "that local governments that receive financial assistance from the state to clean and maintain public beaches fronting the Gulf of Mexico under Chapter 25 of this title, relating to Beach Cleaning and Maintenance Assistance Program, will not be allowed to use funds received under that program to meet the cost-sharing requirement." This proposed new subsection is identical to the original rule but was previously located in §15.42(j).

§15.44, relating to Beneficial Use of Dredged Materials

The proposed amendments to §15.44 revise and update the section by replacing the term "Land Office" with "GLO" throughout the section, delete and relocate §15.44(b) into proposed new §15.41(a)(1), delete outdated reference citations to publication materials by the U.S. Army Corps of Engineers, and delete information pertaining to GLO's outdated mailing address for requesting copies of publications. Conforming letter changes are made throughout the section to address the deletion of §15.44(b). The proposed amendments are in conformance with Texas Natural Resources Code, §33.602(c) and (d).

The proposed amendments to §15.44(a) make minor revisions to this subsection to delete language, update references, and clarify the subsection. In the first sentence the following terms are deleted: "used", "eroding", "wherever practicable", and "Land Office". The following terms are added for clarification in the first sentence "Account", "or to benefit", "areas", "or create", and "to mitigate erosion". As revised, the first sentence states "If a project receives funds from the coastal erosion response account (Account), material dredged in constructing and maintaining navigation inlets and channels of the state shall be placed on, or used to benefit, eroding beach areas or to restore or create wetlands to mitigate erosion."

The proposed amendments to §15.44(b) delete the subsection and delete the following text: "A portion of the shoreline which is experiencing a historical erosion rate of greater than two feet per year based on the published data of the University of Texas at Austin Bureau of Economic Geology, is considered an eroding area for the purposes of this subchapter." This subsection is relocated to proposed new §15.41(a)(1) which expands upon the presumption of erosion to better address areas that are not immediately adjacent to the Gulf. Conforming letter changes are made throughout the section to address the removal of this subsection. Section 15.44(c) is converted to §15.44(b). The following new terms are also added to clarify the subsection "or used to benefit, eroding", "areas", and "to create".

The proposed amendments to §15.44(c) re-letter §15.44(d) to §15.44(c). The proposed amendments in this subsection delete outdated citations to the U.S. Army Corps of Engineers publications that are used as guidance materials by the GLO for determining the suitability and practicality of dredged material for beach placement. The proposed amendments also delete the GLO's outdated mailing address and corresponding language for requesting copies of the publications from the GLO. The GLO is removing this information because the relevant guidance materials are available to the public online at the U.S. Army Corps of Engineers website. New language is added to the subsection clarifying that the "GLO" may refer to the guidance "materials" "by the" U.S. Army Corps of Engineers, "relating to" Engineering & Design, Beneficial Uses of Dredged Materials, "Coastal Engineering, and Beach Fill Design."

The proposed amendment to §15.44(d) would re-letter §15.44(e) to §15.44(d) due to conforming letter changes. There are no other changes to this subsection.

The proposed amendments to §15.44(e) would re-letter §15.44(f) to §15.44(e) due to conforming letter changes. The proposed amendments remove outdated references to the U.S. Army Corps of Engineers publications used for guidance materials in determining the suitability and practicality of dredged material for beach placement and remove the GLO's outdated mailing address for requesting copies of the publications from the GLO because the publications are easily accessed online by the public. New language is added to the subsection to clarify the "GLO" may refer to the guidance "materials" "by the" U.S. Army Corps of Engineers, "relating to" Engineering & Design, Beneficial Uses of Dredged Materials."
The proposed amendments, to §15.44(f) would re-letter §15.44(g) to §15.44(f) due to conforming letter changes. The following language is removed because it is no longer necessary “after the effective date of this section.”

FISCAL AND EMPLOYMENT IMPACTS

David Green, Deputy Director, Coastal Resources, has determined that for each year of the first five years the proposed new and amended rules are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the rules contained in §§15.41, 15.42, and 15.44.

Mr. Green has determined that for each year of the first five years the proposed new and amended rules are in effect, there will be no fiscal implications for local governments as a result of enforcing or administering the rules.

Mr. Green has also determined that the proposed rulemaking will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals because the rulemaking relates solely to administrative functions of the Commissioner and the GLO.

Mr. Green has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Green has determined that for each year of the first five-year period the proposed new and amended rules are in effect, the public will benefit from the rules because the Commissioner and the GLO recognize that public beaches, bays, and estuaries support the economy of cities and counties along the Texas Gulf Coast. Coastal erosion response projects funded under these rules will benefit the public in that public beaches, public coastal property, and coastal natural resources will be preserved, enhanced, or restored, and losses of public and private resources and infrastructure will be reduced. The proposed amendments concerning guidelines for evaluating beneficial use of dredged material will continue to enable the GLO and qualified project partners to obtain material necessary to nourish and maintain beaches or restore wetlands at a relatively low cost, while at the same time preserving the quality and character of beaches or wetlands. The proposed new and amended rules will also improve the public’s understanding of coastal erosion response projects funded under the rules and benefit the public through improved certainty and clarity in the rules.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO has evaluated the proposed rulemaking in accordance with Government Code, §2001.0221. The GLO has determined that for the first five-year period the proposed new and amended rules are in effect, the rules would not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; increase or decrease the number of individuals subject to applicability of the rules; or positively or adversely affect the state’s economy. The proposed rulemaking would also not expand or limit existing regulations, but would repeal §15.41, relating to Evaluation Process for Coastal Erosion Studies and Projects, and new §15.42, relating to Funding Projects From the Coastal Erosion Response Account. The repeal of existing §15.41 and §15.42 and creation of new §15.41 and §15.42 allows the rules to be reorganized and streamlined resulting in improved clarity and transparency in the rules.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking action in accordance with Texas Government Code, §2007.043(b), and the Attorney General's Private Real Property Rights Preservation Act Guidelines and determined that a detailed takings impact assessment is not required. The proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner’s right to the property that would otherwise exist in the absence of the government action. The proposed rulemaking will not result in a taking of private property and there would be no adverse impacts on private real property interests.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

COASTAL MANAGEMENT PROGRAM ANALYSIS

The proposed new rule sections and amendments are not subject to the Texas Coastal Management Program (CMP), Texas Natural Resources Code §33.2053 and 31 Texas Administrative Code §505.11(a)(1), relating to Actions and Rules Subject to the Coastal Management Program. Individual erosion response projects undertaken in compliance with these rules may be subject to the CMP, and consistency with the CMP will be individually determined at the appropriate stage of project planning.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311 or e-mail to Walter.Talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

31 TAC §15.41, §15.42

STATUTORY AUTHORITY

The repeals are proposed under the Texas Natural Resources Code, §33.602(c), which provides the Commissioner of the GLO with the authority to adopt rules as necessary to implement
Texas Natural Resources Code, Chapter 33, Subchapter H, concerning coastal erosion.


§15.42. Funding Projects From the Coastal Erosion Response Account.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 29, 2019.

TRD-201900956
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office

Earliest possible date of adoption: May 12, 2019
For further information, please call: (512) 475-1859

31 TAC §§15.41, 15.42, 15.44

STATUTORY AUTHORITY

The new rule sections and amendments are proposed under the Texas Natural Resources Code, §33.602(c), which provides the Commissioner of the GLO with the authority to adopt rules as necessary to implement Texas Natural Resources Code, Chapter 33, Subchapter H, concerning coastal erosion; and Texas Natural Resources Code §33.602(d), which authorizes the Commissioner of the GLO to adopt rules providing for beneficial use of dredged material.

The proposed new sections and amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapter H.

Texas Natural Resources Code §§33.601 through 33.605 are affected by the proposed rulemaking.


(a) The General Land Office (GLO) will conduct an evaluation of potential coastal erosion studies and projects to designate funding for qualifying projects from the coastal erosion response account (Account). The evaluation process will consist of a review by the GLO of Coastal Resources Funding Application (Applications) to identify priority projects for funding. Throughout the evaluation process, the goal of the GLO is to work cooperatively with qualified project partners to identify and select preferred erosion response solutions to address erosion problems identified in the Applications.

(1) For purposes of this section, erosion is presumed if:

(A) a portion of the Gulf of Mexico (Gulf) shoreline is experiencing a historical erosion rate of greater than two feet per year based on the published data of the University of Texas at Austin Bureau of Economic Geology;

(B) a portion of the bay area is experiencing documented erosion;

(C) a portion of the gulf shoreline or bay area has been the subject of an erosion response project and it has been determined that maintenance is required; or

(D) a portion of the gulf shoreline or bay area has been impacted by a storm event and remediation is required to reestablish the preexisting conditions of the site.

(2) To be considered for funding under the Account, a potential project partner must submit an Application to the GLO by the GLO's established submission deadline.

(A) The submitted Application must include the following information to be considered complete:

(i) the name of the entity that will be the potential project partner and the name, mailing address, email address, and telephone number of the person who will represent the potential project partner and be the primary point of contact with the GLO;

(ii) the location and geographic scope of the erosion problem;

(iii) a description of the erosion problem and the severity of erosion in the area;

(iv) a description of the project or study and how the project or study will lessen the negative economic impacts of the erosion problem;

(v) a description of how the project or study will benefit the public infrastructure, and coastal property that has been impacted or threatened by erosion;

(vi) a description of the natural resources impacted or threatened by erosion in the area;

(vii) the estimated cost to complete the project or study;

(viii) whether the project will incorporate the beneficial use of dredged materials;

(ix) whether any potential or committed sources of funding, other than from the Account, will be provided with a description of the total contribution amount and estimated percentage of the project to be funded;

(x) whether the potential project partner can make a binding funding commitment to meet the required percentage of the Account's shared project cost necessary to receive funding from the Account;

(xi) the desired outcome or goals of the project for which funding is sought from the Account;

(xii) if available, the feasibility and cost-effectiveness of the project;

(xiii) if available, the economic impacts of erosion in the area of the project;

(xiv) identification of the project category for which funding is sought from the Account and a description of the partners proposed cost share:

(I) if the project includes a beach nourishment and associated enhancements project on a public beach or bay shore, the qualified project partner's shared project cost, as compared to the Account's contribution, must be at least 25 percent. Beach nourishment and associated enhancements are defined as activities that include direct placement of beach-quality sand to create or maintain a beach. It also includes associated construction or enhancements to the dune system;

(II) if the project includes a marsh restoration project, a bay shoreline protection project other than a beach nourishment and associated enhancements project, or any other coastal erosion response study or project, the qualified project partner's shared project cost, as compared to the Account's contribution, must be at least 40 percent;
(III) a project for removal of debris or structures, relocation of structures from the public beach, including the purchase of property located on a public beach, or the acquisition of property necessary for the construction, reconstruction, maintenance, widening, or extension of an erosion response project with a shared project cost requirement to be determined by the GLO, in accordance with subsections (b)(11) - (13) and (b) of Texas Natural Resources Code, §33.603;

(IV) a structural shoreline protection project on or landward of a public beach that utilizes innovative technologies, designed or engineered to minimize beach scour, in accordance with Texas Natural Resources Code, §33.603(b)(14); or

(V) an erosion response demonstration project in accordance with Texas Natural Resources Code, §33.603(g);

(VI) whether the project for which funding is sought from the Account is being sought without a shared project cost requirement in accordance with Texas Natural Resources Code, §33.603(f);

(xv) whether there is a permit associated with the project;

(xvi) a description of how the project is consistent with the Coastal Management Plan's enforceable policies set out in 31 TAC §501.26(b) (relating to Policies for Construction in the Beach/Dune System), and identification of whether the project involves structural shoreline protection on or landward of a public beach; and

(xvii) whether the potential project partner seeks to manage the project or requests that the GLO manage the project.

(B) The GLO will evaluate received Applications based on the following general requirements:

(i) the feasibility and cost-effectiveness of the project;

(ii) the economic impacts of erosion in the area of the project;

(iii) the effect of the project on public property, public infrastructure, private property, or natural resource threatened by erosion;

(iv) the effect of the project on Coastal Natural Resource Areas threatened by erosion;

(v) if the project is located within the jurisdiction of a local government that administers a beach/dune plan;

(I) whether the local government is adequately administering the Open Beaches Act (Texas Natural Resources Code, Chapter 61) and the Dune Protection Act (Texas Natural Resources Code, Chapter 63); and

(II) whether the local government has implemented an erosion response plan for reducing public expenditures due to erosion and storm damage losses established under Texas Natural Resources Code, §33.607, and §15.17 of this title (relating to Local Government Erosion Response Plans);

(vi) whether the project will provide for beneficial use of beach-quality sand dredged in constructing and maintaining navigation inlets and channels of the state;

(vii) whether the potential project partner has leveraged other sources of funding and already made or received a binding commitment to fund all or a portion of a given project;

(viii) if the project involves the construction or retrofitting of dams, jetties, groins or other structural impoundments, whether such structures will be designed with a sediment bypass system; and

(ix) if the project involves structural shoreline protection on or landward of a public beach, whether such project uses innovative technologies designed or engineered to minimize beach scour in accordance with Texas Natural Resources Code, §33.603(b)(14) and is consistent with the Coastal Management Plan's enforceable policies set out in 31 TAC §501.26(b) of this title (relating to Policies for Construction in the Beach/Dune System).

(C) After conducting an evaluation according to the general requirements identified in subparagraph (B) of this paragraph, the GLO will further evaluate received Applications based on the following priority criteria:

(i) the relative severity of erosion in each area;

(ii) whether the project will enhance community resiliency;

(iii) the needs in other critical coastal erosion areas;

(iv) whether federal and local governmental financial participation in the project is maximized;

(v) whether financial participation by private beneficiaries of the project is maximized;

(vi) whether the project achieves efficiencies and economies of scale;

(vii) whether funding the project will contribute to balance in the geographic distribution of benefits for coastal erosion response projects in Texas or have received funding from the Account; and

(viii) the cost of the project in relation to the amount of money available in the Account.

(D) Based on the evaluation of the Applications and availability of funding, the GLO will designate projects as either priority projects or alternate projects:

(i) If, as a result of the evaluation process, the GLO designates a potential project as an alternate project, the potential project partner will be notified in writing. The GLO will retain the Application and may reevaluate it if future conditions warrant funding the project in the current state fiscal biennium. The Application must be resubmitted by the potential project partner for consideration for funding in a subsequent state fiscal biennium.

(ii) If the GLO's evaluation results in a designation of a project as a priority project, the GLO will enter into a project cooperation agreement with the qualified project partner.

(E) A project cooperation agreement must explicitly define all activities and responsibilities for undertaking a priority project between the GLO and a qualified project partner as set out in §15.42 of this chapter.

(3) As appropriate, the GLO may request the applicant to work cooperatively or participate in a further review to identify and select a preferred erosion response solution to address any erosion problem(s) identified in the Application. The preferred erosion response solution may be determined by the GLO through the evaluation of an alternatives analysis and feasibility study, which may include modeling and consideration of long-term results of various methods of design. Based on this evaluation, the GLO will select the best erosion response solution to accomplish the goals in the Application.
(A) Projects will be evaluated by the GLO on whether the potential or qualified project partner has already made or received a binding commitment to fund all or a portion of a given project and whether the feasibility and cost-effectiveness of the preferred erosion response solution is meeting the objectives stated in the Application.

(B) The GLO may, at its sole discretion, fund studies or activities that evaluate erosion, identify preferred erosion response solutions, or fund projects that investigate methods to help identify and enhance community resiliency strategies.

(C) The GLO will determine whether a qualified project partner should receive funds from the Account based on the final prioritization of a preferred erosion response solution according to the considerations detailed in subparagraph (A) of this paragraph.

(D) Each state fiscal biennium the GLO may determine that at least one project designated as a priority project may be undertaken by the GLO without requiring a qualified project partner to provide a portion of the shared project cost as provided in Texas Natural Resources Code, §33.603(f). In addition to the considerations detailed in subparagraph (A) and (C) of this paragraph, the GLO may consider the following factors in determining whether to fund erosion response projects without a cost share requirement:

(i) whether the total cost of the projects that are approved under this section exceeds one-half of the total amount appropriated to the GLO for coastal erosion planning and response for the state fiscal biennium in which funding is sought;

(ii) the relative amount of funding available to the qualified project partner from sources other than the Account; and

(iii) the potential impact of the projects on coastal erosion in relation to the total estimated cost of the projects.

(b) The GLO may use the criteria set forth in this section to select a project for funding that will address an emergency situation. The GLO may accept an emergency project Application at any time during the state fiscal biennium. The Application must describe the area that is immediately threatened or impacted by erosion and how the emergency erosion project will address or resolve the identified erosion problem.

§15.42. Funding Projects From the Coastal Erosion Response Account.

(a) For purposes of funding priority projects under the coastal erosion response account (Account), a project cooperation agreement must be executed between the General Land Office (GLO) and a qualified project partner. A potential project partner becomes a qualified project partner by entering into a project cooperation agreement with the GLO. The GLO must explicitly describe in the project cooperation agreement the terms and conditions under which the GLO will provide funds from the Account for the project.

(b) The project cooperation agreement must provide for management of the project by either the GLO or by the qualified project partner. The GLO, in its sole discretion, may determine whether:

(1) the project will be managed by the GLO, with payment to the GLO by the qualified project partner of the required percentage of the shared project cost; or

(2) the project will be managed by the qualified project partner with reimbursement from the Account to the qualified project partner for project expenses for work completed in the amount provided in the project cooperation agreement.

(c) The project cooperation agreement must include the terms of the qualified project partner's commitment to provide the required percentage of shared project cost, provide the total project budget to the extent this it is known, and identify the funding sources and the amounts that will be used as a partner's cost share or the basis of in-kind services that will be used to offset the authorizations that have been obtained or will be required to construct the project, as specified below in subsection (i).

(d) If the GLO determines that a priority project requested by a qualified project partner receives a change in funding from the Account or project terms, the GLO and the qualified project partner will amend the project cooperation agreement to reflect those changes.

(e) Except as provided in Texas Natural Resources Code, §33.603(f) and (h), qualified project partners are required to provide a minimum specified percentage amount of the shared project costs as prescribed by Texas Natural Resources Code, §33.603(e) specified below:

1 at least 25 percent of the shared project cost, as compared to the Account's contribution, if the project is a beach nourishment and associated enhancement project on a public beach or bay shore; and

2 at least 40 percent of the shared project cost, as compared to the Account's contribution, if the project is any other coastal erosion response study or project, including the following examples:

(A) a marsh restoration or enhancement project; or

(B) a bay shoreline protection project other than a beach nourishment project.

(f) The state's portion of the shared project cost for erosion response demonstration projects undertaken or funded pursuant to Texas Natural Resources Code §33.603(g) is limited to one-tenth of the total amount appropriated to the GLO for coastal erosion planning and response during the state fiscal biennium for which funding is sought.

(g) The GLO may, pursuant to Texas Natural Resources Code §33.603(f), undertake at least one erosion response project each biennium without requiring a qualified project partner to provide a portion of the shared project cost if the total cost of projects that do not have a cost share requirement does not exceed one-half of the total amount appropriated to the GLO for coastal erosion planning and response during the state fiscal biennium.

(h) The GLO may determine the percentage of the shared project cost a qualified project partner must provide for a project undertaken pursuant to Texas Natural Resources Code §33.603(b)(11), (12), or (13) for the removal of debris, removal and relocation of structures from the public beach through reimbursement of expenses or purchase of property, and the acquisition of property necessary for the construction, reconstruction, maintenance, widening, or extension of an erosion response project under this subchapter.

(i) No costs incurred by a potential project partner before becoming a qualified project partner may be used to offset the cost-sharing requirement under CEPPRA.

(j) In-kind goods or services provided by the qualified project partner after entering into a project cooperation agreement with the GLO may offset the partner's required portion of the shared project costs, if the qualified project partner provides the GLO with a reasonable basis for estimating the monetary value of those goods or services. The decision on whether to allow any in-kind good or service to offset the cost-sharing requirement is in the sole discretion of the GLO. The project cooperation agreement must reflect any in-kind goods or services approved by the GLO.
(k) Local governments that receive financial assistance from the state to clean and maintain public beaches fronting the Gulf of Mexico under Chapter 25 of this title, relating to Beach Cleaning and Maintenance Assistance Program, will not be allowed to use funds received under that program to meet the cost-sharing requirement.

§15.44. Beneficial Use of Dredged Materials.

(a) If a project receives funds from the coastal erosion response account (Account), material dredged in constructing and maintaining navigation inlets and channels of the state shall be placed on or used to benefit eroding beach areas [beaches] or [used] to restore [eroding] or create wetlands to mitigate erosion [wherever practicable]. The GLO [Land Office], in consultation with a qualified project partner, shall evaluate the practicality and suitability of proposed beneficial use of dredged material in accordance with this section and shall consider relative cost of the material and the sediment composition.

(b) A portion of the shoreline which is experiencing an historical erosion rate of greater than two feet per year based on the published data of the University of Texas at Austin Bureau of Economic Geology, is considered an eroding area for the purposes of this subchapter.

(b) [(c)] For the purposes of this subchapter, beneficial use of dredged material shall not be deemed practicable if the cost to the GLO [Land Office] and qualified project partner for placement of the material dredged in constructing and maintaining navigation inlets and channels of the State exceeds the cost of obtaining similar material suitable for placement on or used to benefit eroding beach areas [beaches] or to create wetlands from another source, including transportation costs. In the case of placement for wetland restoration, the cost of soil preparation and treatment may also be considered.

(c) [(d)] In determining the suitability and practicality of dredged material for beach placement, the GLO [Land Office] may refer to the guidance materials by the [found in Chapter 9 of] U.S. Army Corps of Engineers, relating to [Publication No. EM 1110-2-5026,] "Engineering & Design, Beneficial Uses of Dredged Material, Coastal Engineering, and Beach Fill Design". [USACE, 30 June 1987 and U.S. Army Corps of Engineers, Publication No. EM 1110-2-1100, "Coastal Engineering Manual - Part V," Chapter 4, Beach Fill Design, USACE, 1 August 2008. Copies of these publications can be obtained on request by mail sent to the General Land Office, Attn: Director, Planning, Permitting and Technical Services Division, Coastal Resources Program Area, P.O. Box 12873, Austin, TX 78711-2873 and/or the U.S. Army Corps of Engineers website located at http://140.194.76.129/publications/eng-manuals/.] Only beach-quality sand shall be considered for beach placement.

(d) [(e)] In this section "beach-quality sand means sediment material that:

(1) has effective grain size, mineralogy, and quality that approximates the existing beach material in the placement area;

(2) is low in fine grain, silty, or clayey sediments; and

(3) contains no hazardous substances listed in the Code of Federal Regulations, Title 40, Part 261, Subpart D - List of Hazardous Wastes, in concentrations which are harmful to human health or the environment as determined by applicable, relevant, and appropriate requirements established by the local, state, and federal governments.

(e) [(f)] In determining the suitability and practicality of placement of dredged material for wetland restoration, the GLO [Land Office] may refer to the guidance materials by the [found in Chapter 5 of] U.S. Army Corps of Engineers, relating to [Publication No. EM 110-2-5026,] "Engineering & Design, Beneficial Uses of Dredged Material," [USACE, 30 June 1987. Copies of this publication can be obtained on request by mail sent to the General Land Office, Attn: Director, Planning, Permitting and Technical Services Division, Coastal Resources Program Area, P.O. Box 12873, Austin, TX 78711-2873 and/or the U.S. Army Corps of Engineers website located at http://140.194.76.129/publications/eng-manuals/]

(f) [(g)] This section applies only to an erosion response project that receives funds from the Account [coastal erosion response account after the effective date of this section].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on March 29, 2019.

TRD-201900957

Mark Havens

Chief Clerk, Deputy Land Commissioner
General Land Office

Earliest possible date of adoption: May 12, 2019

For further information, please call: (512) 475-1859

* * * * *

**TITLE 43. TRANSPORTATION**

**PART 1. TEXAS DEPARTMENT OF TRANSPORTATION**

**CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS**

**SUBCHAPTER E. FEDERAL, STATE, AND LOCAL PARTICIPATION**

43 TAC §§15.50 - 15.53, 15.55

The Texas Department of Transportation (department) proposes amendments to §§15.50 - 15.53 and 15.55, concerning Federal, State, and Local Participation.

**EXPLANATION OF PROPOSED AMENDMENTS**

Amendments to §15.50, Purpose, expand the applicability of the subchapter to all transportation projects, in order to ensure that the responsibilities of the parties are clear for all types of projects for which federal, state, and local cost participation is available under current federal and state transportation programs.

Amendments to §15.51, Definitions, expand various definitions to include all transportation projects for which federal, state and local cost participation is available, rather than only highway improvement projects. Multiple definitions are removed because they define terms that are no longer used in this subchapter.

Amendments to §15.52, Agreements, rearrange and reword the text for clarity, and remove references to the chart in §15.55(c) that designates funding participation ratios because that portion of the rule is being amended to remove the chart. This section is further amended to provide for the department to designate the type of funding arrangement to be used under a funding agreement to allow the department to allocate most appropriately the risk of cost overruns to the party that has the greater ability to manage the cost of the project. Inclusion in the Statewide Transportation Improvement Program is added as a condition under which a project may be authorized by the commission to
align with federal requirements. The designation of the fixed price funding arrangement as being the standard funding type is removed and the requirement for executive director approval for the use of specified percentage funding arrangement is removed in order to allow the department to allocate most appropriately the risk of cost overruns to the party that has the greater ability to manage the cost of the project. The criteria the department will consider in determining the fixed price amount is amended in §15.52(4)(A) in order to reduce financial risk to the department. The amendment also adds flexibility by providing for an adjustment to a fixed price amount when further definition of a local government's requested scope of work identifies greatly differing costs than those initially estimated. Subparagraph §15.52(4)(B)(i) related to specified percentage funding is revised to state minimum percentage local government participation amounts for various state and federal funding programs will be designated by the department and that the local government is responsible for all project costs that are greater than the maximum state and federal participation specified in the funding agreement between the department and the local government. Paragraph (8) expands the conditions for termination to indicate conditions under which the department may terminate the agreement when the local government and the department are not able to execute a mutually agreeable amendment.

Amendments to §15.53, Preliminary and Construction Engineering Expenses, remove a reference to §15.55(c) to reflect amendments made to §15.55.

Amendments to §15.55, Construction Cost Participation, remove the chart establishing federal, state, and local cost participation ratios and provides that the department will establish the ratios. The removal provides flexibility by allowing the department to timely update the federal, state, and local cost participation ratios when the required participation ratios change in federal legislation.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Kenneth Stewart, Director, Contract Services Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Kenneth Stewart, Director, Contract Services Division has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be faster negotiation and execution of jointly funded contracts, earlier commencement and completion of projects, and faster reconciliation of final costs for each party to the contract.

COSTS ON REGULATED PERSONS

Kenneth Stewart, Director, Contract Services Division has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are not anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code §2001.045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Kenneth Stewart, Director, Contract Services Division has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed rules are in effect, there is no impact on the growth of state government.

TAKINGS IMPACT ASSESSMENT

Kenneth Stewart, Director, Contract Services Division has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§15.50 - 15.55 and 15.55 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "43 T.A.C. §§15.50 - 15.53 and 15.55." The deadline for receipt of comments is 5:00 p.m. on May 13, 2019. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTES

Transportation Code, Chapter 221; Transportation Code, Chapter 222, Subchapter C; and Transportation Code, Chapter 224.

§15.50. Purpose.

This subchapter describes federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects.

§15.51. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Texas Transportation Commission.

(2) Congestion Mitigation and Air Quality Improvement Program (CMAQ)--A federal program, established and administered in accordance with 23 United States Code §104 and federal regulations, which provides federal funds for a project in a non-attainment area that
contributes to the attainment of a natural ambient air quality standard or will have certified benefits to air quality.]}

(2) [(3)] Construction cost--All direct and indirect costs identified by the department's cost accounting system to a highway improvement or other transportation project, other than for right of way acquisition, preliminary engineering, and construction engineering.

(3) [(4)] Construction engineering cost/expenses--Engineering or project administration costs and expenses incurred, including indirect costs and expenses identified by the department's cost accounting system, on a highway improvement or other transportation project after contract award.

(4) [(5)] Department--The Texas Department of Transportation.

(5) [(6)] District office--One of the 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

(6) [(7)] Economically disadvantaged county--As determined from data provided to the department by the Texas Comptroller of Public Accounts at the beginning of each fiscal year, a county that has, in comparison to other counties in the state:
(A) below average per capita taxable property value;
(B) below average per capita income; and
(C) above average unemployment.

(7) [(8)] Eligible utilities--Costs of utility adjustments, required by a highway improvement or other transportation project, that are eligible, in accordance with federal and state law, for reimbursement by the department.

(8) [(9)] Executive director--The executive director of the department, or a designee.

(9) [(10)] Federal funds--Financial assistance provided by the federal government for highway improvement and other transportation projects.

[(10) Farm and Ranch to Market (FM/RM) System Route--A road on the system of roads designated by the commission under Transportation Code, §201.104.]

(10) [(12)] Highway improvement project--A project which provides for the design, construction, improvement, or enhancement of a public road, including bridges, culverts, or other appurtenances related to public roads, either on or off the state highway system.

(11) [(14)] Local government--Any county, city, other political subdivision of this state, or special district that has the authority to finance a highway improvement or other transportation project.

[(13) Hurricane Evacuation Route--A designation given to a roadway that serves as the primary route for use by the public in the event of a hurricane or other evacuation event and includes appropriate signing, traffic flow indicators, and auxiliary travel lanes.]

[(12) [(15)] Local participation--Financial [Minimum financial] assistance provided by a local government to participate in costs associated with highway improvement or other transportation projects.

(12) [(16)] Matching funds/participation ratio--Those portions of funds required or chargeable for the contribution toward a highway improvement or other transportation project's cost by a local government.

[(14) National Highway System (NHS)--A part of the National Intermodal Transportation System consisting of the National System of Interstate and Defense Highways and those principal arterial roads which are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings as designated by the United States Congress by criteria set forth in federal law.

[(17) Metropolitan highway—A local road or street which contributes to the state highway system, as designated by the commission.]

[(18) Metropolitan planning organization (MPO)--An organization designated in certain urbanized areas to carry out the transportation planning process as required by 23 United States Code §134.]

[(19) National Highway System (NHS)--A part of the National Intermodal Transportation System consisting of the National System of Interstate and Defense Highways and those principal arterial roads which are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings as designated by the United States Congress by criteria set forth in federal law.

[(20) National System of Interstate and Defense Highways (Interstate Highway System)--A system of roads and bridges that constitute a part of the National Highway System designated by the United States Congress as essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings.]

(15) [(21)] Off-State Highway System Bridge Program--A federally mandated program by which federal funds are made available to replace or rehabilitate bridges under the jurisdiction of a local government and not on the state highway system.

[(22) Off-state highway system routes--Those routes not designated on the state highway system which are the responsibility of local governments.]

[(23) Off-State Highway System Safe Routes to School Program--A program that makes federal funds available to improve bicycle and pedestrian safety of school age children in and around school areas on facilities under the jurisdiction of a local government and not on the state highway system.]

[(24) Off-State Highway System Safety Program--A federally mandated program by which federal funds are made available for safety improvements to facilities under the jurisdiction of a local government and not on the state highway system.]

[(25) On-State Highway System Bridge Program--A federally mandated program by which federal funds are made available to replace or rehabilitate bridges on the state highway system.]

[(26) On-State Highway System Safe Routes to School Program--A program that makes federal or state funds available to improve bicycle and pedestrian safety of school age children in and around school areas on the state highway system.]

[(27) On-State Highway System Safety Program--A federally mandated program by which federal or state funds are made available for safety improvements on the state highway system.]

[(28) On-System Turnpike Project - A tolled state highway.]

[(29) Phase 1 Trunk System Corridor--Corridors of the Texas Trunk System prioritized for project development by the commission.]

44 TexReg 1826  April 12, 2019  Texas Register
(16) Preliminary engineering cost/expenses--Costs and expenses incurred, including indirect costs and any other expenses identified by the department's cost accounting system, on a highway improvement project before construction contract award.

(17) Principal Arterial Street System (PASS) Program--A commission-approved program to improve urban arterial streets designated on the state highway system to relieve major traffic corridors and enhance total system operations in urban areas over 200,000 in population.

(18) Reconstruction--The primary activities involving the rebuilding of a segment of highway along the existing route as well as those associated with the acquisition of rights of way where necessary to upgrade to current standards.

(19) Rehabilitation--The primary activities to restore, or re-establish in good condition, a segment of highway (not including the construction of additional travel lanes, other than high occupancy vehicle lanes or auxiliary lanes).

(20) Reservoir agency--A public or private agency that has the authority to construct, maintain, or operate a reservoir facility.

(21) Right of way costs--All direct and indirect costs identified by the department's cost accounting system for the acquisition of land or an interest in land necessary for the development of a highway improvement or other transportation project (including access rights to abutting properties, eligible utility relocation/adjustment costs, and other direct expenses when specified in the agreement).

(22) Right of way acquisition [procurement]--That process identified with the procurement [acquisition] of real property, access rights, mineral rights, and easements permitted in accordance with state law for the construction of approved highway improvement or other transportation projects.

(23) State funds--Money received by the department, other than federal funds, funds in excess of minimum requirements, or local participation, to be expended for highway improvement and other transportation projects.

(24) State highway system--The system of highways in the state included in a comprehensive plan prepared by the department's executive director under the direction and with the approval of the commission in accordance with Transportation Code, §201.103.

(25) State highway system routes--Those state numbered routes designated as a part of the state highway system.

(26) State Park Road Program--A program by which state funds are utilized to construct roads within or adjacent to public facilities administered by the Texas Parks and Wildlife Department.

(27) Statewide Mobility Corridor--A transportation corridor or network designated by the commission that provides for or substantially affects significant multi-regional, intrastate, or interstate travel needs.

(28) Surface Transportation Program (STP)--A federal-aid program where states may obligate federal funds to projects related to certain public roads.

(29) Texas Trunk System--A rural highway network as described in §16.56 of this title (relating to Texas Highway Trunk System).

(30) Transportation Enhancement Program--A federally mandated program identified in §11.200 et seq. of this title (relating to Transportation Enhancement Program), providing federal funding for activities that enhance the intermodal transportation systems and facilities within the state for the enjoyment of the users of those systems.

(31) Transportation project--A transportation improvement project or transportation-related program that is not a highway improvement project and that is fully or partially funded with state or federal funds.

(32) Utility relocation/adjustment costs--Costs of work related to the adjustment, relocation, and removal of utility facilities accomplished in accordance with §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and Chapter 21, Subchapter C of this title (relating to Utility Accommodation).

(33) United States (U.S.) System Route--Those routes designated on the state highway system as U.S. highways and eligible for federal-aid funds as set forth in federal law and regulations.

(34) Urban Road System--A commission designated system of routes that consist of the continuation of Farm to Market Roads in urban areas over 50,000 in population.

(35) Urbanized area--As defined in 23 United States Code §101, an area with a population of 50,000 or more designated by the United States Bureau of Census, within boundaries to be fixed by responsible state and local officials in cooperation with each other, and subject to the approval of the United States Secretary of Transportation.

(36) Utility relocation/adjustment costs--Costs of work related to the adjustment, relocation, and removal of utility facilities accomplished in accordance with §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and Chapter 21, Subchapter C of this title (relating to Utility Accommodation).

§15.52. Agreements.

This section describes the contents of the department's funding [joint participation] agreement with a local government for a highway improvement or other transportation project and the responsibilities of the parties to such an agreement. The department may refuse to enter into an agreement with a local government that has not previously complied with the financial obligations under an agreement entered into under this subchapter.

(1) Right of entry. If the local government is the owner of the project site, it shall permit the department or its authorized representative to occupy the site to perform all activities required to execute the work. If the department is the owner of the project site, it shall permit the local government or its authorized representative to occupy the site to perform all approved activities required to execute the work.

(2) Right of way and utility relocations and adjustments. The local government will provide all necessary right of way and utility relocations and adjustments, whether publicly or privately owned, in accordance with §15.55 of this subchapter (relating to Construction Cost Participation). Existing utilities will be relocated and adjusted by the local government with respect to location and type of installation in accordance with the requirements of the department under §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and Chapter 21, Subchapter C of this title (relating to Utility Accommodation).

(3) Responsibilities of the parties. The local government and the department shall identify in the agreement the responsibilities of each party. Responsibilities assigned to the local government must comply with subparagraph (A) of this paragraph and have the approvals required by subparagraph (B) of this paragraph.
(A) Local government performance and management of projects. For state highway improvement projects and other transportation projects using state or federal funds, the agreement between the department and a local government may provide for the local government to:

(i) perform a highway improvement project on the state highway system using employees under the direct control of the local government;

(ii) outsource preliminary project engineering and design, bid opening, contract award, and construction management of an improvement project for which federal or state reimbursement is requested;

(iii) contract for highway construction; or

(iv) perform other projects and programs as authorized by law.

(B) Approval authority. Before a local government may perform an act described in subparagraph (A) of this paragraph, the executive director must authorize the local government to perform that act. The executive director may also approve the performance by employees of the local government of projects or activities appurtenant to a state highway, including drainage facilities, surveying, traffic counts, roadway construction, landscaping, guardrails, and other items incidental to the roadway itself, such as signing, pavement markings, signals, illumination, and traffic management systems.

(C) Conditions. A local government may perform an act described in subparagraph (A) of this paragraph only if the following conditions are met:

(i) the local government must commit in the agreement to comply with all federal, state, and department requirements, standards, and specifications, and agree to forfeit any claim to federal and state reimbursement if it fails to comply;

(ii) the project must be authorized by the commission in the current Unified Transportation Program, Statewide Transportation Improvement Program, or a specific minute order;

(iii) a project on the state highway system performed or managed by a local government must be operationally beneficial to the state;

(iv) a roadway construction project requested by the local government that is to be on the state highway system, and for which local management is proposed, must be funded at least 50 percent from a non-federal and non-state source, unless a lesser percentage is approved by the executive director;

(v) a project that includes the local government improving freeway mainlines on the state highway system must have the express written approval of the executive director;

(vi) the local government must agree to pay any cost overruns in addition to its local participation on an off-state highway system bridge program project for which local management is proposed; and

(vii) the department must review and approve all plans, contract awards, and change orders.

(D) Approval. Prior to execution of the funding agreement, a local government must receive written approval by the executive director to perform or manage one or more elements of a highway improvement or other transportation project. In determining whether to recommend approval or disapproval of a project, the department will evaluate the following criteria:

(i) availability of department resources to perform or manage the highway improvement or other transportation project in an efficient and timely manner;

(ii) the demonstrated capability of the local government to perform the type of work proposed or to award and manage a contract for that work in a timely manner, consistent with federal, state, and department regulations, standards, and specifications;

(iii) the percentage of total project cost to be provided by the local government;

(iv) the department's determination of cost effectiveness of local performance of the work as compared to the department's performance of the project; and

(v) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(4) Funding arrangement. The agreement will specify the funding arrangement designated [agreed upon] by the department [and the local government]. Funding arrangements in the agreement [The funding arrangement] shall include any adjustments required by §15.55 of this subchapter. The funding arrangement [agreed upon by the department and the local government] for drainage construction costs will be as specified under §15.54(c) of this subchapter (relating to Construction). Available funding types are as follows:

(A) Fixed price (Standard fixed price). The fixed price amount will be based on the department's estimated cost of the work to be performed by the department on a project for which state or federal funds are received.

(i) In determining the fixed price amount, the department will consider:

(I) eligibility of local government requested work for federal or state cost participation;

(II) the department's experience in performing or managing the proposed type of work;

(III) the clarity of defining the local government's proposed work scope and the department's ability to accurately estimate its cost; and

(IV) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(ii) A local government is responsible for the fixed price amount, which is not subject to adjustment unless:

(I) differing site conditions are encountered;

(II) further definition of the local government's requested scope of work identifies greatly differing costs from those estimated;

(III) work requested by the local government is determined to be ineligible for federal participation; or

(IV) the adjustment is mutually agreed to [on] by the department and the local government.

(iii) In determining the fixed price amount, the department will consider:

(1) requests by the local government to include work that is ineligible for federal or state participation;

(2) the need for accelerated project delivery;
the type of work proposed and the ability to accurately estimate its cost; and

(ii) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(iii) The department may refuse to enter into an agreement with a local government that has not previously complied with the financial obligations under an agreement entered into under this subchapter.

(B) Specified percentage. The [if approved by the executive director, the] local government is responsible for [all, or] a specified percentage [as shown in Figure: 43 TAC §15.55(c) of this subchapter] of actual project costs, [the direct costs incurred by the department for preliminary engineering, construction engineering, construction, and right of way, as well as]

(i) Minimum percentage participation amounts for preliminary engineering, construction engineering, construction, right of way, and eligible utilities for various state and federal funding programs will be designated by the department. In addition to the designated specified percentages, with this funding type, the local government is also responsible for the direct cost of [all] any work included in the project which is ineligible for federal or state participation and all project costs that are greater than the maximum state and federal participation specified in the funding agreement between the department and the local government.

(ii) For federally funded non-construction programs, the local government is responsible for any required match and for any work included that is ineligible for federal or state participation. [The department will accept in-kind contributions for matching funds or other funds only under agreements that do not include highway construction.]

(C) Periodic.

(i) The executive director may approve a local government to make periodic payments of its funding share only if:

(I) the periodic payments sought are based on the estimated cost for the work for which the funds are received and the local government proposes a schedule to repay the entire amount; and

(II) the local government does not have a delinquent obligation to the department, as defined in §5.10 of this title (relating to Collection of Debts).

(ii) In approving a request for periodic payments, the executive director will consider:

(I) inability of the local government to pay its total funding share prior to the department's scheduled date for contract letting, based upon population level, bonded indebtedness, tax base, and tax rate;

(II) past payment performance;

(III) needs of the department for delivery of the project to proceed in advance of receiving local funding participation [need for accelerated project delivery];

(IV) whether the project is located in a local government that consists of all or a portion of an economically disadvantaged county; and

(V) any other considerations relating to the benefit of the state, the public, and the operations of the department.

(D) Off-State Highway System Bridge Program Fixed Amount. For projects funded in the Off-State Highway System Bridge Program, the local government is responsible for a fixed amount that is based on the specified percentage[as shown in Figure: 43 TAC §15.55(c) of this subchapter] of the estimated direct costs for preliminary engineering, construction engineering, and construction, and for the actual direct costs for right of way and eligible utilities. The estimated direct costs that will be used to establish the fixed amount under this subparagraph, are based on the department's estimate of the eligible work at the time the agreement is executed. The local government is responsible for the estimated direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the Highway Bridge Program, 23 U.S.C. §144 and Highway Bridge Replacement and Rehabilitation Program, 23 C.F.R. §650 Subpart D.

The fixed amount under this subparagraph will be adjusted through the execution of an amendment to reflect additional costs resulting from changes made at the request of the local government, either during preliminary engineering or construction.

(5) [(4)] Interest. The department will not pay interest on funds provided by the local government. Funds provided by the local government will be deposited into, and retained in, the state treasury.

(6) [(5)] Amendments. In the case of significantly differing site conditions or other mutually agreed upon changes in the scope of work authorized in the agreement, the department, and the local government will amend the funding agreement, setting forth the reason for the change and establishing the revised participation to be provided by the local government.

(7) [(6)] Payment provision. The agreement will establish the conditions for payment by the local government, including, but not limited to, the method of payment and the time of payment.

(A) Fixed price [Standard fixed price]. If a fixed price funding arrangement is used, the fixed price amount is not subject to adjustment, except as provided for in paragraph (4)(A)(ii) [(3)(A)(i)] of this section.

(B) Specified percentage.

(i) Upon execution of the agreement or at a later date, unless periodic payments have been requested by the local government and approved by the executive director, the local government will pay, as a minimum, its funding share for the estimated cost for any right of way and preliminary engineering for the project. Unless periodic payments have been requested by the local government and approved by the executive director, the local government, before the department's scheduled date for contract letting, will remit to the department an amount equal to the remainder of the local government's funding share for the project.

(ii) After the project is completed the final cost will be determined by the department, based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's funding share, then the department will notify the local government of the amount of the difference and the local government shall promptly transmit that amount to the department. If it is found that the amount received is in excess of the local government's funding share, the excess funds paid by the local government shall be returned.

(C) Periodic. After a periodically paid project is completed, the final cost will be determined by the department based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's funding share, then the department will notify the local government of the amount of the difference and the local government shall promptly transmit that amount.
(D) Off-State Highway System Bridge Program. For projects funded in the Off-State Highway System Bridge Program, the department will determine the final cost after the project is completed, based on its standard accounting procedures. The department will notify the local government of any amount due for payment of costs related to changes made at the request of the local government. The local government shall promptly transmit the required amount to the department.

(E) Valuation of in-kind contributions. Before the department may enter an agreement under which goods, services, or real estate are accepted rather than financial consideration, the department will document a value for the in-kind contributions consistent with 49 C.F.R. §18.24.

(8) [(7)] Termination. If the local government withdraws from the project after the agreement is executed, it shall be responsible for all direct and indirect project costs incurred by the department for the items of work in which the local government is participating. If costs for local government requested items increase significantly due to differing site conditions, determination that local government requested work is ineligible for federal or state cost participation, or more thorough definition of the local government’s proposed work scope, and the local government and the department are not able to execute a mutually agreeable amendment, the department may terminate the agreement. In this instance, the department will reimburse local government remaining funds to the local government within 90 days of termination.

[(8)] Responsibilities of the parties. The local government and the department shall identify in the agreement which party will prepare or provide construction plans, perform construction, advertise for bids, award a construction contract, and perform construction supervision. Activities assigned to the local government must comply with subparagraph (A) of this paragraph and have the approvals required by subparagraph (B) of this paragraph.]

[(A) Local government performance and management of projects. For state highway improvement projects and other projects using state or federal funds, the agreement between the department and a local government may provide for the local government to:]

[(i) perform, using employees under the direct control of the local government, a highway improvement project on the state highway system;]

[(ii) outsource preliminary project engineering and design, bid opening, award of construction to a contractor, and construction management by the local government or a consultant hired by the local government of an improvement project for which reimbursement is requested;]

[(iii) contract for highway construction; or]

[(iv) perform other projects as authorized by law.] 

[(B) Approval authority. Before a local government may perform an act described in subparagraph (A) of this paragraph, the executive director must authorize the local government to perform that act. The executive director may also approve the performance by employees of the local government of projects or activities appurtenant to a state highway, including drainage facilities, surveying, traffic counts, roadway construction, landscaping, guardrails, and other items incidental to the roadway itself, such as signing, pavement markings, signals, illumination, and traffic management systems.] 

[(C) Conditions. A local government may perform an act described in subparagraph (A) of this paragraph only if:]

[(i) the local government commits in the agreement to comply with all federal, state, and department requirements, standards, and specifications, and agrees to forfeit any claim to federal and state reimbursement if they fail to comply;]

[(ii) the project is authorized by the commission in the current Unified Transportation Program or by a specific minute order;]

[(iii) a project on the state highway system performed or managed by a local government is operationally beneficial to the state;]

[(iv) a roadway construction project requested by the local government that is to be on the state highway system, for which local management is proposed, is funded with at least 50 percent of the funds coming from a non-federal and non-state source, unless a lesser percentage is approved by the executive director;]

[(v) the local government agrees to pay any cost overruns in addition to its local participation on an off-state highway system bridge program project for which local management is proposed; and]

[(vi) the department reviews and approves all plans, contract awards, and change orders.] 

[(D) Approval. The department will not approve any project that includes the local government improving freeway main lanes on the state highway system, without express written approval of the executive director. In determining its approval or disapproval of local government’s request to manage one or more elements of performance and management of a project, the department will evaluate the following criteria:]

[(i) previous experience of the local government in performing the type of work proposed;]

[(ii) the capability of the local government to perform the type of work proposed or to award and manage a contract for that work in a timely manner, consistent with federal, state, and department regulations, standards, and specifications;]

[(iii) the need for accelerated project delivery;]

[(iv) department resources available to perform or manage the highway improvement project in an efficient and timely manner;]

[(v) cost effectiveness of local performance of the work as compared to awarding the highway improvement project through the competitive bidding process; and]

[(vi) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.] 

(9) Acknowledgment. The local government must acknowledge in the agreement that while not an agent, servant, nor employee of the state, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work authorized in the contract.

(10) Local regulations. If any existing, future or proposed local ordinance, commissioners court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, that is more restrictive than state or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased cost to the department for a highway improvement or other transportation project,
the local government must commit in the agreement to being responsible for all increased costs associated with the ordinance, order, policy, directive, or change, regardless of the funding arrangement specified in the agreement.


(a) Purpose. This section defines the responsibility of local governments for preliminary engineering and construction engineering expenses associated with the development of highway improvement projects.

(b) Funding. Preliminary and construction engineering expenses may be funded by the commission at the entire expense of the department, with local participation, and/or with federal participation, as shown in Appendix A of §15.55 of this title (relating to Construction Cost Participation), and shall be in accordance with criteria set forth by federal law and regulations. Any required local participation is subject to adjustment under §15.55 of this title (relating to Construction Cost Participation).

§15.55. Construction Cost Participation.

(a) Required cost participation. The commission may require, request, or accept from a local government matching or other funds, rights-of-way, utility adjustments, additional participation, planning, documents, or any other local incentives.

(1) Participation ratios. Except as provided in subsections (b) and (d) of this section, the agreement between the local government and the department must include participation ratios as described in subsection (c) of this section.

(2) In-kind contributions. The department will accept in-kind contributions for local government matching or other funds only under agreements that do not include highway construction.

(b) Economically disadvantaged counties. In evaluating a proposal for a highway improvement project with a local government that consists of all or a portion of an economically disadvantaged county, the executive director shall, for those projects in which the commission is authorized by law to provide state cost participation, adjust the minimum local matching funds requirement after receipt of a request for adjustment under paragraph (3) of this subsection.

(1) Commission certification. The commission will certify a county as an economically disadvantaged county on an annual basis as soon as possible after the comptroller reports on the economic indicators listed under §15.51(e)(6) of this subchapter (relating to Definitions).

(2) Local match adjustment. In determining the adjustment to the local matching funds requirement, and a local government's effort and ability to meet the requirement, the commission will consider a local government's:

(A) population level;
(B) bonded indebtedness;
(C) tax base;
(D) tax rate;
(E) extent of in-kind resources available; and
(F) economic development sales tax.

(3) Request for adjustment. The city council, county commissioners court, district board, or similar governing body of a local government that represents all or a portion of an economically disadvantaged county, shall submit a request for adjustment to the local district office of the department. The request will include, at a minimum:

(A) the proposed project scope;
(B) the estimated total project cost;
(C) a breakdown of the anticipated total cost by category (e.g., right-of-way, utility adjustment, plan preparation, construction);
(D) the proposed participation rate;
(E) the nature of any in-kind resources to be provided by the local government;
(F) the rationale for adjusting the minimum local matching funds requirement; and
(G) any other information considered necessary to support a request.

(4) Timing of determination. The executive director will determine whether to make an adjustment at the time the local government submits a proposal for a highway improvement or other transportation project.

(5) Definition. For purposes of this subsection, "executive director" means the executive director or his or her designee, not below the level of district engineer or division or office director.

(c) Participation ratios. The department will establish federal, state, and local cost participation ratios for highway improvement or other transportation projects, subject to the availability of funds to the department. In-kind participation will be valued as described in §15.52(7)(E) of this subchapter (relating to Agreements).

Figure: 43 TAC §15.55(c)

(d) Off-state highway system bridge program.

(1) Definitions. The following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Bridge—For an equivalent-match project, a bridge or other mainlane cross-drainage structure, including low water crossings (with or without conduit).

(B) Deficient bridge—A bridge having a structural load capacity or other safety condition that is inadequate.

(C) District engineer—The chief executive officer in each designated district office of the department.

(D) Equivalent-match project—A project in which the local government will improve the structural load capacity or other safety condition of off-state system bridges utilizing 100% local funds.

(E) Participation-waived project—An off-state system bridge project in which the state agrees to pay for local participation for eligible preliminary engineering, construction, and construction engineering costs as shown in subsection (c) of this section. This project must be authorized for development only, or for development and construction, on the department's approved Unified Transportation Program, satisfy minimum standards established by the department for off-state system bridges, and meet the additional requirements of this subsection.

(F) Safety work—Work performed as part of an equivalent-match project that improves the safety of the project. This work may include, but is not limited to, providing improved structural load capacity, improved hydraulic capacity, increased roadway width, adequate bridge rail, and adequate approach guardrail.
2) Waiver. The district engineer may waive the require-
ment for a local government to provide the original 10% estimate of
direct costs for preliminary engineering, construction engineering, and
construction funds on the participation-waived project(s) if the local
governmental body commits by written resolution or ordinance, as
described in paragraph (4) of this subsection, to spend an equivalent
amount of funds for structural improvement or other safety work on
another bridge or bridges on the equivalent-match project(s) within
its jurisdiction or the jurisdiction of a geographically adjacent or
overlapping governmental unit. An equivalent amount includes, but is
not limited to, expenditures for direct or indirect costs for structural
improvement or other safety work on bridge(s) in the equivalent-match
project(s). Work on one or more equivalent-match projects may be
credited to one or more participation-waived projects.

3) Eligibility. A local government is eligible for a waiver if:

(A) the construction contract for the participa-
tion-waived project has not been awarded;

(B) work on the equivalent-match project has not begun
prior to approval of the waiver (approval of the waiver does not guaran-
tee that the participation-waived project agreement will be executed);

(C) the local government is in compliance with load
posting and closure regulations as defined in the National Bridge In-
spection Standards under 23 C.F.R. §650.303;

(D) the bridge on the proposed equivalent-match
project(s) is a deficient bridge, or a bridge that is weight restricted for
school buses; and

(E) the equivalent-match project increases the struc-
tural load capacity of the existing bridge, replaces the bridge with a
new bridge, or otherwise increases safety, with a minimum upgrade to
safely carry expected school bus loading.

4) Request for waiver. To request a waiver, a local
government must provide a written request to the district engineer
that includes the location(s), description of structural improvement or
other safety work proposed, estimated cost for the equivalent-match
project(s), and a copy of the local governmental body's resolution or
ordinance. The resolution or ordinance must acknowledge assumption
of all responsibilities for engineering and construction and complying
with all applicable state and federal environmental regulations and
permitting requirements for the bridge(s) on the equivalent-match
project(s).

5) Considerations. In approving a request for waiver, the
district engineer will consider:

(A) the type of work proposed for the equivalent-match
project(s);

(B) regional transportation needs; and

(C) past performance under this subsection.

6) Approval. The district engineer will submit a letter to
the local government indicating the district engineer's approval or dis-
approval of the waiver. If disapproved, the letter will state the reasons
for disapproval. If the waiver is approved, the letter will state that the
local government, for the equivalent-match project(s) will assume:

(A) all costs of the work;

(B) responsibility for complying with all applicable
state and federal environmental regulations and permitting require-
ments; and

(C) responsibility for the engineering and construction
necessary for completion of the work.

7) Agreement and conditions.

(A) If the district engineer approves the waiver, the lo-
cal government and the department will enter into an agreement for the
participation-waived project as specified in §15.52 of this subchapter.
One or more participation-waived project agreements can utilize one
or more common or independent equivalent-match projects if the total
equivalent-match project amount equals or exceeds the total remain-
ing local participation amount being waived at the time the agreement
is executed, and the common agreements are adequately cross-refer-
cenced. Previously executed agreements may be amended to incorpo-
rate these participation waiver provisions, or to utilize an additional
equivalent-match project(s) for any outstanding amount not previously
waived, provided the construction contract for the participation-waived
project has not been awarded and the equivalent-match work has not
begun.

(B) Local governments will be allowed a maximum
of three years after the contract award of the participation-waived
project(s) to complete structural or other safety improvements on
the equivalent-match project(s). If more than one participation-waived
project utilizes a common equivalent-match project, the time period
allowed for completion of the equivalent-match project(s) will begin
when the first of the participation-waived projects is awarded. The
district engineer may specify a period less than three years for completion
of equivalent-match projects if project specific conditions warrant.
If specified, the shorter allowable work period must be explicitly
stated in the agreement(s). No later than 30 days after completion,
documentation of completion of the equivalent-match project(s)
requirement will be provided by letter to the district engineer. If the
local government fails to adequately complete the equivalent-match
project(s), it will be excluded from future waivers under this subsec-
tion for a minimum of five years. The district engineer may grant an
extension to the three-year completion requirement if a contract for
the equivalent-match project(s) has been executed within that three
years and the contract timeline for completion is reasonable. In the
absence of information suggesting that a shorter or longer period is
appropriate, two years or less will be presumed to be a reasonable
time, for a maximum of five years to complete the equivalent-match
project(s) following award of the programmed bridge. The granting
of an extension to the three-year time limit must be done in writing
in response to a written request to the district engineer from the local
government. The extension approval must specify a new required
completion date.

(C) With the approval of the district engineer, an equi-
valent-match project(s) may be substituted by subsequent amendment to
the participation-waived project agreement(s). A substitution may be
allowed for unforeseen circumstances, including but not limited to, an
equivalent-match project that is selected for replacement under some
other program of work. Work on the substituted equivalent-match
project(s) must be completed within a maximum of three years after the
award of the construction contract for the original participation-waived
project.

(D) The local government is responsible for all of the
direct cost of any participation-waived project cost item or portion of
a cost item that is not eligible for federal participation under the Fed-
eral Highway Bridge Replacement and Rehabilitation Program under
23 U.S.C. §144 and 23 C.F.R. § 650 Subpart D. The local government
is also responsible for any costs resulting from changes made at the re-
quest of the local government.
(E) The local government will be responsible for 100% of right of way and utilities for the participation-waived project.

(F) A local government located in an economically disadvantaged county that receives an adjustment under subsection (b) of this section may participate in the provisions of this subsection in the amount of its reduced matching funds requirement.

(G) The department will not reimburse funds already received by the department under the terms of existing agreements. Funds already received for a specific project(s) may be credited against the local government's required participation for the subsequent participation-waived project agreement(s) for that same project(s).

(H) Any equivalent-match project(s) cost that is in excess of the local government's required participation for a specific participation-waived project agreement(s) cannot be credited for use on a future participation-waived project(s).

(I) Each equivalent-match project(s) must be specifically identified in the participation-waived project agreement(s) at the time of execution.

(J) The local government must pay its funding share of the estimated participation-waived project cost, as provided in §15.52(7)(A) [§15.52(6)(A)] of this subchapter, for any local participation balance that is remaining at the time the project agreement(s) is executed. This balance would include any remaining required local participation amount in excess of the amount waived as a result of credit for equivalent-match work to be performed as part of the agreement.

(8) Projects with neighboring states. Local cost participation is not required for a bridge connecting Texas with a neighboring state.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2019.

TRD-201900951

Joanne Wright
Deputy General Counsel
Texas Department of Transportation

Earliest possible date of adoption: May 12, 2019

For further information, please call: (512) 463-8630