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TITLE 43

TRANSPORTATION

PART 1

TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 27

TOLL PROJECTS

SUBCHAPTER C

PRIVATE TOLL ROADS

RULE §27.30

Purpose

Transportation Code, Chapter 362, provides that a private entity or corporation may not construct any privately owned toll project which connects to a road, bridge, or highway included in the state highway system unless the project is approved by the Texas Transportation Commission and the Texas Department of Transportation. The sections under this subchapter prescribe the procedures and conditions by which a private entity or corporation may obtain the approval of the commission and the department.

Source Note: The provisions of this §27.30 adopted to be effective February 21, 1996, 21 TexReg 977.

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RULE §27.31	Definitions

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

- (1) Applicant--A private entity or corporation, authorized by law to construct a toll project, proposing to construct a project which will connect to a road, bridge, or highway included in the state highway system.
- (2) Commission--The Texas Transportation Commission.
- (3) Department--The Texas Department of Transportation.
- (4) Design manuals--The latest editions of the:
 - (A) operations and procedures manual of the design division;
 - (B) operation and planning manual of the design division;
 - (C) hydraulic manual of the design division;
 - (D) Texas Manual on Uniform Traffic Control Devices;
 - (E) standard highway sign designs for Texas; and
 - (F) traffic control standard sheets booklet of the traffic operations division.
- (5) Metropolitan planning organization--An organization designated in certain urbanized areas to carry out the transportation planning process as required by 23 United States Code §134.
- (6) Project--A road or highway, bridge, ferry, or similar project other than those constructed, operated, maintained, and/or financed under Transportation Code, Chapter 361, or toll road authorities created by counties, and that is financed in whole or in part through the issuance of revenue bonds payable from toll revenues collected from users.

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RULE §27.32

Preliminary Studies

(a) Studies. Prior to submitting an application to the department for the approval of a project, an applicant shall conduct a feasibility study and a study of the social and environmental impact of the project.

(1) Feasibility study. An applicant shall conduct a feasibility study to determine the financial viability of the proposed project. The study shall include:

(A) the proposed method for financing the planning, design, construction, maintenance, and operation of the project; and

(B) traffic data and projections.

(2) Social and environmental impact. An applicant shall conduct a study of the social and environmental impact of the project, consistent with the spirit and intent of the National Environmental Policy Act, 42 United States Code §§4321 et seq., and 23 United States Code §109(h). The study shall include the following components.

(A) Route and alignment. The applicant shall provide a design geometric layout certified by a professional engineer registered in Texas to be in accordance with design manuals that will:

(i) identify the selected route and alignment as well as the alternative routes and alignments which were considered;

(ii) provide evidence of the project's logical termini and independent utility;

(iii) provide the location of interchanges, mainlanes, grade separations, ramps, profiles and horizontal alignment, projected traffic volumes, and right-of-way limits for all routes and alignments considered; and

(iv) identify revisions or changes to state highway system facilities necessitated by the project.

(B) Environmental documentation.

(i) An applicant shall prepare an environmental document in accordance with Chapter 2, Subchapter C, of this title (relating to Environmental Review and Public Involvement for Transportation Projects).

(ii) The environmental document must describe all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts and all practicable measures to enhance the environment.

(iii) The form and content of an environmental document prepared by an applicant and any decision by an applicant that an environmental impact statement is not necessary must be approved by the department.

(b) Public involvement. An applicant shall provide for public involvement by:

- (1) complying with §2.43(c) of this title (relating to Non Federal-Aid Transportation Projects);
- (2) holding one or more public hearings following the completion of the studies required by this section as may be necessary to ensure participation by each community affected by the project; and
- (3) notifying the department in writing not less than ten days in advance of all public meetings and public hearings held under this section.

(c) Revision to environmental document. Following the public hearing, an applicant shall revise the environmental document for the project to address any issues or concerns identified during the public involvement process.

(d) Respective roles and responsibilities. The applicant shall request that the department make a determination of the respective roles and responsibilities of the applicant and the department under Chapter 2, Subchapter C, of this title (relating to Environmental Review and Public Involvement for Transportation Projects). The applicant shall comply with the department's directives. The directives will specify who will conduct the following work, either by the applicant or by the department:

- (1) preparation and completion of environmental studies;
- (2) submission of appropriate environmental documentation for department review;
- (3) preparation of any document revisions;
- (4) submission of copies of the environmental studies and documentation adequate for distribution;
- (5) preparation of legal and public notices for department review and use;
- (6) arrangements for appropriate public involvement, including court reporters and accommodations if requested for persons with special communication or physical needs related to public hearings;
- (7) preparation of public meetings and hearing materials;
- (8) preparation of any responses to comments;
- (9) preparation of public meeting and public hearing summary and analysis, and the comment and response reports; and
- (10) submission of documentation showing all environmental permits, issues, and commitments have been or will be completed, including copies of permits or other approvals required prior to construction.

(e) Record. An applicant shall provide the department:

- (1) the appropriate environmental document;
- (2) summary and comment and response reports for all meetings;
- (3) summary and analysis and comment and response reports for all public hearings;
- (4) a summary of the proposed changes in the project location and design and mitigation planned as a result of comments;
- (5) the verbatim transcript of any public hearing;
- (6) certification that all public hearings were held in accordance with §2.43 of this title (relating to Non Federal-Aid Transportation Projects, the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987; and
- (7) revised environmental document showing the proposed changes in project location, design, and mitigation as a result of comments and public involvement.

Source Note: The provisions of this §27.32 adopted to be effective February 21, 1996, 21 TexReg 977; amended to be effective April 21, 2005, 30 TexReg 2235

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RULE §27.33

Application

(a) To secure approval of a project, an applicant must file an application with the department's executive director or his or her designee who shall serve as department liaison for the project. The application shall be in a form prescribed by the department, and must be accompanied by the following items:

(1) preliminary studies and the record and analysis of public involvement completed in accordance with §27.32 of this title (relating to Preliminary Studies);

(2) an analysis of project impact, which must include the following:

(A) integration with the state highway system and, if located within the jurisdiction of a metropolitan planning organization in an urbanized area, certification from that organization that the project is compatible with the existing regional transportation plan;

(B) economic impact based on a study assessing the potential impact of the project on the economy of the region in which the project is to be located, including the economies of each county in which the project is to be located and of the municipalities within those counties; and

(C) impact on trade with Mexico, consisting of an assessment of the potential impact of the project on the free flow of trade between the Republic of Mexico and the State of Texas with respect to a project located in whole or in part in a county adjacent to the border between the state and the Republic of Mexico, or in a county adjacent to such a county.

(b) If the department finds that the initial application meets the requirements of subsection (a) of this section, and that the preliminary design is in compliance with the design manuals, it shall notify the applicant of its findings and shall conduct one or more public hearings to receive public comment on the proposed project; and, subsequent to the public hearings, it shall submit the application together with its findings and recommendations to the commission for appropriate action.

Source Note: The provisions of this §27.33 adopted to be effective February 21, 1996, 21 TexReg 977.

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RULE §27.34

Project Requirements

(a) Field changes. Any design field change during the course of construction shall be certified by a professional engineer registered in Texas as being in conformance with the department's design standards contained in the design manuals. A design field change relating to the connection of the proposed project with the state highway system must be approved by the department.

(b) As-built plans. Upon completion of construction of the project the applicant shall file with the department a set of the as-built plans incorporating any field changes during construction. These plans with field changes shall be signed, sealed, and dated by a professional engineer registered in Texas certifying that the project was constructed in accordance with the plans and specifications.

(c) State and federal law. An applicant shall comply with all federal and state laws and regulations applicable to the project and shall provide or obtain all permits, plans, and other documentation required by a federal, state, or local governmental entity.

(d) Speed limit. Upon completion of the project, posted speed limits for the various categories of vehicles shall be established in accordance with the procedures utilized by the department for the state highway system, but in no case shall such limits exceed the maximum prima facie speed limits prescribed by state law for a public road having the same characteristics.

(e) Access. For proposed projects which will provide new access to a roadway requiring Federal Highway Administration (FHWA) approval of changes in access control, the applicant shall submit to the department all data necessary to request FHWA approval.

(f) Work on state right-of-way. All work required within the limits of state owned right-of-way shall be accomplished only pursuant to express written agreement with the department and at the sole expense of the applicant. This work will include all connections with, and necessary modifications to, state highways, and any necessary preliminary engineering and construction inspection. The department may, however, allow work to be accomplished by the applicant on appurtenant facilities.

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RULE §27.35

Hearing

A public hearing held by the department for the purposes of §27.33(b) of this title (relating to Application) shall be conducted by the executive director or his or her designee. Any persons, including, but not limited to, official representatives of a county, municipality, metropolitan planning organization, or other governmental entity, and any individual, group, or association may provide comment.

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RULE §27.36

Commission Action

(a) Preliminary approval.

(1) The commission may preliminarily approve the construction of a project if it finds that the project:

(A) will be consistent with the state transportation plan and an existing regional transportation plan developed by a metropolitan planning organization, if any, of a municipality within whose municipal limits or extraterritorial jurisdiction the proposed project is to be located;

(B) will have no significant overall adverse impact on the economy of the region in which the project is to be located;

(C) will have no significant overall adverse impact on the free flow of trade between the Republic of Mexico and the State of Texas with respect to a project located in whole or in part in a county adjacent to the border between the state and the Republic of Mexico or in a county adjacent to such a county; and

(D) will produce the revenue sufficient to finance the construction, maintenance, operation, design, and planning of the project based upon accurate traffic data and projections.

(2) Prior to granting preliminary approval of a project, the commission shall consider:

(A) the impact of the project on the economies of each county in which the project is to be located and of the municipalities within those counties; and

(B) the views, comments, and certification, if any, of a metropolitan planning organization submitted under §27.33(a)(2)(A) of this title (relating to Application).

(3) The commission may not grant preliminary approval of a project unless it finds that the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts as well as, when practicable, measures to enhance the environment.

(b) Final approval. Subsequent to preliminary commission approval under subsection (a) of this section, the applicant shall submit plans, specifications, and estimates. If the department finds the plans and specifications to be in compliance with the design manuals and the latest versions of the department's standard specifications for construction of highways, streets, and bridges, the commission will grant final approval for the project. All construction plan sheets shall be signed, sealed, and dated in accordance with the Texas Engineering Practice Act by a registered professional engineer.

(c) Order of approval or disapproval. Preliminary and final approval of the project shall each:

- (1) be by written order of the commission;
 - (2) include the rationale, findings, and conclusions on which approval or disapproval is based; and
 - (3) if approved, contain any specified conditions deemed by the commission to be necessary and appropriate.
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Source Note: The provisions of this §27.36 adopted to be effective February 21, 1996, 21 TexReg 977.

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RULE §27.37

Compliance

(a) If, subsequent to final commission approval and prior to completion of the project, the applicant, for any reason, fails or refuses to satisfy any requirement for commission approval of the project, the applicant may not connect the project to any portion of the state highway system.

(b) If, subsequent to final commission approval and completion of the project, the applicant, for any reason, fails or refuses to satisfy any requirement concerning the operation and maintenance of the project, the department shall sever the connection of the project to any portion of the state highway system and erect such barriers or barricades as may be appropriate for such purpose.

(c) Prior to denying or severing connection to a portion of the state highway system, the department will provide the applicant written notice of noncompliance stating the reasons for denial or severance. The applicant will be granted reasonable notice to bring the project into compliance.

(d) An applicant may appeal a decision under this section to deny or sever connection to a portion of the state highway system by filing a petition for an administrative hearing pursuant to §§1.21-1.61 of this title (relating to Contested Case Procedure).

Source Note: The provisions of this §27.37 adopted to be effective February 21, 1996, 21 TexReg 977.

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