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SUBCHAPTER A. GENERAL PROVISIONS

§26.1. Purpose. Transportation Code, Chapter 370, provides that the Texas Transportation Commission may authorize the creation of a regional mobility authority for the purposes of constructing, maintaining, and operating transportation projects in a region of the state. Chapter 370 further provides for commission approval or regulation of certain actions and operations of a regional mobility authority. This chapter prescribes the policies and procedures governing commission regulation of regional mobility authorities as provided by Chapter 370.

The provisions of this §26.1 adopted to be effective March 18, 2004, 29 TexReg 2722.

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

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

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

(3) Commission--The Texas Transportation Commission.

(4) County--Includes the City of El Paso.

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

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

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

(8) Executive director--The executive director of the department or the executive director's designee not below district engineer, division director, or office director.

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

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

(11) Metropolitan planning organization--An organization designated to carry out the transportation planning process in prescribed urbanized areas as required by Title 23, United States Code, §134.

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

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

(14) Public utility facility--Means:

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

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

(C) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications facilities.

(15) RMA--A regional mobility authority.

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

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

(18) Surplus revenue--Revenue that exceeds:

(A) the regional mobility authority's debt service requirements for a transportation project, including the redemption or purchase price of bonds subject to redemption or purchase

as provided in the applicable bond proceedings;

- (B) coverage requirements of a bond indenture for a transportation project;
- (C) costs of operation and maintenance for a transportation project;
- (D) cost of repair, expansion, or improvement of a transportation project;
- (E) funds allocated for feasibility studies; and
- (F) necessary reserves as determined by the regional mobility authority.

(19) Transportation project--Means:

- (A) a turnpike project;
- (B) a system designated under Transportation Code, Section 370.034;
- (C) a passenger or freight rail facility, including:
 - (i) tracks;
 - (ii) a rail line;
 - (iii) switching, signaling, or other operating equipment;
 - (iv) a depot;
 - (v) a locomotive;
 - (vi) rolling stock;
 - (vii) a maintenance facility; and
 - (viii) other real and personal property associated with a rail operation;
- (D) a roadway with a functional classification greater than a local road or rural

minor collector;

- (E) a ferry;
- (F) an airport;
- (G) a pedestrian or bicycle facility;
- (H) an intermodal hub;
- (I) an automated conveyor belt for the movement of freight;
- (J) a border crossing inspection station;
- (K) an air quality improvement initiative;

(L) a public utility facility; and

(M) if applicable, projects and programs listed in the most recently approved state implementation plan for the area covered by the RMA, including an early action compact.

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

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

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

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

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

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

The provisions of this §26.2 adopted to be effective March 18, 2004, 29 TexReg 2722.

SUBCHAPTER B. CREATION OF A REGIONAL MOBILITY AUTHORITY

§26.11. Petition.

(a) One or more counties may petition the commission for approval to create an RMA.

The petition shall include:

(1) an adopted resolution from the commissioners court of each county indicating its approval of the creation by the county of an RMA;

(2) a description of how the RMA would improve mobility in the region;

(3) a description of a potential candidate transportation project or system of projects the RMA may undertake depending on study outcomes, including:

(A) an explanation of how the project or system of projects will be consistent with the appropriate policies, strategies, and actions of the Texas Transportation Plan, and, if appropriate, with the metropolitan transportation plan developed by the metropolitan planning organization;

(B) a brief description of any known environmental, social, economic, or cultural resource issues, such as impacts on wetlands and other water resources, endangered species, parks, neighborhoods, businesses, historic buildings or bridges, and archeological sites;

(C) the name and address of any individuals or organizations known to be opposed to any element of the project or system of projects, and a description of any known controversies concerning the project or system of projects; and

(D) a preliminary financing plan for the project or system of projects, which shall include an estimate of the following information, if available to the petitioner:

(i) total estimated cost, including planning, design, right of way acquisition, environmental mitigation, and construction; and

(ii) proposed financing, specifying the source and use of the funds, including debt financing and department contributions, identified as a loan or a grant;

(4) a commitment by the RMA to be fully responsible for identifying all EPIC,

obtaining all required environmental permits, and other required environmental approvals;

(5) a brief description of any other transportation projects the petitioner is currently considering to be developed by the RMA; and

(6) the representation criteria and the appointment process for board members.

(b) The City of El Paso may petition the commission for approval to create an RMA in the same manner as a county under subsection (a) of this section. Instead of the requirements of subsection (a)(1) of this section, the city must submit a resolution from its city council indicating its approval of the creation by the city of an RMA.

(c) For purposes of this subchapter, a system means a combination or network of transportation projects that the RMA may undertake.

The provisions of this §26.11 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.12. Public Hearing.

(a) If the department finds that the petition meets the requirements of §26.11 of this subchapter, it will notify the petitioner of its findings and will conduct one or more public hearings to receive public comment on the proposed RMA.

(b) The department will hold at least one hearing within at least one of the counties of the petitioner.

(c) The department will file a notice of each hearing with the Secretary of the State for publication in the *Texas Register*.

(d) The petitioner shall advertise each hearing in accordance with an outreach plan developed in consultation with the department.

The provisions of this §26.12 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.13. Approval.

(a) The commission may authorize the petitioner to create an RMA if it finds that:

(1) the creation of an RMA:

(A) has sufficient public support based upon:

(i) public comments received at public hearings;

(ii) any resolutions of support from affected political subdivisions; and

(iii) the expressed opinion, if any, of the affected metropolitan planning organizations;

(B) will result in direct benefits to the state, local governments, and the traveling public; and

(C) will improve the efficiency of the state's transportation systems; and

(2) each potential candidate project or system of projects:

(A) if it is a highway project, the project is consistent with the Texas Transportation Plan, the metropolitan transportation plan, the metropolitan mobility plan, and the Statewide Transportation Improvement Program; and

(B) subject to the completion of required studies and subject to commission approval under §26.31 of this chapter (relating to Request), will benefit the traveling public.

(b) The commission may refuse to authorize the creation of an RMA if the commission determines that the proposed board will not fairly represent political subdivisions in the counties of the RMA that will be affected by the creation of the RMA.

The provisions of this §26.13 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.14. Commission Action.

(a) Order. If approved under §26.13 of this subchapter, the commission will adopt a minute order authorizing the creation of the RMA. The minute order will:

(1) describe the potential candidate project or system of projects to be developed, maintained, and operated by the RMA; and

(2) establish, consistent with Transportation Code, §370.251, the initial size of the board, which shall be composed of an odd number of directors.

(b) Approval of project. Approval of the creation of an RMA shall not constitute final commission approval of any transportation project subject to approval under §26.31 of this chapter (relating to Request).

The provisions of this §26.14 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.15. Creation.

(a) The petitioner shall create an RMA authorized under §26.14 of this subchapter by resolution of each county. Each resolution shall appoint directors consistent with the provisions of §26.14(a)(2) of this subchapter.

(b) Additional directors. The petitioner shall provide for the appointment of any additional members described in §26.11(6) of this subchapter.

The provisions of this §26.15 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.16. Alternative Board Composition and Method of Appointment.

(a) If a petition under §26.11 of this subchapter includes a county in which a regional tollway authority under Transportation Code, Chapter 366 operates or a county owning or operating a toll project under Transportation Code, Chapter 284, the petitioner may submit to the commission an alternative board structure and method of appointment.

(b) The commission may approve a proposal submitted under subsection (a) of this section if:

(1) the proposal includes an adopted resolution from the commissioners court of each county in the RMA indicating its approval of the alternative board structure and method of appointment; and

(2) the commission determines that the alternative will provide for adequate representation of affected political subdivisions.

The provisions of this §26.16 adopted to be effective March 18, 2004, 29 TexReg 2722.

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**SUBCHAPTER C. REVISIONS TO REGIONAL MOBILITY AUTHORITY -
ADDITIONS, WITHDRAWALS, AND DISSOLUTION**

§26.21. Addition of Counties.

(a) One or more counties may request the commission for approval to become part of an existing RMA. The commission may approve the request only if:

(1) the county has submitted a resolution from its commissioners court indicating support for the request;

(2) the board of the RMA has agreed in writing to the addition;

(3) each county that is a member of the RMA has submitted an adopted resolution from its commissioners court indicating support for the request;

(4) the commission finds that the addition will benefit the mobility of the region; and

(5) the commission finds that affected political subdivisions in the new county or counties will be adequately represented on the board.

(b) If one of the counties requesting approval under subsection (a) of this section is part of a regional tollway authority under Transportation Code, Chapter 366 or owns or operates a toll project under Transportation Code, Chapter 284, the county may submit to the commission an alternative board structure and method of appointment. The commission may approve the alternative board structure and method of appointment if:

(1) the proposal includes an adopted resolution from the commissioners court of each county in the RMA indicating its approval of the alternative board structure and method of appointment;

(2) the commission determines that the alternative will provide for adequate representation of affected political subdivisions; and

(3) the commission approves the request submitted under subsection (a) of this section.

The provisions of this §26.21 adopted to be effective March 18, 2004, 29 TexReg

2722.

§26.22. Withdrawal of Counties.

(a) One or more counties may petition the commission for approval to withdraw from an RMA. The commission may approve the petition only if the RMA has no bonded indebtedness.

(b) If the RMA has any debt other than bonded indebtedness, the petitioning county must obtain the approval of the board of the RMA.

*The provisions of this §26.22 adopted to be effective March 18, 2004, 29 TexReg
2722.*

§26.23. Dissolution of an RMA.

(a) Voluntary dissolution. The board of an RMA may request the commission for approval to dissolve. The commission may approve the request if:

(1) all debts, obligations, and liabilities of the RMA have been paid and discharged or adequate provision has been made for the payment of all debts, obligations, and liabilities;

(2) there are no suits pending against the RMA, or adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit; and

(3) the RMA has commitments from other governmental entities to assume jurisdiction of all RMA transportation projects.

(b) Involuntary dissolution.

(1) The commission may by order require the RMA to dissolve if it determines that the RMA has not, as determined by the commission, substantially complied with the requirements of a commission rule or an agreement between the department and the RMA.

(2) The commission may not require dissolution unless:

(A) the conditions described in subsection (a)(1) and (2) of this section have been

met; and

(B) the holders of any indebtedness have evidenced their agreement to the dissolution.

(3) At least 30 days prior to adopting an order under this section, the department will provide written notice to the RMA's board offering an opportunity for the RMA to speak before the commission.

The provisions of this §26.23 adopted to be effective March 18, 2004, 29 TexReg 2722.

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SUBCHAPTER D. APPROVAL OF A TRANSPORTATION PROJECT**§26.31. Request.**

(a) In accordance with Transportation Code, §370.187, the RMA must request commission approval of a transportation project that will connect to the state highway system or to a department rail facility. The RMA must obtain approval after completing the environmental review required by Transportation Code, §370.188 and federal law and before construction of the project begins.

(b) To secure approval under this section, the RMA shall submit:

(1) a report identifying relocations or reconstruction to state highway system facilities or department rail facilities anticipated in connection with the proposed project;

(2) a copy of any report, study, or analysis prepared pursuant to the federal National Environmental Policy Act or Transportation Code, §370.188; and

(3) a commitment that the RMA will comply with §26.33 of this subchapter.

The provisions of this §26.31 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.32. Approval. In deciding whether to grant approval under this subchapter, the commission will consider whether the project may be effectively integrated into the state's transportation system.

The provisions of this §26.32 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.33. Design and Construction.

(a) Applicability. This section applies to an RMA transportation project that will connect to the state highway system or a department rail facility.

(b) State or federal funds. RMA turnpike projects that use federal or state funds provided

by the department must also comply with Chapter 27, Subchapter E of this title (relating to Financial Assistance for Toll Facilities).

(c) Responsibility. The RMA is fully responsible for the design and construction of each project it undertakes, including ensuring that all EPIC are addressed in project design and construction.

(d) Design criteria for highway facilities.

(1) State criteria. All designs developed by or on behalf of the RMA shall comply with the latest version of the department's manuals, including, but not limited to, the Roadway Design Manual, Pavement Design Manual, Hydraulic Design Manual, the Texas Manual on Uniform Traffic Control Devices, Bridge Design Manual, and the Texas Accessibility Standards.

(2) Alternative criteria. An RMA may request approval to use different accepted criteria for a particular item of work. Alternative criteria may include, but are not limited to, the latest version of the AASHTO Policy on Geometric Design of Highways and Streets, the AASHTO Pavement Design Guide, and the AASHTO Bridge Design Specifications. The use of alternative criteria is subject to the approval of the Federal Highway Administration for those projects involving federal funds. The executive director may approve the use of alternative criteria if the alternative criteria are determined to be sufficient to protect the safety of the traveling public and protect the integrity of the transportation system.

(3) Exceptions to design criteria. An RMA may deviate from the state or alternative criteria for a particular design element on a case by case basis after determining that the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution. Documentation of the exceptions shall be retained by the RMA and furnished to the department in accordance with subsection (h) of this section.

(e) Design criteria for rail facilities. Rail facilities developed by or on behalf of the RMA shall comply with the current version of the American Railway Engineering and Maintenance of

Way Association (AREMA) standards.

(f) Access. For proposed projects that will change the access control line to an interstate highway, the RMA shall submit to the department all data necessary for the department to request Federal Highway Administration approval.

(g) Construction specifications for highway projects.

(1) All plans, specifications, and estimates developed by or on behalf of the RMA shall conform to the latest version of the department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to department required special specifications and special provisions.

(2) The executive director may approve the use of an alternative specification if the proposed specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public.

(h) Design and construction review and approval.

(1) Applicability. This subsection applies to the segment of an RMA transportation project that connects to the state highway system or a department rail facility, including an overpass, underpass, intersection, or interchange.

(2) Exceptions to design criteria. An RMA may request approval to deviate from the state or alternative criteria for a particular design element on a case by case basis. The request for approval shall state the criteria for which an exception is being requested and must include a comprehensive description of the circumstances and engineering analysis supporting the request. The executive director may approve an exception after determining that the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution.

(3) Preliminary plan review. When design of the connection is approximately 30% complete, the RMA shall send the following preliminary design information to the department for review and approval in accordance with the procedures and timeline established in the project

development agreement described in §26.34 of this subchapter:

(A) a design schematic depicting plan, profile, and superelevation information for each roadway and rail line;

(B) typical sections showing existing and proposed horizontal dimensions, cross slopes, location of profile grade line, pavement layer thickness and composition, earthen slopes, right of way lines, if applicable, rail cross ties, type and size of rail and ballast type;

(C) bridge, retaining wall, and sound wall layouts, including, where applicable, an indication of structural capacity in terms of design loading;

(D) hydraulic studies and drainage area maps showing the drainage of waterways entering the project and local project drainage; and

(E) the location and text of proposed mainlane guide signs shown on a schematic that includes lane lines or arrows indicating the number of lanes.

(4) Final plan review. When final plans are complete, the RMA shall send the following information to the executive director for review and approval in accordance with the procedures and timelines established in the project development agreement described in §26.34 of this subchapter:

(A) seven copies of the final set of plans, specifications, and engineer's estimate (PS&E) that have been signed and sealed by the responsible engineer; and

(B) revisions to the preliminary design submission previously approved by the department summarized or highlighted for the department.

(5) Contract bidding and award. The RMA shall not advertise the project for receipt of bids until it has received approval of the PS&E from the department. This paragraph does not apply to a project developed under a comprehensive development agreement.

(6) Contract revisions.

(A) All contract revisions related to the connections to the department facility shall comply with the latest version of the applicable national or state administration criteria and

manuals, and must be submitted to the department for its records. Major contract revisions must be submitted to the executive director for approval prior to beginning the revised construction work. Procedures governing the executive director's approval, including time limits for department review, shall be included in the project agreement described in §26.34 of this subchapter.

(B) For purposes of this subsection, "major contract revision" means a revision to a construction contract that:

- (i) reduces geometric design or structural capacity below project design criteria;
- (ii) changes the location or configuration of the physical connection to the department facility;
- (iii) changes the placement of columns and other structural elements within the department's right of way;
- (iv) changes the traffic control plan in a manner that reduces the capacity on the department facility as shown on the approved PS&E;
- (v) changes the access on a controlled access facility; or
- (vi) for federally funded projects, eliminates or revises EPICs.

(i) As-built plans. Within six months after final acceptance of the construction project, the RMA shall file with the department a set of the as-built plans incorporating any contract revisions. These plans shall be signed, sealed, and dated by a licensed professional engineer in Texas certifying that the project was constructed in accordance with the plans and specifications.

(j) Document and information exchange. If available, the RMA agrees to deliver to the department all materials used in the development of the project including, but not limited to, aerial photography, computer files, surveying information, engineering reports, environmental documentation, general notes, specifications, and contract provision requirements.

(k) State and federal law. The RMA shall comply with all federal and state laws and regulations applicable to the project and the state highway system, and shall provide or obtain all

applicable permits, plans, and other documentation required by a federal or state entity.

(1) 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.

The provisions of this §26.33 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.34. Project Development Agreement. The RMA and the department shall enter into an agreement governing the development of a project under this subchapter. The agreement shall, at a minimum, include:

- (1) the responsibilities of each party concerning the design and construction of the project and EPIC;
- (2) procedures governing the submittal of information required by this subchapter;
- (3) timelines governing approvals of the executive director under this subchapter; and
- (4) other terms or conditions mutually agreed upon by the parties.

The provisions of this §26.34 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.35. RMA Project on State Highway System.

(a) An RMA may request the commission to designate a highway project as a part of the state highway system. The commission may approve the request if:

- (1) the commission determines that the project can be efficiently integrated into the state highway system;
- (2) the RMA agrees to design, construct, maintain, and operate the project in accordance with standards established by the department, and to be subject to department reviews and approvals as deemed necessary by the department; and
- (3) the RMA agrees to be responsible for all EPIC.

(b) The RMA and the department may agree to allocate maintenance or operation responsibilities to the department.

The provisions of this §26.35 adopted to be effective March 18, 2004, 29 TexReg 2722.

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SUBCHAPTER E. CONVERSION AND TRANSFER OF TXDOT FACILITY**§26.41. Request.**

(a) An RMA may request the commission to:

(1) convert a non-tolled segment of the state highway system to a turnpike project and transfer that segment to the RMA;

(2) transfer an existing turnpike project that is part of the state highway system to the RMA; or

(3) transfer a department owned and operated ferry to an RMA.

(b) A request submitted under subsection (a) of this section must be in writing and must include:

(1) an explanation of how the proposed transfer is an integral part of the region's overall plan to improve mobility in the region;

(2) an explanation of how the request complies with §26.43(a)(3) and (4) of this subchapter;

(3) copies of any completed studies concerning the transfer;

(4) a brief description of any known environmental, social, economic, or cultural resource issues, such as impacts on wetlands and other water resources, endangered species, parks, neighborhoods, businesses, historic buildings or bridges, and archeological sites concerning the transfer; and

(5) the name and address of any individuals or organizations known to be opposed to the transfer, and a description of any known controversies concerning the transfer.

The provisions of this §26.41 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.42. Public Involvement.

(a) If the commission determines that the proposed transfer is an integral part of the

region's overall plan to improve mobility in the region, the department will:

(1) hold one or more public hearings in each county in which the project is located for the purpose of seeking oral comments;

(2) hold one or more informal public meetings, which will be held, if practicable, in the project area; and

(3) solicit written comments.

(b) Notice of a solicitation of written comments, a public meeting, and a public hearing held under subsection (a) of this section will be:

(1) published in the *Texas Register*;

(2) published in one or more newspapers of general circulation in each of the counties in which the highway or ferry is located;

(3) published in a newspaper, if any, published in each of the counties of the applicable authority;

(4) posted on the department's website, with a link to the RMA's website, if available; and

(5) posted on the RMA's website, if available, with a link to the department's website.

(c) The department will publish and post notices under subsection (b) of this section at least 10 days prior to the date of a hearing or meeting.

(d) A notice published or posted under subsection (b) of this section will inform the public that the RMA's request and any studies submitted by the RMA in support of the request are available for review at one or more designated offices of the department and can be found on the websites of the department and, if available, the RMA. The notice will provide the links to the request and studies. The department will not make studies available on the websites if it determines such action to be impractical due to size of the files.

The provisions of this §26.42 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.43. Approval.

(a) The commission may, after considering public input concerning the proposed transfer, approve a proposed transfer under this subchapter if:

(1) the RMA agrees to assume all liability and responsibility for the safe and effective maintenance and operation of the highway or ferry upon its transfer;

(2) the RMA agrees to assume all liability and responsibility for compliance with all federal laws, regulations, and policies applicable to the highway or ferry;

(3) the commission determines that the transfer is in the public interest;

(4) the RMA agrees to assume all liability and responsibility for EPIC;

(5) for the transfer of a non-tolled highway, the commission determines that the public has a reasonable alternative route on nontoll roads; and

(6) the RMA has adopted rules providing criteria and guidelines for approval of the transfer of a ferry or highway.

(b) The commission will consider impacts on residential neighborhoods and the length of the alternative route when considering whether an alternative route is reasonable.

(c) Commission approval under this section is conditioned on the approval of the governor.

The provisions of this §26.43 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.44. Preliminary Approval.

(a) The commission may grant preliminary approval of the transfer, with final approval conditioned on the completion of preliminary studies necessary for the commission to make findings required by §26.43 of this subchapter. The preliminary studies may include, but are not limited to, social, economic, and environmental studies and the preparation of traffic and revenue

forecasts.

(b) The commission may require the RMA to pay for or complete all or a portion of the preliminary studies.

(c) Upon completion of the preliminary studies, the department will hold one or more additional public hearings. The department will publish and post notice of a hearing held under this subsection in accordance with §26.42(b)-(d).

(d) The commission may grant final approval of the transfer consistent with the requirements of §26.43 of this subchapter.

The provisions of this §26.44 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.45. Reimbursement.

(a) An authority shall reimburse the commission for the cost of a transferred highway or ferry unless the commission determines that the transfer will result in a substantial net benefit to the state, the department, and the traveling public that equals or exceeds the cost.

(b) In computing the cost of the highway or ferry, the commission will:

(1) include the total amount spent by the department for the original construction of the highway or ferry, including the costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, the acquisition of necessary rights-of-way, and actual construction of the highway or ferry and all necessary appurtenant facilities; and

(2) consider the anticipated future costs of expanding, improving, maintaining, operating, or extending the highway or ferry to be incurred by the RMA and not by the department if the highway or ferry is transferred.

The provisions of this §26.45 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.46. Use of Surplus Revenue. Notwithstanding the provisions of §26.53 of this chapter (relating to Surplus Revenue) to the contrary, the commission may, as a condition to the transfer, require that expenditures of surplus revenue, if any, derived from a transferred highway or ferry be made to implement projects included in the metropolitan transportation plan or the department's unified transportation program. Within the project operating agreement described under §26.54 of this chapter (relating to Project Operating Agreement), the commission and the RMA shall, prior to transfer, mutually agree to the amount of expenditures subject to this section and projects to be funded under this section. These provisions may be revised at any time upon agreement of both parties.

The provisions of this §26.46 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.47. Applicability. This subchapter does not apply to a ferry located in a municipality with a population of 5,000 or less unless the city council of the municipality approves the transfer.

The provisions of this §26.47 adopted to be effective March 18, 2004, 29 TexReg 2722.

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SUBCHAPTER F. MISCELLANEOUS OPERATION PROVISIONS**§26.51. Conflict of Interest.**

(a) Prohibited conduct for directors and employees. A director or employee of an RMA may not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the director or employee in the discharge of official duties or that the director or employee knows or should know is being offered with the intent to influence the director's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the director or employee might reasonably expect would require or induce the director or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the director's or employee's independence of judgment in the performance of the director's or employee's official duties;

(4) make personal investments, including investments of a spouse, that could reasonably be expected to create a conflict between the director's or employee's private interest and the interest of the RMA or that could impair the ability of the individual to make independent decisions;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the director's or employee's official powers or performed the director's or employee's official duties in favor of another; or

(6) have a personal interest in an agreement executed by the RMA.

(b) Eligibility of directors and chief administrative officer.

(1) A person is not eligible to serve as a director or chief administrative officer of an RMA if the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other

organization, other than a political subdivision, that is regulated by or receives funds from the department, the RMA, or a member county;

(B) directly or indirectly owns or controls more than a 10% interest in a business or other organization that is regulated by or receives funds from the department, the RMA, or a member county;

(C) uses or receives a substantial amount of tangible goods, services, or funds from the department, the RMA, or a member county; or

(D) is required to register as a lobbyist under Government Code, Chapter 305, because of the person's activities for compensation on behalf of a profession related to the operation of the department, the RMA, or a member county.

(2) A person is not eligible to serve as a director or chief administrative officer of an RMA if the person is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, rail, or aviation, or if the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, rail, or aviation.

(3) Except as provided in Transportation Code, §370.251(g), a person is not ineligible to serve as a director or chief administrative officer of an RMA if the person has received funds from the department, the RMA, or a member county for acquisition of highway right of way.

(4) The commission may approve an exception to the requirements of subsection (b)(1)(A) if:

(A) the RMA or the applicable county has properly disclosed to the public the details of the potential conflict;

(B) the potential conflict concerns employment with an entity that receives funds from a member county; and

(C) the commission determines that the employment will not result in the director or chief administrative officer incurring any obligation of any nature that is in substantial conflict

with the director or officer's proper discharge of his or her duties on behalf of the RMA.

The provisions of this §26.51 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.52. Donations. An RMA may only accept donations of cash, goods, services, and property that will further the performance of its functions. All donations shall be used by the RMA for their intended purpose in accordance with applicable law. All RMAs, in receiving donations, shall accept and use the donations only for specific purposes legally supported and authorized by the donors and shall be strictly accountable to the donors.

The provisions of this §26.52 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.53. Surplus Revenue.

(a) General. Each fiscal year, if an RMA determines that it has surplus revenue from transportation projects, the RMA shall:

(1) reduce tolls;

(2) spend the surplus revenue on other transportation projects in the counties of the RMA, in accordance with the provisions of this subchapter and, if applicable, as authorized by federal law; or

(3) deposit the surplus revenue to the credit of the Texas Mobility Fund.

(b) Expenditures on transportation projects. Subject to any applicable restrictions under federal law, an RMA may spend surplus revenue in the region on other transportation projects by:

(1) constructing a transportation project located within the counties of the RMA;

(2) assisting in the financing of a toll or toll-free transportation project of another governmental entity; or

(3) constructing a toll or toll-free transportation project and, on completion of the project, transferring the project to a governmental entity if:

(A) approved by the commission under subsection (c) of this section;

(B) the governmental entity authorizes the RMA to construct the project and agrees to assume all liability and responsibility for the maintenance and operation of the project on its transfer; and

(C) the project is constructed in compliance with all laws applicable to the governmental entity.

(c) Commission approval. The commission will approve an RMA constructing a transportation project under subsection (b)(3) of this section if:

(1) the project comes from a conforming transportation plan and transportation improvement program, when required by federal law;

(2) the project is consistent with the Texas Transportation Plan, the metropolitan transportation plan, and the Statewide Transportation Improvement Program; and

(3) the commission determines that the project will have a significant positive impact on the mobility of the region of the RMA.

(d) Considerations. When approving or disapproving a project under subsection (c) of this section, the commission will consider:

(1) the anticipated reduction to traffic congestion;

(2) potential social, environmental, and economic impacts of the project, and the extent to which the RMA has complied with all EPIC;

(3) benefit to state and local government; and

(4) whether the construction will expand the availability of funding for transportation projects or reduce direct state costs.

The provisions of this §26.53 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.54. Project Operating Agreement. An RMA and the department may enter into a project operating agreement governing the maintenance and operation of a transportation project. The agreement may include provisions governing:

(1) bridge inspection; and

(2) department maintenance or operation of the turnpike project, provided the RMA reimburses the department for necessary costs of maintaining or operating the project unless the RMA is provided assistance under Chapter 27, Subchapter E of this title (relating to Financial Assistance for Toll Facilities).

The provisions of this §26.54 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.55. Contracts with Mexico.

(a) Prior to entering into a contract with the United Mexican States or a state of the United Mexican States, the RMA must submit to the department:

(1) a summary of the purpose of the agreement;

(2) a list of the duties and responsibilities to be performed by each party to the contract;

(3) a description of any federal, state, or local funds to be spent in Mexico; and

(4) a description of any work to be done by RMA employees or contractors within Mexico.

(b) The commission will authorize the RMA to enter into a contract with the United Mexican States or a state of the United Mexican States if it determines that, based on the information provided by the RMA and any other factors the commission deems relevant, the contract will provide a significant benefit to the State of Texas.

The provisions of this §26.55 adopted to be effective March 18, 2004, 29 TexReg

2722.

SUBCHAPTER G. REPORTS AND AUDITS**§26.61. Written Reports.**

(a) Financial and operating reports. An RMA shall submit the following financial and operating reports to the department:

(1) the annual operating and capital budgets adopted by the RMA each fiscal year pursuant to the trust agreement or indenture securing bonds issued for a project, and any amended or supplemental operating or capital budget;

(2) annual financial information and notices of material events required to be disclosed under Rule 15c2-12 of the United States Securities and Exchange Commission (17 C.F.R. §240.15c2-12); and

(3) to the extent not otherwise disclosed in another report required under this subsection, a statement of any surplus revenue held by the RMA and a summary of how it intends to use the surplus revenue.

(b) Investment reports. An RMA shall submit to the department an independent auditor's review, if required by law, of the reports of investment transactions prepared by an RMA's investment officers under Government Code, §2256.023.

(c) Certification. Reports submitted under this section must be approved by official action of the board and certified as correct by the chief administrative officer of the RMA.

(d) Submission dates. Reports required by subsections (a)(1) and (3) of this section must be submitted to the executive director within 90 days after the beginning of the fiscal year or the adoption of any amended or supplemental budget. Reports required by subsection (a)(2) and subsection (b) of this section must be submitted to the executive director within 30 days after disclosure under Rule 15c2-12 or approval of the independent auditor's report.

The provisions of this §26.61 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.62. Annual Audits.

(a) General. The RMA shall maintain its books and records in accordance with generally accepted accounting principles in the United States, as promulgated by the Government Accounting Standards Board, the Financial Accounting Standards Board, or pursuant to applicable federal or state laws or regulations, and shall have an annual financial and compliance audit of such books and records in accordance with this section.

(b) Submission date. The annual audit shall be submitted to the executive director within 120 days after the end of the fiscal year.

(c) Certification. The financial and compliance audit must be conducted by an independent certified public accountant in accordance with generally accepted auditing standards, as modified by the governor's Uniform Grant Management Standards, or the standards of the Office of Management and Budget Circular A-133, Audits of States, Local Governments and Non-profit Organizations, as applicable.

(d) Paperwork retention period. All work papers and reports shall be retained for a minimum of four years from the date of the audit report, unless the department notifies the RMA in writing to extend the retention period.

(e) Availability of audit work papers. If requested by the department, audit work papers shall be made available to the executive director, within 30 days of request, at any time during the retention period.

The provisions of this §26.62 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.63. Other Reports. The RMA will provide other reports and information regarding its activities promptly when requested by the commission or the executive director.

The provisions of this §26.63 adopted to be effective March 18, 2004, 29 TexReg 2722.

§26.64. Operating Records. The department will have access to all operating and financial records of the RMA. The executive director will provide notification if access is desired by the department.

The provisions of this §26.64 adopted to be effective March 18, 2004, 29 TexReg 2722.

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