

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 04-08

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 46 Tex. Admin. Code § 26.01, *et. seq.* (the "RMA Rules"); and

WHEREAS, pursuant to Chapter 370 of the Texas Transportation Code RMAs are authorized to pursue and develop a wide variety of transportation projects, including congestion management projects; and

WHEREAS, the Texas Department of Transportation (TxDOT) has published proposed amendments to rules which address the operation of congestion mitigation facilities; and

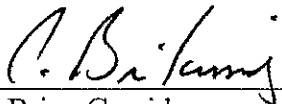
WHEREAS, it is the recommendation of CTRMA staff that clarification of the rules is warranted to assure that the ability of RMAs to pursue the development and operation of congestion mitigation facilities is not adversely affected by the rules;

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the CTRMA hereby authorizes staff and legal counsel to file comments on the proposed amendments to TxDOT's rules concerning the operation of congestion mitigation facilities; and

BE IT FURTHER RESOLVED, that the CTRMA staff and legal counsel are directed to update the Board of Directors on the rulemaking process and the content of the rules finally adopted by the Texas Transportation Commission.

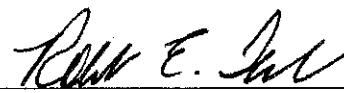
Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 25th day of February, 2004.

Submitted and reviewed by:



C. Brian Cassidy
Legal Counsel for the Central
Texas Regional Mobility Authority

Approved:

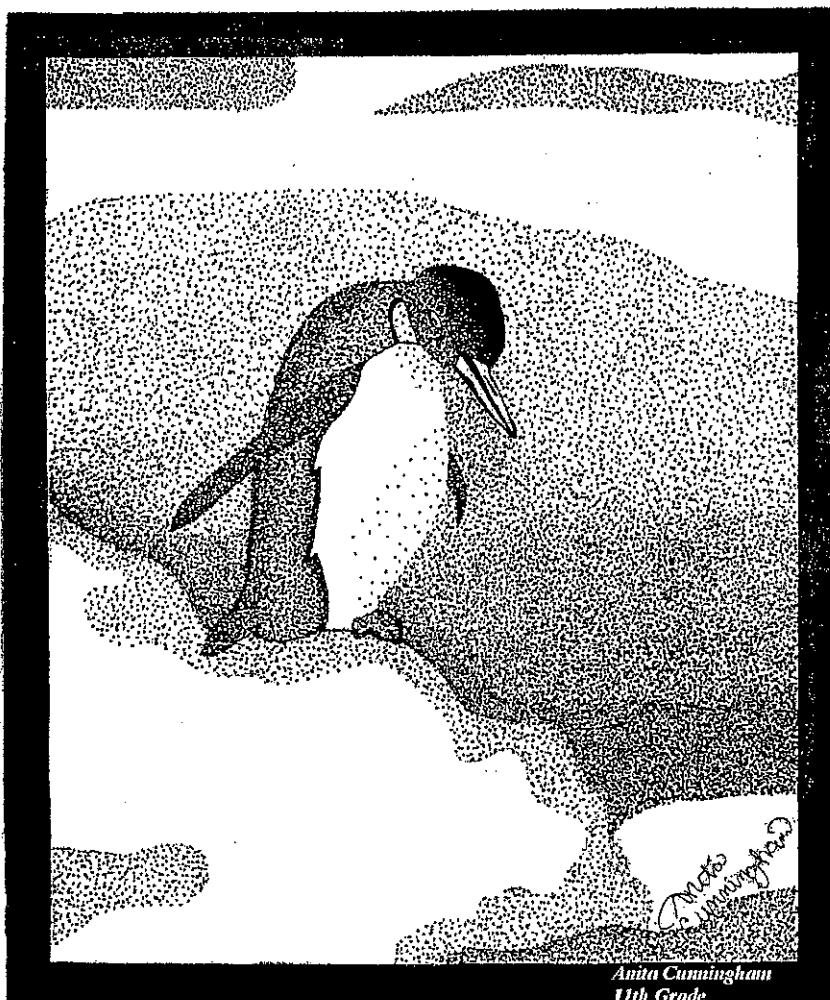


Chairman, Board of Directors
Resolution Number 04-08
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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER C. CONGESTION
MITIGATION FACILITIES

43 TAC §§25.40 - 25.47

The Texas Department of Transportation (department) proposes amendments to §§25.40 - 25.43 and new §§25.44 - 25.47, concerning congestion mitigation facilities.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS

House Bill 1208, 78th Legislature, Regular Session, 2003, expands the authority of the department to enter into agreements with various transportation entities for the design, construction, operation, and maintenance of high-occupancy vehicle (HOV) lanes and toll lanes established for the purpose of congestion mitigation.

House Bill 1208 also allows the Texas Transportation Commission (commission) to authorize the use of HOV lanes by low-emission vehicles (LEV) and motorcycles regardless of the minimum number of occupants of these vehicles as long as this does not jeopardize the receipt or use of federal funds by the department.

The legislation also gives the commission the authority to designate one or more lanes of a portion of the state highway as an exclusive lane for one or more classes of vehicles. The commission must follow specific criteria contained in the statute before it may designate an exclusive lane. The commission may also establish tolls on an exclusive lane under certain conditions.

House Bill 1208 also notes that restrictions contained in Transportation Code, Chapter 224, Subchapter F do not apply to police or emergency vehicles, that the department is responsible for installation and maintenance of traffic control devices installed under that subchapter, and that motorists are responsible for obeying these traffic control devices.

SECTION BY SECTION ANALYSIS

Section 25.40 is amended to reflect the expanded authority of the department established by House Bill 1208 to enter into agreements with transportation entities for HOV and toll lanes.

Section 25.41 is amended to incorporate new definitions for "exclusive lanes," "HOV authority," "level of service C," "low-emission vehicle," "seriously degraded," "toll entity," and "toll lane." The term "authority" is deleted and replaced with "HOV authority" to distinguish it from the definition of "toll entity." The definition of "low-emission vehicle" is designed to ensure that only very clean single occupancy vehicles have access to the HOV lanes.

Section 25.42 is amended to reflect the department's authority to create toll lanes on any portion of the state highway system for congestion mitigation purposes and to create exclusive lanes.

Section 25.43 is amended to include toll lanes.

New §25.44 allows, but does not require, the department to authorize the use of HOV lanes by low-emission vehicles and motorcycles without meeting the minimum occupancy requirements of the facility. Before such authorization may occur, the department must find that the HOV lane or lanes will be able to adequately absorb the additional traffic volume without suffering adverse operational impacts. The new section also establishes the criteria the department will follow before suspending or rescinding the use of an HOV facility by these vehicles. The section notes that no such authorization may be given by the department if it would jeopardize the state's ability to receive or use federal transportation funds.

New §25.45 allows the commission to designate and the department to finance, design, construct, operate, or maintain exclusive lanes on a portion of the state highway system. In order to designate an exclusive lane, the commission must find that the designation will improve transportation safety, mobility, or air quality. In accordance with House Bill 1208, the department may charge a toll for the use of an exclusive lane if the lanes or multi-lane facility adjacent to the exclusive lane are also tolled or a vehicle authorized to use the tolled exclusive lane is authorized to use non-tolled adjacent lanes or an adjacent non-tolled multi-lane facility. The new section also allows the department to enter into a third-party agreement with various entities for the design, construction, operation, or maintenance of a toll exclusive lane.

New §25.46 states that the department is responsible for the installation and maintenance of all official traffic control devices installed under this subchapter. The section does allow the department to authorize an entity with which it contracts to operate a toll lane under this subchapter to install and maintain the necessary traffic control devices.

New §25.47 provides that police and emergency vehicles may use any lane of the state highway system regardless of the restrictions imposed by this subchapter.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments and new sections as proposed are in effect, there will be no fiscal implications for local government and there will be minimal fiscal implications for state government as a result of enforcing or administering the amendments and new sections. Positive fiscal impact may be experienced as a result of possible expanded use of tolls on the state highway system for congestion mitigation purposes; however, exact fiscal impact cannot be determined. The proposed

changes will be accomplished using existing department staff and additional costs for roadway signing should not be significant. There should be no other fiscal impacts associated with the amendments and new sections. There could be an economic cost for persons choosing to utilize the toll lanes. That cost cannot be estimated because the toll charges will be set according to the needs of each particular project.

Carlos A. Lopez, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new sections.

PUBLIC BENEFIT

Mr. Lopez has also determined that for each of the first five years the amendments and new sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new sections will be to provide a safer, more efficient driving environment for the traveling public. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments and new sections may be submitted to Carlos A. Lopez, P.E., Director, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on March 15, 2004.

STATUTORY AUTHORITY: The amendments and new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and specifically Transportation Code, 224.151(8) which authorizes the commission to define a low-emissions vehicle, and Transportation Code, §224.159 which authorizes the commission to adopt rules for Transportation Code, Chapter 224, Subchapter F.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapter 224, Subchapter F.

§25.40. Purpose.

Transportation Code, Subchapter F, Chapter 224, authorizes the Texas Department of Transportation (the department) to finance, design, construct, operate, or maintain one or more lanes on a state highway facility as high occupancy vehicle (HOV) or exclusive lanes and to charge a toll for these lanes. The department may also enter into agreements with various transportation entities for the design, construction, operation, and maintenance of HOV and toll lanes. [Transportation Code, §224.153 and §224.154, authorize the commission to designate, and the department or a transportation corporation to design, construct, operate, or maintain, high occupancy vehicle (HOV) lanes on the state highway system, and to charge a toll for the use of one or more lanes of a state highway facility, including an HOV lane, for the purpose of congestion mitigation.] In order to support the construction of infrastructure and traffic operation strategies designed to decrease traffic congestion, improve air quality, improve safety, and enhance the use of existing highways, this subchapter prescribes requirements for the designation, funding, and operation of HOV lanes, toll lanes, and exclusive lanes [and high occupancy toll (HOT) lanes] on the state highway system.

§25.41. Definitions.

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

~~[(1) Authority--A regional tollway authority created under Transportation Code, Chapter 366; a metropolitan rapid transit authority created under Transportation Code, Chapter 451; a regional transportation authority created under Transportation Code, Chapter 452; or a municipal transit department created under Transportation Code, Chapter 453.]~~

(1) ~~[(2)]~~ Commission--The Texas Transportation Commission.

(2) ~~[(3)]~~ Department--The Texas Department of Transportation.

(3) Exclusive lane--A lane of a highway or segment of a highway on the state highway system the use of which is restricted to one or more specific classifications of motor vehicle.

(4) - (7) (No change.)

(8) HOV Authority--A transit authority created under Transportation Code, Chapter 451, 452, or 453; a regional mobility authority created under Transportation Code, Chapter 361 or 370; a municipality; or a transportation corporation.

(9) Level of Service C--A measure of highway congestion as defined by the latest edition of the Highway Capacity Manual published by the United States Transportation Research Board.

(10) Low-emission vehicle--A vehicle that has been certified by regulations of the federal Environmental Protection Agency to meet the Tier II Bin 1 or Bin 2 emission level established for that make and model year.

(11) Seriously degraded--When a lane or lanes fail to achieve at least a level of Service C for 90% of the time over a consecutive 90-day period during weekday peak travel periods.

(12) Toll entity--A regional tollway authority created under Transportation Code, Chapter 366; a transit authority created under Transportation Code, Chapter 451, 452, or 453; a regional mobility authority created under Transportation Code, Chapter 361 or 370; a county acting under Transportation Code, Chapter 284; or a transportation corporation.

(13) Toll lane--A lane or lanes of the state highway system, including an HOV lane, on which a toll has been authorized by order of the commission under Transportation Code, Chapter 224, Subchapter E.

(14) ~~[(8)]~~ Transportation corporation--A corporation created by the commission under §§15.80 - 15.93 of this title (relating to Transportation Corporations).

§25.42. Development of HOV, Exclusive, and Toll Lanes [and HOT Lanes].

(a) Criteria. The department may expend funds to perform studies and analyses of project alternatives that include the development of an HOV (including a HOT lane), toll, or exclusive [or HOT] lane on the state highway system for the purposes of congestion mitigation as described under this subchapter. In performing studies and project planning, the department will consider whether a potential HOV, toll, or exclusive [or HOT] lane will:

(1) - (4) (No change.)

(5) provide connectivity to or enhance the effectiveness of existing HOV, toll, or exclusive [or HOT] lanes;

(6) - (8) (No change.)

(b) Project development. After completion of all necessary studies and project planning, the department will submit a proposal to

the commission requesting the designation of one or more lanes on a state highway facility as dedicated HOV, toll, or exclusive [or HOT] lanes, and requesting approval to design and construct an HOV, toll, or exclusive [or HOT] lane project. In determining whether to make a designation and grant approval, the commission will consider the criteria prescribed in subsection (a) of this section. As part of the designation and approval process, the commission will consider the studies and planning documents prepared by the department under subsection (a) of this section.

§25.43. Operation of HOV and Toll [HOT] Lanes.

(a) Eligibility requirements. The executive director, in cooperation with an HOV authority with which the department contracts under this subchapter [subsection (d) of this section], will establish eligibility requirements for vehicles authorized to use HOV [or HOT] lanes on the state highway system, including eligible vehicle classes and occupancy requirements. These requirements may be established based on the type and location of the transportation facility and on the time of day. In establishing these requirements, the executive director will consider:

(1) the level of service on the HOV [or HOT] lanes;

(2) the level of service on general purpose lanes that are part of the highway facility on which HOV [or HOT] lanes are located or are proposed to be located;

(3) - (6) (No change.)

(b) Toll charges.

(1) The commission by minute order will establish charges for the use of toll lanes or will authorize an HOV authority or toll entity with which the department contracts to set the amount of toll charges [HOT lanes]. Variable toll charges may be established based on severity of congestion, time of day, classification of vehicle, type and location of facility, and vehicle occupancy. In establishing toll charges, the commission will consider the results of traffic and revenue studies and operational plans [s] prepared by the department or an HOV authority or toll entity [an authority] with which the department contracts under this subchapter [under subsection (d) of this section], and the criteria prescribed in subsection (a) of this section.

(2) A governmental entity that contributes substantial funding for a toll [HOT] lane project may recommend a toll charge to be set by commission minute order. The commission will approve the recommended toll charge if the commission determines that the charge:

(A) - (B) (No change.)

(c) Administrative fee. The commission by minute order, or an HOV authority or toll entity with which the department contracts by order of its governing body, will establish an administrative fee charged to owners of vehicles that use toll lanes established under this subchapter [HOT lanes] without paying the proper toll. In establishing an administrative fee, the commission will consider:

(1) the estimated cost to the department to collect unpaid tolls on tolled [HOT] lanes on the state highway system; and

(2) the existing or estimated violation rate on tolled [HOT] lanes on the state highway system.

(d) Operating agreements. The department may enter into an agreement with an HOV authority or toll entity to operate one or more HOV or toll [HOT] lanes. The agreement will contain terms necessary for the safe and efficient operation of the HOV or toll [HOT] lane, including, but not limited to:

(1) - (3) (No change.)

(4) responsibilities for setting toll charges and administrative fees;

(5) [(4)] indemnification of the department; and

(6) [(5)] distribution of revenue between the department and the HOV authority or toll entity.

§25.44. Use of HOV Lanes by Motorcycles and Low-Emissions Vehicles.

(a) The department may allow motorcycles and low-emissions vehicles to use HOV lanes without meeting the minimum occupancy requirements of the facility.

(b) In determining whether to allow these vehicles to use an HOV lane or lanes without meeting the minimum occupancy requirements, the department will consider the ability of the HOV lane or lanes to absorb the additional traffic volume without suffering adverse operational impacts.

(c) The department may suspend or rescind this authorization if:

(1) the department believes that the operation of the HOV lane or lanes has become, or is in danger of becoming, seriously degraded; or

(2) the use of an HOV facility by these vehicles without meeting the minimum occupancy requirement would jeopardize or impair the state's ability to receive or use federal funds.

§25.45. Exclusive Lanes.

(a) The commission by minute order may designate, and the department may finance, design, construct, operate, or maintain an exclusive lane or lanes on a portion of the state highway system.

(b) In designating an exclusive lane, the commission must find that such a designation will improve transportation safety, mobility, or air quality.

(c) Before designating an exclusive lane, there must be:

(1) two or more lanes adjacent to the proposed exclusive lane for the use of other vehicles; or

(2) a multi-lane facility adjacent to the proposed exclusive lane for the use of other vehicles.

(d) The department may charge a toll for the use of an exclusive lane if the toll is expected to enhance safety or mobility, improve congestion or air quality, and:

(1) the lanes or multi-lane facility adjacent to the exclusive lane are also tolled; or

(2) a vehicle authorized to use the tolled exclusive lane is authorized to use non-tolled adjacent lanes or an adjacent non-tolled multi-lane facility.

(e) Lanes that are adjacent to an exclusive lane may be designated as exclusive lanes themselves for differing classes of motor vehicles.

(f) The department may enter into an agreement with a regional mobility authority created under Transportation Code, Chapter 361 or 370, a county acting under Transportation Code, Chapter 282, or a transportation corporation to design, construct, operate, or maintain a toll exclusive lane created under this section.

§25.46. Traffic Control Devices.

(a) The department is responsible for the installation and maintenance of all official traffic control devices necessary to implement and ensure compliance with lane restrictions designated under this subchapter.

(b) If the department enters into a contract with an entity to operate a toll lane under this subchapter, the department may authorize the contracted entity to erect and maintain the necessary traffic control devices.

(c) All traffic control devices installed under this subchapter must be in compliance with the Texas Manual on Uniform Traffic Control Devices.

(d) Motorists are required to obey traffic control devices installed under this subchapter as required under Transportation Code, §544.004.

§25.47. Police and Emergency Vehicles.

A police or emergency vehicle as defined by Transportation Code, §541.201, may use any lane of the state highway system regardless of restrictions imposed under this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2004.

TRD-200400606

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: March 14, 2004

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

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