

TRANSPORTATION CODE

TITLE 6. ROADWAYS

SUBTITLE A. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 202. CONTROL OF TRANSPORTATION ASSETS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 202.001. ADMINISTRATION. (a) The commission may maintain state highways.

(b) A county is:

(1) not liable for expenses associated with the maintenance of a state highway; and

(2) not responsible for the supervision of a state highway.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.002. FUNDS. (a) The commission shall use automobile registration fees in the state highway fund to maintain state highways and may not divert funds from automobile registration fees for another use.

(b) Notwithstanding Subsection (a), if the commission is without sufficient funds from other sources to match the federal aid for roads in the state, the commission may by resolution transfer a sufficient amount from the state highway fund to match the federal aid.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. SALE, EXCHANGE, OR RETURN OF HIGHWAY PROPERTY

Sec. 202.021. REAL PROPERTY NO LONGER NEEDED. (a) The commission may recommend to the governor the sale or transfer of any interest in real property, including a highway right-of-way, that:

(1) was acquired for a highway purpose; and

(2) as determined by the commission, is no longer needed for a state highway purpose.

(b) Except as provided by Subsection (c) and Section [202.113\(b\)](#), real property shall be transferred or sold with the

following priorities:

(1) to a governmental entity with the authority to condemn the property; or

(2) to the general public.

(c) A highway right-of-way shall be transferred or sold with the following priorities:

(1) to a governmental entity with the authority to condemn the property;

(2) to abutting or adjoining landowners; or

(3) to the general public.

(d) The commission shall:

(1) determine the fair value of the state's interest in the real property; and

(2) if the value is \$10,000 or more, advise the governor of the value.

(e) The commission may waive payment for real property transferred to a governmental entity under this section if:

(1) the estimated cost of future maintenance on the property equals or exceeds the fair value of the property; or

(2) the property is a highway right-of-way and the governmental entity assumes or has assumed jurisdiction, control, and maintenance of the right-of-way for public road purposes.

(e-1) A grant transferring real property under Subsection (e)(2) must contain a reservation providing that if property described by that subsection ceases to be used for public road purposes, that real property shall immediately and automatically revert to this state.

(e-2) A municipality that received a grant of highway right-of-way from the department on June 12, 2013, that is subject to a reservation described by Subsection (e-1) and that is described by Section 2 of the Act enacting this subsection may, with the approval of its governing body after a public hearing, enter into an agreement with the department under which:

(1) the department agrees to:

(A) recommend to the governor that an instrument releasing the reservation be executed; and

(B) if executed, record the instrument in the

deed records of the county in which the right-of-way is located; and

(2) the municipality, if the instrument releasing the reservation is executed, agrees to:

(A) transfer the right-of-way to one or more landowners in exchange for real property with a value that is equal to or greater than the value of the right-of-way and that is described by Section 2 of the Act enacting this subsection;

(B) use the acquired real property for public road purposes necessary to accomplish a portion of a transportation master plan adopted by the municipality's governing body at a public meeting in February 2008; and

(C) execute and record in the deed records of the county in which the acquired real property is located a restrictive covenant that grants the real property to the state if the real property ceases to be used for public road purposes.

(f) Any revenue from the sale of property under this subchapter shall be deposited to the credit of the state highway fund.

(g) The governor may execute a deed conveying the state's interest in the property.

(h) If the commission determines that the value of the real property is less than \$10,000, it may authorize the executive director to execute a deed conveying the state's interest in the property without a recommendation to the governor.

(i) Notwithstanding Subsection (b), Tract 11, Block 49, of the Ysleta Grant located in El Paso County shall be sold to a federally recognized Indian tribe:

(1) whose reservation is located within counties of this state bordering the United Mexican States; and

(2) that is not subject to the federal Indian Gaming Regulatory Act.

(j) The standard for determination of the fair value of the state's interest in access rights to a highway right-of-way is the same legal standard that is applied by the commission in the:

(1) acquisition of access rights under Subchapter D, Chapter 203; and

(2) payment of damages in the exercise of the

authority, under Subchapter C, Chapter 203, for impairment of highway access to or from real property where the real property adjoins the highway.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 668, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 763 (H.B. 3333), Sec. 1, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 20, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 26, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 864 (H.B. 1738), Sec. 1, eff. June 18, 2015.

Acts 2017, 85th Leg., R.S., Ch. 862 (H.B. 2646), Sec. 1, eff. June 15, 2017.

Sec. 202.022. NOTICE OF SALE. Notice of a sale to the general public must be published in the English language:

(1) once a week for three consecutive weeks, with the final publication occurring not later than the 20th day before the date of the sale; and

(2) in a newspaper in the county where the property is located.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.023. SALE OF REAL PROPERTY BY BID. (a) A sale to the general public of an interest in real property under this subchapter is by sealed bid and may not be for less than the value determined by the commission under Section 202.021.

(b) The commission may require that each bidder pay to the commission a bid deposit in an amount and form determined by the commission.

(c) The commission shall apply the bid deposit to the purchase price of the property for the bid accepted by the commission.

(d) If for any reason the bidder fails to complete the

purchase before the 61st day after the date on which the bidder receives written notice that the state is ready to complete the sale, the bid deposit is forfeited.

(e) The state shall refund the bid deposit if the state is unable to complete the sale.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.024. EXCHANGE OF REAL PROPERTY. The governor, on the recommendation of the commission, may execute a deed exchanging an interest in real property acquired but not needed for a highway purpose as whole or partial consideration for another interest in real property needed for a state highway purpose.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.025. EXECUTION OF DEED: METHOD. The governor, on the recommendation of the commission, may execute a deed relinquishing and conveying under this subchapter the state's interest in real property as follows:

(1) if the state's title was acquired by donation, convey to the grantor or the grantor's heirs or assigns;

(2) if the state's title was acquired by purchase by a county or municipality, convey to the county or municipality, or to the grantor or the grantor's heirs or assigns at the request of the county or municipality;

(3) if the interest conveyed to the state is only the right to use the property, convey to the owner of the fee in the property;

(4) if the interest in the property was acquired and held by a county or municipality in its own name for use by the state, quitclaim to the county or municipality any interest that might have accrued to the state by use of the property;

(5) if there is no record title to the property, quitclaim any interest that might have accrued to the state by use of the property to the county or municipality where the property is located or to abutting property owners at the request of the county or municipality; or

(6) if necessary to comply with a reversionary clause

contained in the instrument that originally conveyed the interest to the state, quitclaim the state's interest.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.026. RECONVEYANCE OF PROPERTY ACQUIRED FOR FREEWAY. (a) The governor, on recommendation of the commission, may execute a deed reconveying the property to the grantor or the grantor's heirs or assigns, if, not later than 12 months after the date the property is acquired for use as an approach-way to an urban freeway, the commission determines that the property is not needed for a highway purpose because of relocation of the approach-way.

(b) The sale price for the property must be the same as the purchase price paid by or for the state plus six percent annual interest from the date the original purchase price was paid.

(c) When the commission determines that the property is not needed for a highway purpose, it shall send written notice to the grantor, at the grantor's address at the time of acquisition.

(d) Not later than the second anniversary of the date the notice is mailed, the grantor or the grantor's heirs or assigns may request in writing that the state reconvey the property to them.

(e) If the commission does not receive a request to reconvey the property before the expiration of the period, the commission may dispose of the property at a public sale.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.027. REIMBURSEMENT TO COUNTY OR MUNICIPALITY. (a) If real property owned by the state and sold under this subchapter was acquired by a county or municipality and if a part of that acquisition cost was reimbursed to the county or municipality by the state, the department may pay the county or municipality a percentage of the proceeds of the sale that is equal to the percentage of the value or cost not reimbursed to the county or municipality at the time of the initial acquisition.

(b) Reimbursement under this section applies only to real property that the commission determines was never used for the purpose for which it was acquired.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.028. CORRECTION OF ERROR OR AMBIGUITY IN INSTRUMENT. (a) The governor, on the recommendation of the commission, shall execute and deliver a quitclaim deed, correction deed, or other conveyance necessary to resolve an ambiguity or error in an instrument that conveyed an interest in real property to the state for a highway right-of-way.

(b) The ambiguity or error may be for any reason, including a metes and bounds description that is incomplete or incorrect.

(c) The ambiguity or error must be of sufficient consequence to raise doubt as to the location or extent of the interest conveyed, or must have resulted in the acquisition of real property or an interest in real property not intended to be included and not needed for a highway purpose.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.029. RIGHTS OF PUBLIC UTILITY OR COMMON CARRIER. Under this subchapter, if the state sells, conveys, or surrenders possession of real property that is being used by a public utility or common carrier having a right of eminent domain for right-of-way and easement purposes, the sale, conveyance, or surrender of possession of the real property is subject to the right and continued use of the public utility or common carrier.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.030. APPROVAL OF TRANSFERS. (a) The attorney general must approve a transfer or conveyance that is made under this subchapter if the value of the real property transferred or conveyed is \$10,000 or more.

(b) The state's right to full and exclusive right of possession of all retained rights-of-way may not be infringed or lessened in any way by a transfer or conveyance made under this subchapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 668, Sec. 3, eff. June 20, 2003.

Sec. 202.031. EXPENSES. (a) The person requesting the sale

of an interest in property or the grantee in a deed issued under this subchapter shall pay expenses incurred by the department, including handling, appraising, or advertising the sale.

(b) The department may not process a request or deliver a deed until the expenses under Subsection (a) are paid.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.032. RULES. The commission may adopt rules to implement this subchapter and to provide requestor refunds.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.033. TRANSFER OF HISTORIC BRIDGE. (a) In this section, "historic bridge" means a bridge that is included on or eligible to be included on the National Register of Historic Places.

(b) The department may transfer ownership of a historic bridge scheduled for replacement to a governmental entity or a responsible private entity. The entity that accepts ownership of the bridge:

(1) assumes all legal and financial responsibility for the bridge; and

(2) must maintain and preserve the bridge and its historic features.

(c) The department may not transfer a bridge under this section unless it first reviews the proposed recipient's intended use of the bridge and determines that the bridge can be safely used for that purpose.

(d) The following laws do not apply to a transfer under this section:

(1) Chapter 2175, Government Code;

(2) Section 202.030(a); and

(3) Section 202.031.

Added by Acts 2003, 78th Leg., ch. 668, Sec. 4, eff. June 20, 2003.

SUBCHAPTER C. LEASES, EASEMENTS, AND AGREEMENTS CONCERNING HIGHWAY
PROPERTY

Sec. 202.051. DEFINITIONS. In this subchapter:

(1) "Highway asset" means an interest in real property that is held or controlled by the department for a highway or department purpose.

(2) "Rest area" means an area of public land designated by the department as a rest area, comfort station, picnic area, or roadside park.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.052. LEASE AUTHORITY. (a) The department may lease a highway asset, part of a right-of-way, or airspace above or underground space below a highway that is a part of the state highway system if the department determines that the interest to be leased will not be needed for a highway purpose during the term of the lease.

(b) The lease may be for any purpose that is not inconsistent with applicable highway use.

(c) The department shall charge not less than fair market value for the highway asset, payable in cash, services, tangible or intangible property, or any combination of cash, services, or property.

(d) The department may authorize exceptions to the charges under Subsection (c) for:

(1) the lease of a highway asset to a public utility provider;

(2) a lease for a social, environmental, or economic mitigation purpose; or

(3) a lease to an institution of higher education for a purpose of the institution.

(e) In this section, "institution of higher education" has the meaning assigned by Section [61.003](#), Education Code.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.10(a), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1171, Sec. 1.19, eff. Sept. 1, 1997.

Sec. 202.053. LEASE OF HIGHWAY ASSETS: TERMS. (a) The department may determine all terms of the lease except:

(1) a tenant may not be required to post a bond or security for a lease in an amount in excess of six months' rental under the lease; and

(2) the lease must allow the tenant to mortgage or otherwise pledge or grant a security interest in the leasehold to secure financing for the acquisition of the leasehold and for the construction and operation of an improvement permitted under the lease.

(b) The department may not convey title to, or sever from the real property, any permanent improvement constructed on the area leased under this subchapter.

(c) The lease may:

(1) contain a provision for early termination, at the option of either party, with or without cause; and

(2) provide that the right of one party to terminate without cause before the stated termination date may be conditioned on the payment of an amount negotiated by the parties and specified in the lease.

(d) In evaluating the consideration proposed by a tenant, the department may consider the value of any real property the tenant proposes to donate or convey for a highway purpose.

(e) Subject to rules of the commission to preserve safety and scenic beauty, a tenant may erect and maintain signs and other advertising displays relating to a business conducted on the leasehold.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.054. REVENUE FROM LEASES. The department shall deposit payments received under a lease under this subchapter to the credit of the state highway fund.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.055. LEASE OF REST AREAS. (a) The department may lease a rest area to a person engaging in sales, services, or other commercial activities that serve the needs of the traveling public.

(b) The department shall require the person to maintain the rest area in a proper manner and repair promptly any damage to the

rest area caused by the person or a customer of the person, or pay to the state all expenses incurred by the department in repairing the damage.

(c) The department shall adopt rules to implement this section.

(d) Section 94.002, Human Resources Code, does not apply to a lease authorized under this section.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.056. CERTAIN OIL AND GAS LEASES PROHIBITED. The commission may not enter into an oil and gas lease for real property owned by the state that was acquired to construct or maintain a highway, road, street, or alley.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.057. CONVEYANCE OF EASEMENT OR INTEREST FOR FLOOD CONTROL. (a) The commission may, on request of an officer of the United States or the county judge of an affected county, convey without monetary consideration to the United States, or to a county that has agreed to convey real property or an interest in real property to the United States under an Act of Congress, an easement or interest in that property if:

(1) the state acquired the property for use as a right-of-way for a state highway in a county that borders on the United Mexican States, or in a county adjacent to such a county; and

(2) the property is used or is proposed to be used by that county or the United States for the construction, operation, and maintenance of a system to control flood waters of a navigable stream of the state.

(b) If the state does not own fee simple title to the property, the commission may join and consent to an easement to be used for a flood control purpose if the owner of the fee has executed an easement.

(c) The commission may execute a necessary deed, conveyance, or agreement, to be signed by the chair of the commission as provided by commission order, for flood control

purposes under this section.

(d) In lieu of the monetary consideration waived by Subsection (a), the commission may make a reservation or agreement for the construction, reconstruction, alteration, operation, or maintenance of a structure or facility used or projected to be used for a highway purpose on real property that is needed for a flood control purpose.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 140, Sec. 8, eff. Sept. 1, 2003.

Sec. 202.058. AGREEMENT TO USE OR CULTIVATE RIGHT-OF-WAY.

(a) The department may agree with the owner of real property abutting or adjoining property acquired by the department for the right-of-way of a road in the state highway system, allowing the owner to use or cultivate a portion of the right-of-way not required for immediate use by the department.

(b) An agreement must be in writing and may provide for:

- (1) use or cultivation of the property;
- (2) construction of improvements on the property;
- (3) placement of fences on the property; and
- (4) other matters.

(c) The director or the director's authorized representative and the owner of the property shall execute the agreement.

(d) The department may not execute an agreement that would impair or relinquish the state's right to use the property for a right-of-way purpose when the property is needed to construct or reconstruct the road for which it was acquired.

(e) Use by the owner of adjoining or abutting property under this section is not abandonment of the property by the department.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.059. MOWING, BALING, SHREDDING, AND HOEING MATERIAL ON RIGHT-OF-WAY. (a) A department district engineer, on request of a person, may, but is not required to, permit the person to mow, bale, shred, or hoe material on the right-of-way of a portion of a state highway that is in the district supervised by

that engineer.

(b) In a county with a population of more than 10,000, if the person requesting permission under Subsection (a) is not the owner of the real property adjacent to the right-of-way that is the subject of the request, the district engineer must first provide the owner of the property the option of mowing, baling, shredding, or hoeing material on the right-of-way before granting permission to another person.

(c) A person permitted to mow, bale, shred, or hoe the right-of-way may not receive compensation for the mowing, baling, shredding, or hoeing but is entitled to use or dispose of the hay or other material produced.

(d) The state, the department, and the district engineer are not liable for any property damage, personal injury, or death resulting from the performance of a service or agreement under this section.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 919 (H.B. 463), Sec. 1, eff. June 18, 2015.

Sec. 202.060. LIVING LOGOS; PILOT PROJECT. (a) The commission may adopt rules implementing a pilot project for the leasing of state highway right-of-way, subject to any applicable federal regulation of outdoor advertising, as a location or locations for commercial advertising by means of a floral mosaic living logo.

(b) Rules adopted under this section shall:

(1) provide for the award of a lease in a manner that maximizes revenue to the state;

(2) regulate the content, composition, placement, installation, and maintenance of a floral mosaic living logo;

(3) set a bond for faithful performance of the lessee;

(4) provide for the public safety;

(5) ensure that installation and maintenance of a floral mosaic living logo will not interfere with access to, or be inconsistent with the use of, abutting property; and

(6) include such other matters as may be necessary to protect the integrity of the involved highway.

(c) A floral mosaic living logo installed or placed under this section may not contain a message, symbol, or trademark that resembles an official traffic-control device.

(d) This section applies to state highway right-of-way in a county with a population of 500,000 or more.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.16, eff. Sept. 1, 1997.

Sec. 202.061. ENVIRONMENTAL COVENANT. (a) The commission may enter into an environmental covenant for the purpose of subjecting real property in which the department has an ownership interest to a plan or the performance of work for environmental remediation if the plan or work performed is first approved by the Texas Commission on Environmental Quality or a federal agency with the authority to approve the plan or work under the applicable laws and regulations.

(b) The environmental covenant must:

(1) contain a legally sufficient description of the property subject to the covenant;

(2) describe the nature of the contamination on or under the property, including the contaminants, the source, if known, and the location and extent of the contamination; and

(3) describe the activity and use limitations on the property.

(c) The plan or performance of work for environmental remediation must:

(1) meet applicable state and federal standards for environmental remediation; and

(2) bring the property into compliance with zoning or land use controls imposed on the property by each applicable local government.

(d) For each property for which the commission may enter into an environmental covenant, the commission by order may authorize the executive director to execute an environmental covenant on behalf of the commission. Not less than 30 days before

the date the commission considers a proposed order under this subsection, the commission must mail to each owner of a property interest in the applicable property, each adjacent landowner, and each applicable local government a notice that includes a clear and concise description of the proposal to enter into the environmental covenant and a statement of the manner in which written comments may be submitted to the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 743 (S.B. 480), Sec. 1, eff. September 1, 2009.

SUBCHAPTER D. RECLAIMED ASPHALT PAVEMENT

Sec. 202.081. DEFINITION. In this subchapter "reclaimed asphalt pavement" means hot mix asphalt pavement and any accompanying tack coat, seal coat, or chip seal removed as millings or broken pavement pieces from a road during construction, reconstruction, or repavement under the authority of the department.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 202.082. DISPOSAL OF ASPHALT. (a) The department shall dispose of all reclaimed asphalt pavement from a road in the state highway system in the most cost-effective and environmentally sensitive manner the department considers appropriate, giving priority to political subdivisions of this state for the maintenance, development, and construction of public works projects.

(b) Disposal of reclaimed asphalt pavement under this section is not subject to:

(1) Chapter 2175, Government Code; or

(2) the statutory or regulatory authority of the comptroller formerly exercised by the General Services Commission.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.11(a), eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.111, eff. September 1, 2007.

SUBCHAPTER E. TELECOMMUNICATIONS FACILITIES

Sec. 202.091. DEFINITION. In this subchapter, "telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, or sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.20, eff. Sept. 1, 1997.

Sec. 202.092. USE OF DEPARTMENT FACILITIES. Notwithstanding any other law, a telecommunications provider may not place or maintain its facilities or otherwise use improvements, including structures, medians, conduits, or telecommunications equipment or lines, constructed or installed by the state as components of the state highway system except by a lease under Section 202.052 or an agreement under Section 202.093.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.20, eff. Sept. 1, 1997.

Sec. 202.093. AGREEMENT. (a) Notwithstanding any other law, the department may enter into an agreement with a telecommunications provider allowing the provider, for the provider's commercial purposes, to:

(1) place the provider's telecommunications facilities within the median of a divided state highway; or

(2) place lines within or otherwise use telecommunications facilities owned or installed by the state in or on the improved portion of a state highway, including a median, structures, equipment, conduits, or any other component of the highway facilities constructed or owned by the department.

(b) An agreement entered into under Subsection (a) may provide for compensation between the department and the telecommunications provider in the form of cash or the shared use of facilities.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.20, eff. Sept. 1,

1997.

Sec. 202.094. COMPETITIVE SEALED PROPOSAL. (a) Before entering into an agreement with a telecommunications provider under this subchapter, the department shall follow a procedure using competitive sealed proposals.

(b) The department shall solicit proposals by a request for proposals and shall publish notice of the request in at least two newspapers of general circulation and in the Texas Register.

(c) The proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. After a contract is awarded, all proposals that have been submitted shall be open for public inspection subject to Subchapter C, Chapter 552, Government Code.

(d) The department may discuss an acceptable or potentially acceptable proposal with an offeror to assess the offeror's ability to meet the solicitation requirements. After the submission of a proposal but before making an award, the department may permit the offeror to revise the proposal in order to obtain the best final offer. The department may not disclose any information derived from proposals submitted from competing offerors in conducting discussions under this section. The department shall provide each offeror with an equal opportunity for discussion and revision of proposals.

(e) The department shall make a written award of a contract to the offeror whose proposal is the most advantageous to the state, considering price and the evaluation factors in the request for proposals, except that if the department finds that none of the offers is acceptable, it shall refuse all offers. The contract file must state in writing the basis on which the award is made.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.20, eff. Sept. 1, 1997.

Sec. 202.095. APPLICABILITY. (a) Subtitle D, Title 10, Government Code, does not apply to a procurement under this subchapter.

(b) This subchapter does not limit a telecommunications

provider from placing lines or facilities in the unimproved portion of state highway right-of-way to the extent authorized by applicable law.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.20, eff. Sept. 1, 1997.

Sec. 202.096. REVENUE. The department shall deposit in the state highway fund any revenue received under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.20, eff. Sept. 1, 1997.

Sec. 202.097. RULEMAKING. The commission shall adopt rules for the implementation of this subchapter.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.20, eff. Sept. 1, 1997.

SUBCHAPTER F. ADVANCE ACQUISITION OF PROPERTY

Sec. 202.111. DEFINITION. In this subchapter, "advance acquisition" means an acquisition by the commission under Section [202.112](#).

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 3.02, eff. Sept. 1, 2003.

Sec. 202.112. ADVANCE ACQUISITIONS. (a) The commission may acquire real property or an interest in real property or purchase an option to acquire real property for possible use in or in connection with a transportation facility before:

(1) a final decision has been made as to whether the transportation facility will be located on that property; or

(2) environmental clearance has been issued for the transportation facility by the appropriate federal or state authority.

(b) An advance acquisition shall be made by the commission using the procedures authorized under Subchapter D of Chapter [203](#) or other law authorizing the commission or the department to acquire real property or an interest in real property for a

transportation facility. If the commission acquires real property or an interest in real property under Subchapter D of Chapter 203 or other law, the commission may make an advance acquisition in the manner provided by this subchapter.

(c) The commission may not make an advance acquisition by condemnation.

(d) An option to acquire real property purchased under this section may not expire later than the fifth anniversary of the date the option was purchased and may be renewed for subsequent periods that expire not later than the fifth anniversary of the date the option was renewed, by agreement of the commission and the grantor of the option or the grantor's heirs or assigns.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 3.02, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.06, eff. June 14, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 259 (H.B. 1201), Sec. 5, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 862 (H.B. 2646), Sec. 2, eff. June 15, 2017.

Sec. 202.113. DISPOSAL OF SURPLUS PROPERTY. (a) Except as provided by Subsection (b), the commission shall dispose of property acquired by advance acquisition that is not needed for a transportation facility in the manner provided by Subchapter B.

(b) Notwithstanding any other law, the commission first shall offer property described by Subsection (a) for sale to the person from whom the commission acquired the property at a price that is equal to the lesser of:

(1) the price the commission paid the person to acquire the property; or

(2) the fair market value of the property at the time it is offered for sale under this subsection, taking into account any damage to the property.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 3.02, eff. Sept. 1, 2003.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 862 (H.B. [2646](#)), Sec. 3, eff. June 15, 2017.

Sec. 202.114. MANAGEMENT. If requested by the department, property acquired by advance acquisition may be managed by the General Land Office on behalf of the department as the department and the General Land Office may agree. Subchapter E, Chapter [31](#), Natural Resources Code, does not apply to property acquired under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 3.02, eff. Sept. 1, 2003.