



Texas Department of Transportation  
Bicycle Advisory Committee (BAC) Meeting  
July 25, 2014 - 10:00 AM  
200 East Riverside Drive, Bldg. 200, Conference Room E (RA200E)  
Austin, Texas 78704  
Teleconference Available for BAC Members

Agenda

1. Convene.
2. Introduction of BAC members, Federal Highway Administration staff, and Texas Department of Transportation (TxDOT) staff.
3. Approval of BAC meeting summary for April 28, 2014 (action item).
4. Update from TxDOT's Statewide Bicycle and Pedestrian Coordinator.
5. Discussion of TxDOT's Crash Record Information System.
6. Discussion and recommendations regarding TxDOT's Safe Routes to School safety campaign (action item).
7. Discussion and recommendations regarding TxDOT's proposed Transportation Alternatives Program rules (action item).
8. Discussion of agenda items for future BAC meetings.
9. Adjourn.

I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements.

CERTIFYING OFFICIAL: Angie Parker, Associate General Counsel,  
(512) 463-8630.

# AGENDA ITEM 3

Bicycle Advisory Committee  
Meeting Summary  
Meeting Date: April 28, 2014

TxDOT's Bicycle Advisory Committee (BAC) to the Texas Transportation Commission met to discuss various topics related to bicycle education, initiatives and safety.

A public notice of this meeting containing all items on the agenda was filed in the office of the Secretary of State at 3:30 p. m. on April 9, 2014, as required under Chapter 551 of the Government Code, referred to as "The Open Meetings Act."

The meeting opened at 10:04 a.m. with the following members present:

**BAC Committee Members Participating:**

Annie Melton, Dallas  
Billy Hibbs, Tyler  
Tommy Eden, Austin  
Bobby Gonzales, El Paso  
Margaret Charlesworth, San Angelo  
Regina Garcia, Houston (Chair)  
Howard Peak, San Antonio  
Ann-Marie Williamson, Wichita Falls  
Julia Murphy, San Antonio

**BAC Committee Members Not Attending:**

Sheila Holbrook-White, Austin (participated via teleconference the last 30 minutes)  
Russ Frank, Houston

**TxDOT Liaison:**

Teri Kaplan (TxDOT-PTN)

**Presenters:**

Caroline Love (TxDOT-Commission)  
Robin Stallings (BikeTexas)  
Teri Kaplan (For TxDOT-Traffic Operations)  
Donna Roberts (TxDOT-PTN)  
Michael Chamberlain (TxDOT-TPP)

Agenda items are listed below numerically, with a summary of discussion under each item

**1. Convene**

The meeting started at 10:04  
A BAC Quorum was declared

**2. Introductions of committee members, TxDOT staff and speakers.**

A BAC Quorum was present. The members present included:  
Regina Garcia (Chair, of Houston), Margaret Charlesworth (San Angelo), Tommy Eden (Austin), Robert Gonzales (El Paso), Billy Hibbs (Tyler), Annie Melton (Dallas), Julia

Murphy (San Antonio), Howard Peak (San Antonio), and Anne-Marie Williamson (Wichita Falls). Members Russ Frank (Houston) and Sheila Holbrook-White (Austin) were not available to attend the meeting; however, Holbrook-White did join some of the meeting by phone.

**3. Approval of meeting summary for February 21, 2014 (action item)**

February 21, 2014 meeting summary approved, subject to grammatical corrections.

**4. Approval of posting BAC meeting schedule and members contact information on TxDOT's website. (action item)**

The committee members approved publishing the BAC members' contact information on the TxDOT.gov website along with a list of the TxDOT District Bicycle Coordinators' contact information.

**5. Presentation from Bike Texas on their activities to support and promote the consideration of pedestrian and bicycle accommodations**

Robin Stallings of BikeTexas provided a presentation to the members with a focus on their activities supporting and promoting the consideration of pedestrian and bicycle accommodations on the transportation system. Robin opened by stating that BikeTexas views TxDOT as their biggest partner, but also as an "agency frienemy" (friend-enemy). Stallings said there are so many silos in TxDOT that while some within the agency are great partners, there are other who are pushing against bicycling. There are differences of opinion among staff on whether a facility is a roadway or a bike trail.

Some say that bicyclists do not pay into the transportation system through fuel taxes; in response Stallings asserted that bicycling activities provide more retail and sales tax revenue to the state than hunting and fishing and that bicyclist do pay their "fair share". He explained that BikeTexas works to connect silos and bridge gaps between lawmakers, municipalities, etc. Stallings claimed BikeTexas does not benefit monetarily from any of their efforts and said that during the last Safe Routes to School (SRTS) program they had to bring money to the table to get projects done.

Stallings explained BikeTexas relies upon local and federal money for programs, and that TxDOT manages the federal funds. Local bonds are the biggest source of funding for programs and that Transportation Alternatives Program (TAP) is the newest source of federal funding. (NOTE: the TAP rules are still under development given this program is new under the MAP-21 authorization bill.) Stallings explained he is not aware of the status of TAP and that he has "asked a Senator" to check into it as well. Stallings claims Texas has the best, palatial rest stops but that it is bike trail money building them and that is what will become of TAP funds for the next few years.

Stallings stated that 16% of fatalities (3500 a year) in Texas are bicyclists/pedestrian incidents, yet less than 1% of funding goes towards bike/ped projects. He feels there should be more of a balance and that the TAP rules should be written in a way to score the bike/ped benefits of a project. When asked about the SRTS status, Stallings explained that TxDOT is working on a Statement of Work Request for a \$3 million ad campaign from previously dedicated SRTS funds, but that otherwise "the program is over."

Stallings showed examples of Cycle Track Networks which are the newest development in Europe enhancing local arterials and provide better bicyclist safety rates. The networks are engineered to use cars to protect bicyclists (by creating a wall of vehicles) and not the other way around. When Stallings noted the BikeTexas members and staff, Billy Hibbs noted a lack of representation in East. Stallings explained that Butch Willingham served for a long time, and the Tyler Bike Club is very active, however members are spread thin in the area. (An example of involvement includes Tyler Simpson who was interested in joining, but had too many other commitments. Stallings explained that the region remains tied into BikeTexas efforts. Billy inquired about membership and was asked to visit the Bike Texas website. Billy also inquired on steps to pass a "safe Passing" law locally. Stallings recommended they have a conversation later and simply stated that "...it helps to know someone on city council"

Stallings explained previous conversations with Phil Wilson in which Wilson indicated there would not be any flexing/diverting of TAP funds; however Stallings gets the impression that now SRTS money is going to palatial highway rest stops. Stallings claimed "TxDOT lobbyists in DC" were instrumental in allowing for "more flexibility" of funds through TAP and flexing out SRTS, noting funds through TAP could no longer go directly to a non-profit such as BikeTexas, a 501(c)(3), that has been the lead in Texas on bicycle advocacy and education for children. BAC member Julia Murphy clarified that TAP allows SRTS coordinators and that it is now incumbent upon municipalities to find local match for projects. Stallings explained SRTS use to not require a match, and he does not know "who killed SRTS" and "who opposes bicycle safety education for children".

**6. Discussion of TxDOT's Safe Routes to School safety campaign (action item)**

Teri Kaplan discussed the \$3.2 million "non-infrastructure" SRTS funds available that TxDOT will use to promote bicycle and pedestrian safety and education. The funding would sustain a 2-year campaign statewide with input from BAC. This committee will be asked to select representatives to represent TxDOT BAC to review proposals received and help select the vendor(s) that would be selected and awarded a non-infrastructure SRTS contract. TxDOT's Traffic Operations Division was in the process of preparing the Statement of Work Request (SOWR). The DRAFT SOWR will be discussed at the July 2014 meeting. TxDOT would like to get feedback from the committee, with special attention to the deliverables, prior to submission to the commission. Debra Vermillion and staff from TxDOT's Traffic Operations Division will discuss the SOWR at the July BAC meeting.

BAC Member Annie Melton is concerned that the campaign will include flashy billboards, where she feels "teaching the teachers" is the most effective measure for education and information (teach 30 and they teach 30...) Anne-Marie gave support to the behavior aspects and Margaret wants to see more infrastructures. Anne mentioned a need for more research (back packs are heavy). Regina mentioned how Houston is always focused on vehicular traffic. Billy Hibbs suggested that \$3 million statewide would breakdown to \$3k for each school in Texas. The BAC could then give each one a list of what they can do with funds (buy bicycles, education, etc). TxDOT staff plans to host a conference call with the BAC within the next few weeks to discussion intentions and options with the campaign.

BAC member Anne-Marie Williamson is concerned we are squeezing out the health and safety benefits through not funding educational programs.

Donna Roberts with TxDOT's Public Transportation Division explained that MAP-21 focused on consolidating programs to streamline processes for DOTs throughout the United States requiring them to manage fewer programs; however, the same types of projects are eligible for funding. BAC Chair Regina Garcia feels like TxDOT gutted the SRTS program and asked if TxDOT plans to implement a complete streets program to carry these safety initiatives forward. Roberts explained our options are being worked through. BAC member Murphy expressed her good feeling about TxDOT utilizing the remaining non-infrastructure funds for a SRTS campaign indicating that these types of projects would not be funded under MAP-21. BAC member Williamson discussed having behavioral change and building more bike paths and making safer crossings. BAC member Garcia stated that Texas has a huge cultural issue, and if people knew their alternatives they might use them.

These discussions will continue more in-depth at the July 25 meeting, and will include Mark Marek or his designee from the TxDOT Design Division to further explain the realities of TAP and the rulemaking process. There is a possibility of the rules being proposed at the July Transportation Commission meeting, and TxDOT staff will keep the BAC informed and in the loop on the rules process.

**7. Discussion of the Transportation Alternatives Program (TAP)**

Unfortunately DES staff was unavailable to attend this meeting, the discussions will continue more in-depth when Mark Marek, from the TxDOT Design Division, or his designee will speak at the July 25, 2014 BAC meeting to further explain the realities of TAP and the rulemaking process. There is a possibility of the rules being proposed at the July Transportation Commission meeting, and TxDOT staff will keep the BAC informed and in the loop on the rules process.

Larger MPOs with designated TAP funding will conduct a competitive independent Call for Projects to select local projects.

**8. Discussion of TxDOT's Statewide Bikeway Map and Statewide Planning Map**

Michael Chamberlain with the TxDOT Transportation Planning & Programming Division provided an update on Statewide Planning Map located on TxDOT's web site at: <http://www.txdot.gov/inside-txdot/division/transportation-planning/maps/statewide-planning.html>. While the map currently includes average daily traffic counts and facility characteristics to help bicyclist plan safer routes for travel, the BAC asked for it to include fatality characteristics as well, which Chamberlain will work on. The next update will be in about 6 months. Aja Davidson with the TxDOT Planning & Programming Division covered the Tyler District pilot program on shoulder width; while looking at implementing a statewide program highlighting shoulder widths and information on any prohibition on operation of bicycles for planning purposes. She is also looking into adding photos of intersections to view limitations on lane width, and looking at controlled access facilities which would not allow bicycles.

BAC Member Billy Hibbs noted that in the local Tyler paper from April 19 an article highlighted 3 bicyclists hit in last 8 days in an area. Hibbs was informed TxDOT staff will reach out to the Tyler District on the matter to see what can be accomplished in the near term with signage or other immediate safety efforts to help with the issue. More collaboration on this issue will be needed. Annie would like to see more information about non-motorized traffic.

**9. Discussion of agenda items for future BAC meetings.**

Time was not available to have a discussion of agenda items for future BAC meetings. BAC members were asked to forward their requests for agenda items to the BAC chair and copy TxDOT's State Bike/Ped Coordinator.

**10. Adjourn**

At 11:58 a.m. the meeting concluded.

# AGENDA ITEM 4

## Reportable Motor Vehicle Traffic Fatalities and Serious Injuries To Pedestrians and Pedalcyclist Calendar Years 2009 - 2013

Crash Year	PEDALCYCLIST						PEDESTRIAN											
	Not on State Highway System			On State Highway System			Total			Not on State Highway System			On State Highway System			Total		
	Fatalities	Serious Injuries	Total	Fatalities	Serious Injuries	Total	Fatalities	Serious Injuries	Total	Fatalities	Serious Injuries	Total	Fatalities	Serious Injuries	Total	Fatalities	Serious Injuries	Total
2009	17	923	940	31	315	346	48	1,238	1,286	122	1,964	2,086	235	796	1,031	357	2,760	3,791
2010	14	986	1,000	29	300	329	43	1,286	1,329	116	1,835	1,951	241	825	1,066	357	2,660	3,717
2011	18	940	958	29	339	367	47	1,279	1,326	131	1,791	1,917	294	853	1,147	425	2,644	3,791
2012	26	1,092	1,118	30	363	393	56	1,455	1,511	164	2,033	2,197	323	937	1,260	487	2,970	4,237
2013	23	1,077	1,100	25	388	413	48	1,465	1,513	161	2,088	2,249	327	989	1,276	488	3,077	4,327

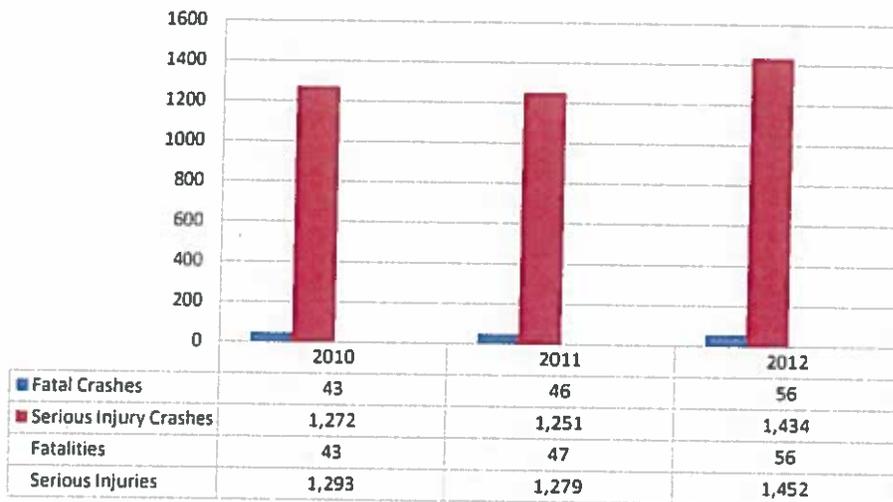
Information contained in this report represents reportable data collected from Texas Peace Officer's Crash Reports (CR-3) received and processed by the Department as of the report date.

## Bicyclists

Bicyclist crashes involve at least one bicycle and one motor vehicle. Fatalities and serious injuries related to bicycle crashes are reported for the bicyclists only.

### The Issue

Often crashes involving bicyclist result in fatalities and serious injuries for the cyclist due to their vulnerability. Fatal bicycle crashes account for 2 percent of the total fatal crashes annually. Over 85 percent of the serious injury and fatal crashes occur within city limits.



### 2015 Objective

Reduce the number of fatal and serious injury crashes involving bicycles by 10 percent by 2015, as compared to 2010.

### Progress

No progress has been made toward the 2015 goal. Since 2010, there has been a 37 percent increase in fatal crashes and a 13 percent increase in serious injury crashes.

	2010	2011	2012	% Change 2010 to 2011	% Change 2011 to 2012	% Change 2010 to 2012
Fatal Crashes	43	49	59	14%	20%	37%
Serious Injury Crashes	1,272	1,251	1,434	-2%	15%	13%
Fatalities	43	47	56	9%	19%	30%
Serious Injuries	1,293	1,279	1,452	-1%	14%	12%

### Established Countermeasures

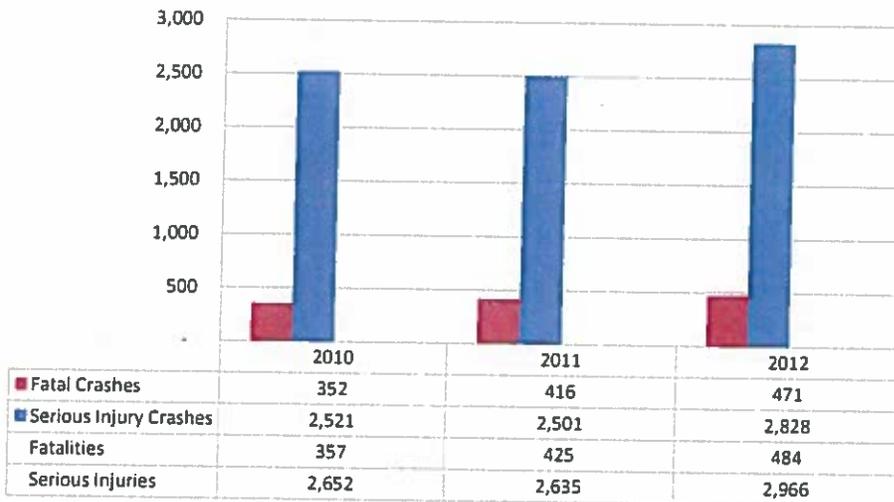
- Improve pedestrian safety in and around school zone areas.
- Integrate bicycles into transportation system (improve connectivity).
- Conduct PI&E campaigns on bicycle traffic laws and the use of bicycle safety equipment for both bicyclists and non-biking motorists.
- Increase enforcement of bicycle right-of-way traffic laws.
- Conduct bicycle training programs for school age children and adults using bicycles for both recreation and transportation.
- Increase motorist awareness of bicycles: "Share the Road."
- Increase participation of EMS personnel in helmet and other safety equipment use advocacy.
- Encourage local ordinances regarding bicycle helmet use.
- Encourage municipalities to pass vulnerable road user statutes.

## Pedestrians

Pedestrian crashes involve at least one pedestrian and one motor vehicle. Casualties related to pedestrian crashes are reported for pedestrians only.

### The Issue

Annually, on average, pedestrian fatalities make up 13 percent of the total traffic fatalities and 3 percent of the serious injuries. Often pedestrians suffer death and more serious injuries due to their vulnerabilities. The majority, 83 percent, of pedestrian crashes occur with city limits.



### 2015 Objective

Reduce the number of fatal and serious injury crashes involving pedestrians by 10 percent by 2015, as compared to 2010.

### Progress

Progress to the 2015 goal is not being made. Annually there has been an increase in the number of fatal pedestrian crashes and serious injury crashes.

	2010	2011	2012	% Change 2010 to 2011	% Change 2011 to 2012	% Change 2010 to 2012
<b>Fatal Crashes</b>	354	419	473	18%	13%	34%
<b>Serious Injury Crashes</b>	2,521	2,501	2,828	-1%	13%	12%
<b>Fatalities</b>	357	425	484	19%	14%	36%
<b>Serious Injuries</b>	2,652	2,635	2,966	-1%	13%	12%

#### Established Countermeasures

- Improve signals, signs, and crosswalk markings at intersections.
- Improve pedestrian environments through traffic calming.
- Increase the number of sidewalks and walkways in rural and urban areas. Needs are especially great in and around ports of entry.
- Remove impediments to walking on existing sidewalks.
- Increase sight distance to and from intersections and increase lighting at intersections and crosswalks.
- Increase enforcement of pedestrian laws and public intoxication laws in urban and rural areas.
- Develop PI&E materials concerning pedestrian crashes regarding the responsibilities of both pedestrian and driver, including appropriate actions following vehicle breakdowns.
- Implement programs for removing disabled vehicles and their occupants from limited access highways and extending hours, especially at night, of existing "courtesy patrol" programs.
- Develop programs to encourage safe walking rather than driving for appropriate trips.

# AGENDA ITEM 6



# FY 2015 Statement of Work Request (SOWR)

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Safe Routes to School, Traffic Safety Campaign

Date

Comment [T1]: When approval of release date is done by procurement, insert the date here.

## Scope of Work

The selected vendor(s) will assist the Texas Department of Transportation (TxDOT) and its partners to develop a statewide public awareness campaign to educate and encourage children to walk and bicycle to school safely. This will be a paid media campaign and public education outreach. The TxDOT project will focus on educating children and their parents about the broad range of transportation choices, instructing them in important lifelong bicycling and walking safety skills, and launching driver safety campaigns in the vicinity of schools. The campaign period will start the fall of 2014 and extend through to the end of FY2016. Paid media will include focused events such as National Walk to School Day and National Bike to School Day and provide support throughout the school year. Safe Routes to School (SRTS) kits containing items such as educational materials, banners, and brochures will be provided to schools for distribution to children and their parents.

TxDOT reserves the right to withdraw or reduce the amount of an award or to cancel any blanket purchase order release resulting from this process if adequate funding is not received from the Federal Highway Administration (FHWA) or other funding sources or due to legislative changes.

**NOTE: After the Statement of Work (SOW) is awarded, the vendor should be prepared to scale back the scope of their proposal if funding is reduced.**

## Background

For many of us, walking or bicycling to school was a normal routine. Schools were located in the center of the neighborhood, and gridded streets lined with sidewalks allowed for safe pedestrian use. Now, what was once a part of our culture is becoming increasingly rare. Lines of bikes parked on a rack outside the school have been replaced with lines of vehicles waiting to drop off children.

The decline in walking and bicycling has had the following adverse effects:

- traffic congestion and air quality around schools
- pedestrian and bicycle safety
- a sedentary lifestyle that may result in childhood obesity

The purpose of the Federal Safe Routes to School (SRTS) Program is to address these issues head on. At its heart, the SRTS Program empowers communities to make walking and bicycling to school a safe and routine activity once again.

This campaign will focus on the State of Texas as a whole, with emphasis on primary and middle school age children (Grades K – 8).

This campaign should be designed to educate and encourage school age children (Grades K – 8) to safely walk and bike to school.

## **Texas Statistics**

There has been a drastic decline in the number of children walking and bicycling to school in the U.S.—down from about 50% forty years ago, to just 15% today. Today, in part because of safety concerns and changes in school locations, most kids are driven to school or ride a bus. This trend has resulted in increased obesity rates, snarled congestion and worsening air quality levels around schools.

According to the Texas Department of State Health Services, the costs attributed to obesity for 2001 were estimated at \$10.5 billion and are projected to reach \$15.6 billion by 2010. Approximately 35% of Texas school-age children are overweight or obese.

## **SOW Eligibility**

Vendors eligible to submit responses to this request for SOW are media vendors who have a current Master Blanket Purchase Order issued from TxDOT.

## **Safe Routes to School Funding**

The Safe Routes to School (SRTS) Program was created by Section 1404 of the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Act* (SAFETEA-LU, signed into Public Law (P.L. 109-59) on August 10, 2005. The SRTS program is administered at the state level by TxDOT's Traffic Operations Division. The funds are provided by the Federal Highway Administration (FHWA).

## **Funding Constraints**

SOWs selected for inclusion in the Safe Routes to School (SRTS) Program become cost reimbursable blanket purchase order releases. Federal and state funds cannot be used for lobbying and supplanting is prohibited. The funding year for this project is based on the State Fiscal Year 2015 – starting September 1, 2014 and ending on August 31, 2016.

## **Budget and Matching Funds**

The project budget for the FY 2015 Safe Routes to School (SRTS) Non-Infrastructure campaign is not to exceed a maximum TxDOT reimbursable amount of \$3,200,000. (***Final awarded amount will be contingent on funding***). There are no required matching funds for the SRTS Program.

## **Projected Term of Service**

The projected Term of Service is November 1, 2014 through August 31, 2016 with an option to renew for 12 additional months contingent upon renewal of the Master Blanket Purchase Order and funding availability.

## PROJECT DELIVERABLES

### Tasks will include, but are not limited to the following:

#### *Campaign Planning: Development of Marketing & Communication Strategies*

- Provide a project overview. Please include your strategy, goals and objectives, target audience, key messages and overview of tactics.
- Provide a timeline for all anticipated campaign activities, and include a listing of key personnel with their roles and responsibilities.
- Develop a detailed project budget. The project budget is not to exceed a maximum TxDOT reimbursable amount of \$3,200,000.00 (\$1.6M per year). Budget information is critical in the final determination of a SOW award.

A strong SOW budget supports the objective, performance measures, and activities that are proposed to affect the Project. The proposed budget must be realistic and reasonable, allowable, and necessary and must include only cost-eligible line items. Include as much specific information as possible for all costs in the categories of Labor, Travel, Contractual Services, and Other Miscellaneous activities and cost.

Examples of information that must be included in the detailed budget are:

- Number of personnel and their pay rates
- Estimated means and length of travel
- Contractual services
- Details of other miscellaneous activities and costs

NOTE: Any standard-size printing for this project may be done internally by the TxDOT print shop assuming an adequate turn-around time is allowed. This does not include custom fulfillment. Any printing done by the TxDOT print shop would not impact the vendor's budget. The vendor will provide the TxDOT Project Manager the necessary specifications prior to development of any print materials to ensure these items can be printed internally.

*Creative Development: Branding and Original Creative Concepts*

- Provide a Creative/Branding Plan. Include recommendations and illustrations for a custom-designed creative concept, direction and/or branding for exclusive use by TxDOT.
  
- Note: Vendor will use the TxDOT and/or the National Safe Routes to School logo for this initiative. Using the existing SRTS logos as a starting point, develop and produce a direction/brand for launching a visual identity to effectively build awareness around TxDOT's SRTS campaign. The new logo would be used as a recurring theme in all media and materials.
  
- Using the existing SRTS logo as a starting point, indicate any adjustments, new variations, or new twists that you might incorporate to effectively build awareness of the SRTS initiative.  

NOTE: Any new, custom-designed creative elements proposed as part of the SOWR will be contingent on maximum or near-maximum federal funding obligated to TxDOT. If the funding is reduced by 50 percent or more, the vendor shall use only existing creative materials in FY2016 and any renewal or extension beyond that time.
  
- Utilizing the creative concept outlined in "Creative/Branding Plan" (above) design a variety of materials for radio, outdoor such as gas pump toppers, and/or internet geo targeted to grades K – 8 school zones. The vendor will be required to provide all materials in English and in Spanish.
  
- Provide recommendations for collateral, printed educational pieces, or additional promotional ancillary items to support the major media platforms.
  
- A press release to kick-off the project.
  
- Approximately 5% - 10% of the budget will be dedicated to give away materials (for public consumption at events) – i.e. – public information and education materials such as bike lights and reflective sling bags.
  
- Safe Routes to School (SRTS) kits containing educational materials such as, banners, and brochures will be provided to schools for distribution to children and their parents. The state of Texas has approximately 4,000 public elementary schools (K-8) and approximately 1,000 private schools. With this campaign, we would like to distribute kits to at approximately 2,000 schools.

***Note: The vendor budget will cover shipping costs, containers, fulfillment, and contents. In addition, vendor will need to plan on staff time to contact representatives at all these schools and enlist their participation.***

*Media Planning & Placements: Message Distribution*

- Provide a measurable comprehensive Paid-Media Placement Plan. Craft an efficient paid-media mix for this initiative for, but not limited to, radio, print, outdoor signs, and internet. In addition, vendor will be asked to secure free and leveraged air time, so this media plan may include some leveraged (non-paid) elements.
- Identify unique and unusual methods for delivery and placement of key themes.
- Provide a matrix showing the following for each paid media platform: placement/reach; number & name of markets; number, length & frequency of advertisements; estimated total airtime or Gross Ratings Points (GRPs); estimated impressions.

*Public Relations Plan*

- Provide a detailed Public Relations Plan. Vendors will identify resources for capturing and utilizing non-paid media through publicity activities designed to reach audiences at the grass-roots level. This may include press releases, promotional activities, civic engagement, sporting events, earned media, and social media. This may also include details on how the vendor will creatively utilize TxDOT's Traffic Safety Specialists and Public Information Officers spread around the state to get the message to the public at the local level. Additionally, the vendor should give information on the efficient use of the TxDOT sub-grantee partners to distribute collateral materials and information.

Highlight any specific plans to incorporate the use of social media technologies such as Blogs, Facebook, and Twitter to engage in interactive dialogue with potential audiences.

*Campaign Program Measurement: Message Evaluation*

- Provide a Campaign Evaluation Plan. The vendor(s) will evaluate all activities and generate a report that will effectively measure the campaign and program results, identify activities, resources, lessons-learned, critique and suggestions for improving future public awareness efforts related to this project.

NOTE: The vendor(s) selected will also be required to provide comprehensive reports for the various tasks listed in this document. Frequency of reporting will be agreed upon by designated TxDOT Project Manager and the selected vendor(s). These reports may include but are not limited to the following:

- Regular reporting on milestones achieved, and any problems on milestones
- A detailed media report for all placements to include reach and frequency.
- A final comprehensive report that captures project goals and objectives and identifies how each goal was accomplished. This report should include examples of all deliverables as well as collateral materials, if any, that were distributed.
- A summary of the campaign for our TxDOT's Annual Report.
- Vendors will be required to enter billings and performance reports into eGrants.

**Response Submission**

*General Formatting:*

Each submission should be formatted in sections as indicated below. Proposals should be submitted electronically by email in PDF letter-size format to Connie Knesek, Purchasing Coordinator, at [Connie.Knesek@txdot.gov](mailto:Connie.Knesek@txdot.gov). Completed proposals shall be limited to a maximum of 60 pages. Please include only the information specified in each section.

*Project Deliverables:*

This section of the vendor's submission should address each of the items outlined in the Section titled: *Project Deliverables*.

**Each item should be addressed in the order presented in this document.**

NOTE: The vendor should be specific when creating their submission. Detailed, measurable data is critical in the final determination of a SOW award. For example, when presenting your Media Placement Plan, the information should be quantifiable including all relevant performance indicators such as the number and name of markets, frequency of ad placement, estimated total amount of air time, or estimated number of online impressions (for web advertising).

## **AWARDING THE SOW**

### *TxDOT's Evaluation Process*

Each respondent must submit a response to the Statement of Work Request (SOWR) based on established criteria set forth in this SOWR:

- (a) If only one vendor submits a response to the SOWR, a TxDOT evaluation committee will evaluate the response based on established criteria set forth in their written Statement of Work, and may award a SOW to such vendor if the Statement of Work Response meets the criteria outlined in section of this document under the heading "Project Deliverables" *[or alternatively, set forth in this Statement of Work Request, if there are additional criteria they must meet]*. Respondents shall not contact members of the evaluation team. TxDOT may request that the vendor, including key personnel, participate in discussions or oral presentations with TxDOT prior to making an award to evaluate the respondent's capability to perform the service.
- (b) If more than one vendor submits a response to the SOWR, then each vendor who submits a response, including key personnel, shall participate in an oral presentation with TxDOT. A TxDOT evaluation committee will evaluate and score each oral presentation. Oral presentations shall be evaluated based on the respondent's ability to best satisfy TxDOT requirements set forth in this Statement of Work Request. Respondents shall not contact members of the evaluation team.
- (c) For details regarding discussions or oral presentations, please see Attachment A titled Supplemental Terms and Conditions; Section 1, Discussions or Oral Presentation. Vendors

selected to provide oral presentations will be evaluated according to each respondent's ability to best satisfy TxDOT's requirements.

*Pre-Proposal Project Meeting*

A pre-proposal meeting is not scheduled this proposal.

*Questions Concerning Proposal*

- Start date for submission of questions: August 14, 2014
- Last date for submission of questions: August 22, 2014
- TxDOT Response to Questions to be completed: August 29, 2014

All questions and inquiries concerning this SOW shall be submitted via e-mail to: Purchaser: Connie Kneseck, CTPM, CTCM  
E-mail: [connie.kneseck@txdot.gov](mailto:connie.kneseck@txdot.gov)

**PROPOSAL SUBMISSION**

Vendor should notify the TxDOT Procurement Division Contract Manager in writing of their intention to participate no later than September 4, 2014. Failure by the vendor to notify TxDOT in writing may disqualify the vendor from further consideration.

Comment [T2]: Any/all of these dates may change depending on when this SOWR receives final approval from Procurement.

Vendor will provide a written Project SOW Response no later than September 25, 2014 to Connie Kneseck via drop box at <https://ftp.dot.state.tx.us/dropbox/> at above email in order to be accepted for an oral presentation. Any questions or concerns regarding this SOW can be directed to Connie Kneseck, Procurement Division Contract Manager at (512) 416-4720.

**Supplemental Terms and Conditions  
Attachment A**

1. DISCUSSIONS OR ORAL PRESENTATIONS: TxDOT may request that selected respondents, including key or respondent personnel participate in discussions or oral presentations.

**OPTION 1 - Discussions**

- 1.1. The respondent and TxDOT may discuss and clarify various requirements of the solicitation, vendor response, discuss any negotiable points, further confirm proposed personnel qualifications and determine the respondent's capability to perform the service. A TxDOT evaluation committee may evaluate and score each discussion.
  - 1.1.1. The initial evaluation score of the qualifications and submission information will be replaced with the discussion meeting score.
  - 1.1.2. TxDOT will advise each respondent in writing of the location, date and time of the scheduled discussion meeting. A minimum of one weeks' notice will be given to the respondent(s) selected for the discussion phase.
  - 1.1.3. TxDOT may provide the respondent with a list of proposed key or respondent personnel required to attend and participate in the meeting.
  - 1.1.4. Respondent and proposed key or respondent personnel should be prepared to address any questions that may be asked by TxDOT evaluators.

**OPTION 2 – Oral Presentation**

- 1.2. The TxDOT evaluation committee will evaluate and score each oral presentation. All responses will be evaluated according to the respondent's ability to best satisfy TxDOT requirements.
  - 1.2.1. The initial evaluation score of the qualifications and submission information will be replaced with the oral presentation score.
  - 1.2.2. TxDOT will advise each respondent in writing of the location, date and time of the scheduled oral presentation. A minimum of one weeks' notice will be given to the respondent(s) selected for the oral presentation phase.
  - 1.2.3. TxDOT may provide the respondent with a list of proposed key personnel required to attend and participate in the meeting.
  - 1.2.4. Respondent and proposed key or respondent personnel should be prepared to address any questions that may be asked by TxDOT evaluators.

- 1.2.5. TxDOT reserves the right to continue discussions with selected respondent(s).
    - 1.3. NEGOTIATIONS: Upon completion of discussions or oral presentation evaluation scoring, TxDOT reserves the right to enter into negotiations with one or more selected respondents.
    - 1.4. STEP 4 – BEST AND FINAL OFFER (BAFO): TxDOT reserves the right to request a BAFO from selected respondent(s).
      - 1.4.1. The respondent(s) shall submit a final price and any added value. If more than one respondent reaches this level, the negotiated terms, references, BAFO and added values will be the considered in the award. TxDOT will make the final determination on the best value.
      - 1.4.2. TxDOT may award the purchase order for the service without requesting a BAFO.
2. **AWARD:** TxDOT reserves the right to award a purchase order(s) to the company that provides the best value to TxDOT in performance of this service. TxDOT may award to a single vendor, multiple vendors, or use any combination that best serves the interest of TxDOT.
  - 2.1. BEST VALUE: TxDOT will be the sole judge of best value. Best value criteria may include, but are not limited to:
    - 2.1.1. Best meets the goals and objectives of the solicitation as stated in the Service Requirements.
    - 2.1.2. Best meets the quality and reliability of the proposed goods and services.
    - 2.1.3. Effect of the proposed solution on agency productivity.
    - 2.1.4. Provides the most customer focused solution that will best meet the needs of the traveling public.
    - 2.1.5. Experience in successfully providing services in the solicitation.
3. **PURPOSE OF STATEMENT OF WORK:** The only purpose of this SOWR is to ensure uniform information in the solicitation of SOWs and procurement of services. This SOWR is not construed as a purchase agreement or contract or as a commitment of any kind, nor does it commit TxDOT to pay for cost incurred prior to the execution of a formal agreement unless such costs are specifically authorized in writing by TxDOT.
4. **RIGHT TO CANCEL OR REISSUE SOWR:** TxDOT reserves the right to cancel or reissue this SOWR in part or its entirety or decline to issue a contract or grant based on this SOWR.

5. RIGHT TO CORRECT ERRORS: TxDOT reserves the right to correct any error(s) and/or Make changes to this solicitation as it deems necessary. Corrections and/or changes will be posted on the TxDOT Website prior to the date of award at:  
<https://www.txdot.gov/apps/egrants/eGrantsResources/SOW.html>.
6. RIGHT TO NEGOTIATE FINAL TERMS: TxDOT reserves the right to negotiate the final terms of any and all contracts or grant agreements with selected vendor(s) and any such terms negotiated as a result of this SOW which may be renegotiated and/or amended in order to successfully meet the needs of TxDOT.
7. RIGHT TO WITHDRAW, REDUCE AWARD AMOUNT OR CANCEL RELEASE: TxDOT reserves the right to withdraw or reduce the amount of an award or to cancel any blanket purchase order release resulting from this process if adequate funding is not received from the National Highway Traffic Safety Administration (NHTSA) or other funding sources or due to legislative changes.
8. INFLUENCING TXDOT STAFF: Vendors shall not offer or provide any gratuities, favors, or anything of monetary value to any officer, member, employee, or agent of TxDOT, for the purpose of influencing the award of any SOW.
9. CONFLICT OF INTEREST: No employee, officer, or agent of TxDOT shall participate in the selection, award, or administration of an agreement supported by federal and/or state funds if a conflict of interest or potential conflict or appearance of impropriety would be involved.
10. RIGHT TO REQUEST ADDITIONAL INFORMATION: TxDOT reserves the right to clarify, explain or verify any aspect of a response to the SOWR and to require the submission of any price, technical or other revision to the SOWR that results from negotiations conducted with the presumptive selected Vendor(s).
11. RIGHT TO DISQUALIFY: TxDOT reserves the right to deem non-responsive or disqualify any response to this SOWR that is determined to not comply with or conform to terms and conditions and requirements herein contained.
12. DEBRIEFING: Vendors not awarded the blanket purchase order release may obtain a prompt explanation concerning the reasons that the SOW submitted by the unsuccessful vendor was not selected for a blanket purchase order release. Unsuccessful Vendors, who wish to be debriefed, must request the debriefing in writing. Vendors must notify the Contract Manager of their request for a debriefing within five business days of notification to the Vendor that they were unsuccessful.
13. PROTEST PROCEDURE: Respondent's may protest any award as detailed below.
  - 13.1. AUTHORITY: 43TAC, §9.3, Protest of Department Purchases under the State Purchasing and General Services Act.

- 13.2. **RIGHT TO PROTEST:** Any actual or prospective bidder or offeror who is aggrieved in connection with the solicitation, evaluation, or award of a purchase made by the department under the State Purchasing and General Services Act may file a written protest.
- 13.3. **FILING DEADLINES:** A protest must be made within 10 working days after the aggrieved person knows, or should have known, of the action or fact causing the complaint. Untimely protests may not be considered unless the Texas Transportation Commission determines the appealing party has demonstrated good cause for the delay, or that a protest raises issues significant to procurement practices or procedures.
- 13.4. **HANDLING PROTESTS:** The protest must be in writing and:
- 13.4.1. Addressed to the Director of Purchasing for purchases made on behalf of a division, and submitted to the Director of the General Services Division and
  - 13.4.2. Copies sent by protestor to all identifiable interested parties (defined as a vendor that has submitted a response for the purchase involved).
- 13.5. **CONTENTS OF PROTEST:** The protest must be sworn and must contain all of the following:
- 13.5.1. Statutory or regulatory provision of the Act or the rules that the action is alleged to have violated
  - 13.5.2. Specific description of the violation
  - 13.5.3. Precise statement of the relevant facts
  - 13.5.4. Issue to be resolved
  - 13.5.5. Argument and authorities in support of the protest, and
  - 13.5.6. Statement confirming that copies of the protest have been mailed or delivered to other identified interested parties.
- 13.6. **SUSPENSION OF AWARD:** If a protest or appeal of a protest has been filed, then the department will not proceed with the solicitation or the award of the purchase until the executive director or his or her designee, not below the level of division director, consults with the director of general services and makes a written determination that the award of the purchase should be made without delay to protect substantial interests of the department.
- 13.7. **INFORMAL RESOLUTION:** The director of purchasing may informally resolve the dispute, including:

13.7.1. Soliciting written responses to the protest from other interested parties;  
and

13.7.2. Resolving the dispute by mutual agreement.

13.8. WRITTEN DETERMINATION: If the protest is not resolved by agreement, the director of purchasing will issue a written determination to the protesting party and interested parties which sets forth the reason for the determination. The director of purchasing may determine that:

13.8.1. No violation has occurred; or

13.8.2. A violation has occurred and it is necessary to take remedial action which may include:

13.8.2.1. Declaring the purchase void;

13.8.2.2. Reversing the award; and

13.8.2.3. Re-advertising the purchase using revised specifications.

13.9. APPEAL

13.9.1. An interested party may appeal the determination to the executive director. The written appeal must be received in the executive director's office no later than 10 working days after the date of the determination. The appeal is limited to a review of the determination.

13.9.2. The appealing party must mail or deliver copies of the appeal to the director of purchasing and other interested parties with an affidavit that such copies have been provided.

13.9.3. The general counsel shall review the protest, the determination, and the appeal, and prepare a written opinion with recommendation to the executive director.

13.9.4. The executive director may:

13.9.4.1. Issue a final written determination; or

13.9.4.2. Refer the matter to the commission for its consideration at a regularly scheduled open meeting.

13.10. The commission may consider oral presentations and written documents presented by the department and interested parties. The chair shall set the order and the amount of time allowed for presentation. The commission's determination of the appeal shall be adopted by minute order and reflected in the

minutes of the meeting.

13.11. The decision of the commission or executive director shall be final.

13.12. **FILING DEADLINE:** Unless the commission determines that the appealing party has demonstrated good cause for delay or that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

13.13. **DOCUMENT RETENTION:** The department shall maintain all documentation on the purchasing process that is the subject to a protest or appeal in accordance with the retention schedule of the department.

DRAFT

# AGENDA ITEM 7

**PROPOSED ADOPTION OF NEW SECTIONS TO CHAPTER 11  
CONCERNING DESIGN**

**Description**

This minute order proposes the adoption of new §§11.300 – 11.317 concerning Transportation Alternatives Program, which provides funding for programs and projects that are defined as transportation alternatives.

**Background**

Moving Ahead for Progress in the 21st Century Act (also known as MAP-21) created the Transportation Alternatives Program (TAP). The TAP, which is contained in 23 U. S. C., §213, provides federal funding for a variety of alternative transportation projects, many of which were previously eligible for funding under separate programs.

**Criteria**

None.

**Problem/Condition**

Rules are needed to set out the policies and procedures for the implementation and administration of the TAP.

**Other Comments**

Comments on the proposed new sections will be accepted until 5:00 p.m. on August 11, 2014.

**Alternate Solutions/Actions**

None.

The Texas Transportation Commission (commission) finds it necessary to propose new §§11.300 – 11.317, relating to Transportation Alternatives Program to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed new sections, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the new §§11.300 – 11.317 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

Recommended by:

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Director, Design Division

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Executive Director

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes new  
3 §§11.300 - 11.317 concerning the Transportation Alternatives  
4 Program.

5  
6 EXPLANATION OF PROPOSED NEW SECTIONS

7 The Transportation Alternatives Program (TAP) was created by the  
8 Moving Ahead for Progress in the 21<sup>st</sup> Century Act (also known as  
9 MAP-21). The TAP provides federal funding for a variety of  
10 alternative transportation projects, many of which were  
11 previously eligible for funding under separate programs. The  
12 TAP is contained in 23 U. S. C. §213.

13  
14 Many of the concepts contained in the new sections are carried  
15 forward from the department's administrative rules concerning  
16 the Transportation Enhancement (TE) Program, the predecessor to  
17 the TAP, and will be familiar to interested parties.

18  
19 New Subchapter F is titled "Transportation Alternatives Program"  
20 to accurately reflect and conform to federal law.

21  
22 New §11.300, Purpose, describes the purpose of the subchapter,  
23 which is to set out the policies and procedures for the  
24 implementation and administration of the TAP.

1 New §11.301, Definitions, defines various terms used in the new  
2 subchapter, which are standard and recognizable within the  
3 transportation planning community.

4

5 New §11.302, Program Administration, briefly describes the  
6 suballocation of TAP funds as required by federal law, and  
7 provides that each Metropolitan Planning Organization (MPO)  
8 serving an urbanized area with a population over 200,000 will  
9 implement the TAP for the award of funds in that area. The  
10 remaining TAP funds will be distributed through a competitive  
11 process administered by the department.

12

13 New §11.303, Project Selection and Implementation by MPOs,  
14 provides general guidance for MPOs that are responsible for the  
15 review and selection of TAP projects. The department is not  
16 mandating how the MPOs will conduct the selection process;  
17 however, project selection and implementation must be conducted  
18 in accordance with applicable state and federal laws and  
19 regulations. Eligibility determinations will be made by the  
20 MPO, subject to audit by the Federal Highway Administration  
21 (FHWA). Applications for projects located within an urbanized  
22 area with a population in excess of 200,000 must be submitted  
23 during a program call administered by the MPO serving the  
24 urbanized area. Projects not selected by the MPO are not  
25 eligible for consideration during a program call administered by

1 the department. MPOs are required to provide the department a  
2 list of all projects submitted during a program call,  
3 specifically identifying the selected projects, and must include  
4 selected projects within their respective Transportation  
5 Improvement Programs (TIPs).

6  
7 New §11.304, Eligible Activities, describes those activities for  
8 which TAP funds may be awarded under a program call administered  
9 by the department. These activities include construction of on-  
10 road and off-road trail facilities for pedestrians, bicyclists,  
11 and other non-motorized forms of transportation; construction of  
12 infrastructure-related projects and systems to improve safe  
13 routes for non-drivers; conversion and use of abandoned railroad  
14 corridors for trails for pedestrians, bicyclists, or other non-  
15 motorized transportation users; and construction of  
16 infrastructure-related projects to improve the ability of  
17 students to bike and walk to school. Several types of  
18 activities that are defined as "transportation alternatives"  
19 under federal law will not be considered for funding under a  
20 program call administered by the department. The agency is  
21 placing an emphasis on facilities for pedestrians, bicyclists  
22 and other non-motorized forms of transportation, as well as  
23 certain types of infrastructure projects formerly eligible under  
24 the Safe Routes to School Program, in an effort to encourage the  
25 development of a safe and multimodal transportation system.

1 Non-infrastructure activities formerly eligible under the Safe  
2 Routes to School Program remain eligible for funding from other  
3 sources. Projects requiring the acquisition of real property  
4 through eminent domain or condemnation are not eligible.  
5 Whether proposed as an independent project or an element of a  
6 larger project, the project must be limited to a logical unit of  
7 work and be constructible as an independent project.

8

9 New §11.305, Allowable Costs, provides that the use of federal  
10 funds is limited to construction-related project expenditures  
11 and eligible project costs incurred by the department. The  
12 costs of preliminary engineering are not allowable, and  
13 expenditures for routine operation and maintenance are not  
14 reimbursable unless specifically allowed under the applicable  
15 federal program category. These limitations on allowable costs  
16 are based on the department's experience under the TE Program,  
17 where much of the funding for selected projects was ultimately  
18 expended on the planning and design phase. As a result, many  
19 projects were left with inadequate funding and could not be  
20 built as originally proposed.

21

22 New §11.306, Local Funding Match, specifies that the local  
23 funding match will be a cash match provided by or through the  
24 project sponsor. In-kind donations will not be considered part  
25 of the local funding match due to the difficulty associated with

1 properly accounting for and quantifying such donations. Unless  
2 specifically authorized under federal law or regulation, funds  
3 from other federal programs may not be used as a local funding  
4 match. Donated services will not be accepted as a match, but  
5 may be used to reduce the overall cost of the project. If a  
6 selected project is to be administered by the department, the  
7 project sponsor must provide the local funding match prior to  
8 the commencement of project activities.

9

10 New §11.307, Call for Nominations, describes the method by which  
11 the department will announce a call for projects and the type of  
12 information that will be included in the notice. The department  
13 may limit a program call to a particular type of eligible  
14 activity, in order to focus its efforts towards making an  
15 overall impact in a specific area.

16

17 New §11.308, Nomination Package, specifies the manner in which a  
18 project sponsor must submit its nomination and the type of  
19 information and justification that must be included in the  
20 nomination package. Project sponsors must provide persuasive  
21 evidence of support from the local community and a commitment to  
22 provide a cash match of 20% of the allowable project costs.  
23 Project submissions must be received by the published deadline  
24 and any nomination package that fails to include the required  
25 items will be considered incomplete and not considered for

1 funding.

2

3 New §11.309, Project Screening and Evaluation, describes the  
4 method by which the department will conduct the project review  
5 process. Under the TE Program, the department used a bifurcated  
6 process that separated the eligibility/technical screening from  
7 the evaluation of project benefits. In an effort to streamline  
8 the review process for the TAP, the executive director will  
9 appoint a project evaluation committee consisting of department  
10 staff to review and evaluate all aspects of the project. The  
11 committee will provide selection recommendations to the director  
12 of the division responsible for administering the TAP, who will  
13 then provide a list of recommended projects to the commission  
14 for consideration.

15

16 New §11.310, Finding of Ineligibility; Request for  
17 Reconsideration, provides that the department will notify  
18 project sponsors of each ineligible activity proposed and the  
19 reason for the determination, and describes how a project  
20 sponsor may request a reconsideration of the determination.

21

22 New §11.311, Selection of Projects by the Commission, describes  
23 the process by which the commission will select projects for  
24 funding under the TAP. In making the selection, the commission  
25 will consider: (1) recommendations from the director of the

1 division responsible for administering the program; (2) the  
2 potential benefit to the state of the project; and (3) whether  
3 the project enhances the surface transportation system. The  
4 commission will not be bound by the department's  
5 recommendations. Funds awarded by the commission are a fixed  
6 amount and any additional funds needed for the project must be  
7 provided by the project sponsor or sought during subsequent  
8 program calls.

9  
10 New §11.312, Inclusion of Selected Projects in Planning  
11 Documents, provides that the department will request that MPOs  
12 include projects selected by the commission within their  
13 respective TIPs. The department will also include all selected  
14 projects in the Statewide Transportation Improvement Program  
15 (STIP).

16  
17 New §11.313, Project Implementation, describes the operational  
18 responsibilities of project sponsors, as well as the  
19 department's role, during implementation of the project. These  
20 guidelines will help ensure effective and efficient  
21 implementation of each project selected by the commission.  
22 Project sponsors are expected to implement or arrange for  
23 implementation of a selected project; however, the department,  
24 in its sole discretion, may agree to implement a project on  
25 behalf of a project sponsor. All selected projects must be

1 developed according to current standards and specifications and  
2 in accordance with new Subchapter F. Project sponsors must  
3 enter into a local agreement with the department and comply with  
4 all applicable state and federal requirements related to the  
5 development of federal-aid highway projects. The department  
6 will ensure that all required opportunities for public  
7 involvement have been followed and that all environmental  
8 documentation has been completed prior to funding construction  
9 activities. Funding from other federal programs may only be  
10 used when specifically authorized by federal law or regulation.  
11 Changes to the scope of work must be approved in advance by the  
12 executive director. The department is responsible for final  
13 project inspection and acceptance. If the project sponsor does  
14 not complete the project as approved, the department may seek  
15 reimbursement of the expended federal funds.

16  
17 New §11.314, Payment of Costs, provides that the department will  
18 submit all requests for reimbursement to FHWA and describes the  
19 manner in which costs for locally-administered projects may be  
20 submitted for reimbursement. All project costs are borne by the  
21 project sponsor until reimbursement can be obtained. Costs  
22 incurred prior to inclusion of the project in the STIP,  
23 execution of the local agreement, and prior to state and federal  
24 authorization are not eligible for reimbursement.

25

1 New §11.315, Elimination from the TAP, specifies that a project  
2 will be eliminated from the TAP if the department is notified of  
3 opposition from the local jurisdiction in which the project is  
4 located. In addition, the executive director may eliminate a  
5 project from the TAP if: (1) the project sponsor fails to meet  
6 the requirements of the proposed subchapter; (2) implementation  
7 of the project would require a significant deviation from the  
8 activities proposed in the nomination package; (3) the project  
9 sponsor withdraws from the project; (4) a construction contract  
10 has not been awarded within three years of project selection;  
11 (5) a local agreement has not been executed within one year of  
12 project selection; or (6) the executive director determines that  
13 federal funding may be jeopardized because the project has not  
14 been implemented or completed.

15

16 New §11.316, Project Transfer; Approval of Change, outlines the  
17 basic steps required to transfer a project to another entity in  
18 the event of a legislative action and specifies that the  
19 disposition must be approved by FHWA.

20

21 New §11.317, Maintenance and Operation; Dedication for Public  
22 Use, provides that a selected project must be maintained and  
23 operated for the purpose for which it was approved and funded,  
24 and offers guidance regarding the expected project lifespan as  
25 it relates to the federal investment.

1

2 FISCAL NOTE

3 James Bass, Chief Financial Officer, has determined that for  
4 each of the first five years in which the new sections as  
5 proposed are in effect, there will be no fiscal implications for  
6 state or local governments as a result of enforcing or  
7 administering the new sections.

8

9 Mark Marek, Director of Engineering Operations for the  
10 Engineering Operations Divisions, has certified that there will  
11 be no significant impact on local economies or overall  
12 employment as a result of enforcing or administering the new  
13 sections.

14

15 PUBLIC BENEFIT AND COST

16 Mr. Marek has also determined that for each year of the first  
17 five years in which the sections are in effect, the public  
18 benefit anticipated as a result of enforcing or administering  
19 the new sections will be a more efficient and robust  
20 transportation system through the development of various types  
21 of federally-funding transportation projects as allowed under  
22 the Transportation Alternatives Program. There are no  
23 anticipated economic costs for persons required to comply with  
24 the sections as proposed. There will be no adverse economic  
25 effect on small businesses.

1

2 SUBMITTAL OF COMMENTS

3 Written comments on the proposed new §§11.300 - 11.317 may be  
4 submitted to Rule Comments, Office of General Counsel, Texas  
5 Department of Transportation, 125 East 11th Street, Austin,  
6 Texas 78701-2483 or to RuleComments@txdot.gov with the subject  
7 line "TAP." The deadline for receipt of comments is 5:00 p.m.  
8 on August 11, 2014. In accordance with Transportation Code,  
9 §201.811(a)(5), a person who submits comments must disclose, in  
10 writing with the comments, whether the person does business with  
11 the department, may benefit monetarily from the proposed new  
12 sections, or is an employee of the department.

13

14 STATUTORY AUTHORITY

15 The new sections are proposed under Transportation Code,  
16 §201.101, which provides the Texas Transportation Commission  
17 with the authority to establish rules for the conduct of the  
18 work of the department.

19

20 CROSS REFERENCE TO STATUTE

21 Title 23, United States Code, §213.

1           SUBCHAPTER F.   TRANSPORTATION ALTERNATIVES PROGRAM

2   §11.300.   Purpose.   The sections under this subchapter prescribe  
3   the policies and procedures for the implementation and  
4   administration of the Transportation Alternatives Program (TAP),  
5   as authorized by 23 U. S. C. §213.

6  
7   §11.301.   Definitions.   The following words and terms, when used  
8   in this subchapter, shall have the following meanings, unless  
9   the context clearly indicates otherwise.

10           (1) Commission--Texas Transportation Commission.

11           (2) Department--Texas Department of Transportation.

12           (3) Executive director--The executive director of the  
13   Texas Department of Transportation or his or her designee.

14           (4) FHWA--Federal Highway Administration.

15           (5) Local agreement--An agreement between the project  
16   sponsor and the department which includes a commitment for the  
17   required local funding, describes the total scope and course of  
18   project activities, and outlines the responsibilities and duties  
19   of the participants.

20           (6) Metropolitan planning organization (MPO)--The  
21   organization or policy board of an organization created and  
22   designated under 23 U. S. C. §134, and 49 U. S. C. §5303, to  
23   make transportation planning decisions for the metropolitan

1 planning area and carry out the metropolitan planning process.

2 (7) Project--An undertaking to implement or construct an  
3 eligible activity at a specific location or locations, or, if  
4 the context so implies, the particular activity so implemented  
5 or constructed.

6 (8) Project sponsor--An eligible entity as described by  
7 23 U. S. C. §213, that nominates a particular project for  
8 consideration, exercises jurisdiction over the geographic area  
9 in which that project is located, and commits to the project's  
10 development, implementation, construction, maintenance,  
11 management, and financing.

12 (9) State--The State of Texas or any of its political  
13 subdivisions.

14 (10) Statewide Transportation Improvement Program (STIP)-  
15 -A four year short-range program developed by the department as  
16 a compilation of all metropolitan transportation improvement  
17 programs, together with rural transportation improvement  
18 programs, that include recommendations from rural planning  
19 organizations and department districts for the areas of the  
20 state that are outside of the boundaries of a metropolitan  
21 planning organization, including transportation between cities.

22 (11) Surface transportation system--An interconnected  
23 surface transportation network for moving people and goods using

1 various combinations of transportation modes.

2 (12) Transportation Improvement Program (TIP)--A short-  
3 range program developed by each metropolitan planning  
4 organization in cooperation with the department and public  
5 transportation operators that covers a four-year period and  
6 contains a prioritized listing of all projects proposed for  
7 federal funding and regionally significant projects proposed for  
8 state, federal, and local funding in a metropolitan area.

9 §11.302. Program Administration.

10 (a) The state is required to suballocate, in accordance  
11 with 23 U.S.C. §213, a part of its TAP apportionment to  
12 urbanized areas with populations over 200,000.

13 (b) Each MPO serving an urbanized area with a population  
14 over 200,000 shall implement the TAP for the award of funds  
15 suballocated within such area. Section 11.303 of this  
16 subchapter applies only to the use of those TAP funds.

17 (c) For TAP funds not covered by subsection (b) of this  
18 section, the commission will select projects through a  
19 competitive process administered by the department. Sections  
20 11.304 - 11.317 of this subchapter apply only to the use of  
21 those TAP funds.

22

23 §11.303. Project Selection and Implementation by MPOs.

1 (a) This section applies only to an MPO serving an  
2 urbanized area with a population over 200,000 and the award of  
3 TAP funds suballocated for such an urbanized area.

4 (b) The MPO, in consultation with the department, shall  
5 develop a competitive process to allow project sponsors to  
6 submit applications for funding under the TAP.

7 (c) The MPO will coordinate determinations regarding  
8 project eligibility, subject to audit by the FHWA.

9 (d) Applications for projects located within an urbanized  
10 area with a population over 200,000 must be submitted during the  
11 program call administered by the MPO serving that urbanized  
12 area.

13 (e) Projects not selected by the MPO are not eligible for  
14 consideration under a program call administered by the  
15 department.

16 (f) Following the conclusion of the competitive process,  
17 the MPO shall provide to the department a list of all projects  
18 submitted during the program call on which the selected projects  
19 are identified, and immediately shall begin the process required  
20 to include the selected projects in its TIP.

21 (g) The MPO will conduct project selection and  
22 implementation in accordance with all applicable federal and  
23 state laws and regulations.

1 (h) If a project is located on state right-of-way, the  
2 project sponsor is responsible for securing a land-use permit  
3 from the department prior to construction.

4

5 §11.304. Eligible Activities.

6 (a) During a program call administered by the department,  
7 TAP funds may be awarded for any of the following activities:

8 (1) Construction of on-road and off-road trail facilities  
9 for pedestrians, bicyclists, and other non-motorized forms of  
10 transportation, including sidewalks, bicycle infrastructure,  
11 pedestrian and bicycle signals, traffic calming techniques,  
12 lighting and other safety-related infrastructure, and  
13 transportation projects to achieve compliance with the Americans  
14 with Disabilities Act of 1990;

15 (2) Construction of infrastructure-related projects and  
16 systems that will provide safe routes for non-drivers, including  
17 children, older adults, and individuals with disabilities to  
18 access daily needs;

19 (3) Conversion and use of abandoned railroad corridors  
20 for trails for pedestrians, bicyclists, or other non-motorized  
21 transportation users; and

22 (4) Construction of infrastructure-related projects to  
23 improve the ability of students to walk and bicycle to school,

1 including sidewalk improvements, traffic calming and speed  
2 reduction improvements, pedestrian and bicycle crossing  
3 improvements, on-street bicycle facilities, off-street bicycle  
4 and pedestrian facilities, secure bicycle parking facilities,  
5 and traffic diversion improvements in the vicinity of schools.

6 (b) A project that will require the acquisition of real  
7 property through the exercise of eminent domain or condemnation  
8 is not eligible for participation in the TAP.

9 (c) Whether proposed as an independent project or as an  
10 element of a larger transportation project, the project must be  
11 limited to a logical unit of work and be constructible as an  
12 independent project.

13

14 §11.305. Allowable Costs.

15 (a) Costs are allowable only if they are necessary  
16 construction-related project expenditures that are eligible for  
17 reimbursement under applicable statutes and regulations.

18 (b) The costs of preliminary engineering (including  
19 planning, design, and plans, specifications, and estimates) are  
20 not allowable costs.

21 (c) Eligible pre-construction costs incurred by the  
22 department are reimbursable. All other pre-construction costs  
23 are the responsibility of the project sponsor.

1 (d) Expenditures for routine operation and maintenance are  
2 not allowable costs unless specifically allowed under the  
3 individual federal category for which the project qualifies.

4

5 §11.306. Local Funding Match.

6 (a) The local funding match is a cash match provided by or  
7 through the project sponsor.

8 (b) Funds from other federal programs may be used as a  
9 local funding match only when specifically authorized by federal  
10 law or regulation.

11 (c) Donated services may not be accepted as a local funding  
12 match, but may be used to reduce the overall cost of the  
13 project.

14 (d) If a project selected by the commission is administered  
15 by the department, the project sponsor must provide the local  
16 funding match prior to the commencement of project activities.

17

18 §11.307. Call for Nominations.

19 (a) The department will issue a notice of a call for  
20 nominations by publication in the *Texas Register*.

21 (b) The notice will include information regarding the  
22 content of the nomination package, the procedures applicable to  
23 the program call, and the specific evaluation criteria to be

1 used during the project selection process.

2 (c) All or a portion of a call for nominations may be  
3 designated for a particular eligible activity.

4

5 §11.308. Nomination Package.

6 (a) To nominate a project during a program call  
7 administered by the department, the project sponsor must submit  
8 its nomination in the form prescribed by the department.

9 (b) The nomination package must present persuasive evidence  
10 of support for the proposed project from the communities in  
11 which it would be implemented and include a commitment to  
12 provide a cash amount of at least 20% of the allowable costs of  
13 the project.

14 (c) A complete nomination package must be received by the  
15 department no later than the specified deadline published in the  
16 *Texas Register*. A nomination package that fails to include any  
17 of the items specified in this subsection or the respective  
18 program call is considered to be incomplete and will not be  
19 considered for funding.

20

21 §11.309. Project Screening and Evaluation.

22 (a) The executive director will appoint a project  
23 evaluation committee consisting of department staff to review,

1 evaluate, and make recommendations on projects submitted during  
2 a program call administered by the department.

3 (b) The committee will screen each project to determine  
4 whether it is eligible for funding under applicable federal and  
5 state law and whether it meets technical standards established  
6 by applicable law and accepted professional practice.

7 (c) The committee will evaluate the benefits of each  
8 project that is determined to be eligible under subsection (b)  
9 of this section or §11.310 based on the specific selection  
10 criteria set forth in the program call.

11 (d) The committee will provide project selection  
12 recommendations and supporting documentation to the director of  
13 the division of the department responsible for administering the  
14 TAP.

15 (e) The director of the division responsible for  
16 administering the TAP will provide a list of recommended  
17 projects to the commission for consideration.

18  
19 §11.310. Finding of Ineligibility; Request for Reconsideration.

20 (a) The department will by certified mail, return receipt  
21 requested, notify the project sponsor of each ineligible  
22 activity proposed and the reason for the determination.

23 (b) A request for reconsideration of a finding of

1 ineligibility may be initiated only by a letter from the  
2 nominating entity to the executive director setting forth  
3 reasons in support of a finding of eligibility. The letter  
4 requesting reconsideration must be received by the department no  
5 later than 15 days after the nominating entity received the  
6 department's notification, as established by the return receipt.

7 (c) The determination of the executive director in response  
8 to the request for reconsideration is final.

9  
10 §11.311. Selection of Projects by the Commission.

11 (a) The commission, by written order, will select projects  
12 for funding under the TAP based on:

13 (1) recommendations from the director of the division  
14 responsible for administering the TAP;

15 (2) the potential benefit to the state of the project;  
16 and

17 (3) whether the project enhances the surface  
18 transportation system.

19 (b) The commission is not bound by project selection  
20 recommendations provided by the department.

21 (c) The department will notify the project sponsor of the  
22 selection.

23 (d) The commission will specify a fixed amount of TAP funds

1 for each project. Project costs in excess of this amount are  
2 the responsibility of the project sponsor. The project sponsor  
3 may seek additional funds through the TAP in subsequent program  
4 calls.

5 (e) A project that is not selected must be resubmitted to  
6 receive consideration during subsequent program calls.

7  
8 §11.312. Inclusion of Selected Projects in Planning Documents.

9 (a) If a project selected by the commission is to be  
10 implemented in a metropolitan area, the department will request  
11 that the MPO for that area immediately begin the process  
12 required to include the selected project in its TIP.

13 (b) The department will also immediately begin the process  
14 required to include all selected projects in the STIP.

15  
16 §11.313. Project Implementation.

17 (a) The project sponsor will implement or arrange for  
18 implementation of each project selected by the commission in  
19 accordance with statutory requisites and contracting procedures  
20 applicable to the type and character of the project. The  
21 department, in its sole discretion, may agree to implement a  
22 project on behalf of a project sponsor.

23 (b) All projects must be developed:

1 (1) to current standards and specifications established  
2 or recognized by the federal government and the department; and

3 (2) in accordance with this subchapter.

4 (c) All project sponsors must enter into a local agreement  
5 and comply with all federal and state procedures and  
6 requirements applicable to development of federal-aid  
7 transportation projects.

8 (d) Before funding any construction activities, the  
9 department will ensure that required opportunities for public  
10 involvement have been provided and proper environmental  
11 documentation has been completed.

12 (e) Funds from other federal programs may be used only when  
13 specifically authorized by federal law or regulation. Private  
14 cash donations may be accepted if authorized by law.

15 (f) Any change in the scope of work that was specified in  
16 the nomination package and approved by the commission must have  
17 the advance written approval of the executive director.

18 (g) The department is responsible for the inspection and  
19 final acceptance of all projects selected by the commission and  
20 for certification of project completion.

21 (h) If the project sponsor does not complete the project as  
22 originally approved by the commission, the department may seek  
23 reimbursement of the expended federal funds from the sponsor.

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§11.314. Payment of Costs.

(a) The department will submit all requests for reimbursement of allowable costs to FHWA.

(b) A project sponsor must use the forms and procedures specified by the department to request reimbursement of allowable costs incurred.

(c) For locally administered projects, the entire project cost is borne by the project sponsor until reimbursement can be obtained from FHWA for eligible activities.

(d) Costs incurred prior to the inclusion of the project in the STIP, execution of the local agreement, or prior to federal and state approval and authorization to proceed are not eligible for reimbursement.

§11.315. Elimination of Project from the TAP.

(a) A project will be eliminated from participation in the TAP if at any time prior to the execution of the local agreement, the governing body of a municipality or county in which project activities are proposed, by resolution, order, or other official action, notifies the department of its opposition to the project.

(b) The executive director may eliminate a project or a

1 portion of a project from participation in the TAP if at any  
2 time:

3 (1) the project sponsor fails to satisfy any requirement  
4 of this subchapter;

5 (2) implementation of the project would involve  
6 significant deviation from the activities as proposed in the  
7 nomination package and approved by the commission;

8 (3) the project sponsor withdraws from participation in  
9 the project;

10 (4) a construction contract has not been awarded or  
11 construction has not been initiated within three years after the  
12 date that the commission selected the project;

13 (5) a local agreement is not executed within one year  
14 after the date that the commission selected the project; or

15 (6) the executive director determines that federal  
16 funding may be lost because the project has not been implemented  
17 or completed.

18  
19 §11.316. Project Transfer; Approval of Change.

20 (a) If at any time legislative action requires transfer of  
21 the project to another entity, the department may terminate the  
22 existing project agreement and execute an agreement with the  
23 responsible entity.

1 (b) A transfer under subsection (a) of this section must  
2 receive approval from FHWA.

3

4 §11.317. Maintenance and Operation; Dedication for Public Use.

5 (a) A project selected by the commission shall be  
6 maintained and operated for the purpose for which it was  
7 approved and funded and for a period of time that is  
8 commensurate with the amount of federal investment in the  
9 project.

10 (b) A project selected by the commission shall be dedicated  
11 for public use for the greater of:

12 (1) a period that is commensurate with the amount of  
13 federal investment in the project; or

14 (2) 10 years, if the amount of federal investment in the  
15 project is \$1 million or less, or 20 years, if the amount of  
16 federal investment is more than \$1 million.

17 (c) If at any time the project sponsor can no longer  
18 maintain and operate the project for its intended purpose, the  
19 sponsor will return the federal share used for the project in  
20 accordance with current deferral recapture procedures.

**PROPOSED ADOPTION OF AMENDMENTS TO CHAPTER 16  
CONCERNING PLANNING AND DEVELOPMENT OF TRANSPORTATION PROJECTS**

**Description**

This minute order proposes the adoption of amendments to §16.153 and §16.154 concerning Transportation Funding.

**Background**

The Transportation Alternatives Program (TAP) was created by the Moving Ahead for Progress in the 21st Century Act (also known as MAP-21). The TAP provides federal funding for a variety of alternative transportation projects, many of which were previously eligible for funding under separate programs. The TAP is contained in Title 23, United States Code, §213.

**Criteria**

None.

**Problem/Condition**

The amendments to §16.153, Funding Categories, and §16.154, Transportation Allocation Funding Formulas, are necessary to implement the TAP as authorized by federal law. The TAP replaces the Transportation Enhancement Program.

**Other Comments**

Comments on the proposed amendments will be accepted until 5:00 p.m. on August 11, 2014.

**Alternate Solutions/Actions**

None.

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §16.153 and §16.154, relating to Transportation Funding, and to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §16.153 and §16.154 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

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Director, Transportation Planning  
and Programming Division

Recommended by:

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Executive Director

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes  
3 amendments to §16.153 and §16.154, concerning Transportation  
4 Funding.

5  
6 EXPLANATION OF PROPOSED AMENDMENTS

7 The Transportation Alternatives Program (TAP) was created by the  
8 Moving Ahead for Progress in the 21st Century Act (also known as  
9 MAP-21). The TAP provides federal funding for a variety of  
10 alternative transportation projects, many of which were  
11 previously eligible for funding under separate programs. The  
12 TAP is contained in Title 23, United States Code, §213.

13  
14 The amendments to §16.153, Funding Categories, and §16.154,  
15 Transportation Allocation Funding Formulas, are necessary to  
16 implement the TAP as authorized by federal law. The TAP  
17 replaces the Transportation Enhancement Program, which is  
18 currently referenced in the amended sections.

19  
20 Amendments to §16.153, Funding Categories, remove the reference  
21 to the Safe Routes to School Program from Category 8, since  
22 funding for eligible projects under that program is now  
23 available through the TAP. In addition, the title and  
24 description of Category 9 has been revised to reference the TAP,  
25 as contained in Chapter 11, Subchapter F, of the department's

1 administrative rules.

2

3 Amendments to §16.154, Transportation Allocation Funding  
4 Formulas, clarify the new funding distributions applicable to  
5 the TAP. Specifically, the formula allocation for Category 9 in  
6 subsection (a)(6) has been revised to provide that a portion of  
7 the funds will be allocated to metropolitan planning  
8 organizations (MPOs) serving urbanized areas with populations  
9 over 200,000 based on their relative share of population, unless  
10 the Federal Highway Administration approves a joint request from  
11 the department and the MPO to use other factors in determining  
12 the allocation. In addition, the non-formula allocation for  
13 Category 9 in subsection (c)(4) has been revised to provide that  
14 of the remaining funds in the category, a portion will be  
15 allocated to certain areas of the state, based on their relative  
16 share of population, and a portion may be allocated in any area  
17 of the state or transferred to other eligible federal programs  
18 as authorized by law. This funding methodology is consistent  
19 with the provisions of MAP-21 and associated federal guidelines  
20 concerning the TAP. In addition, "other eligible entity" has  
21 been added in subsection (c) to the list of entities that may  
22 receive funding, since that terminology is used in federal law.

23

24 FISCAL NOTE

25 James Bass, Chief Financial Officer, has determined that for

1 each of the first five years in which the amendments as proposed  
2 are in effect, there will be no fiscal implications for state or  
3 local governments as a result of enforcing or administering the  
4 amendments.

5  
6 James Koch, Director, Transportation Planning and Programming  
7 Division, has certified that there will be no significant impact  
8 on local economies or overall employment as a result of  
9 enforcing or administering the amendments.

10

#### 11 PUBLIC BENEFIT AND COST

12 Mr. Koch has also determined that for each year of the first  
13 five years in which the sections are in effect, the public  
14 benefit anticipated as a result of enforcing or administering  
15 the amendments will be clarity in the methodology by which  
16 funding will be allocated through the department's Unified  
17 Transportation Program. There are no anticipated economic costs  
18 for persons required to comply with the sections as proposed.  
19 There will be no adverse economic effect on small businesses

20

#### 21 SUBMITTAL OF COMMENTS

22 Written comments on the proposed amendments to §16.153 and  
23 §16.154 may be submitted to Rule Comments, Office of General  
24 Counsel, Texas Department of Transportation, 125 East 11th  
25 Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov

1 with the subject line "Transportation Funding." The deadline  
2 for receipt of comments is 5:00 p.m. on August 11, 2014. In  
3 accordance with Transportation Code, §201.811(a)(5), a person  
4 who submits comments must disclose, in writing with the  
5 comments, whether the person does business with the department,  
6 may benefit monetarily from the proposed amendments, or is an  
7 employee of the department.

8

#### 9 STATUTORY AUTHORITY

10 The amendments are proposed under Transportation Code, §201.101,  
11 which provides the Texas Transportation Commission (commission)  
12 with the authority to establish rules for the conduct of the  
13 work of the department, and more specifically, Transportation  
14 Code, §201.991, which requires the commission to adopt rules  
15 that define program funding categories, and Transportation Code,  
16 §201.996, which requires the commission to specify the formulas  
17 for allocating funds by rule.

18

#### 19 CROSS REFERENCE TO STATUTE

20 Transportation Code, Chapter 201, Subchapter P. Title 23,  
21 United States Code, §213.

1                   SUBCHAPTER D.   TRANSPORTATION FUNDING

2   §16.153.   Funding Categories.

3           (a) Highway program funding categories.   The ten-year  
4 unified transportation program (UTP) described in §16.105 of  
5 this chapter (relating to Unified Transportation Program (UTP))  
6 will contain the following 12 program funding categories for  
7 highway related projects:

8           (1) Category 1 Preventive Maintenance and Rehabilitation  
9 - preventive maintenance and rehabilitation on the existing  
10 state highway system, including:

11           (A) Preventive maintenance - minor roadway  
12 modifications to improve operations and safety; and

13           (B) Rehabilitation - installation, rehabilitation,  
14 replacement, and maintenance of pavement, bridges, traffic  
15 control devices, traffic management systems, and ancillary  
16 traffic devices;

17           (2) Category 2 Metropolitan and Urban Corridor Projects -  
18 mobility and added capacity projects along a corridor that  
19 improve transportation facilities in order to decrease travel  
20 time and the level or duration of traffic congestion, and to  
21 increase the safe and efficient movement of people and freight  
22 in metropolitan and urbanized areas;

23           (3) Category 3 Non-Traditionally Funded Transportation

1 Projects - transportation related projects that qualify for  
2 funding from sources not traditionally part of the state highway  
3 fund including state bond financing under programs such as  
4 Proposition 12 (General Obligation Bonds), Texas Mobility Fund,  
5 pass-through toll financing, unique federal funding, regional  
6 toll revenue, and local participation funding;

7 (4) Category 4 Statewide Connectivity Corridor Projects -  
8 mobility and added capacity projects on major state highway  
9 system corridors which provide statewide connectivity between  
10 urban areas and corridors, to create a highway connectivity  
11 network composed of the Texas Highway Trunk System, National  
12 Highway System, and connections from those two systems to major  
13 ports of entry on international borders and Texas water ports;

14 (5) Category 5 Congestion Mitigation and Air Quality  
15 Improvement - congestion mitigation and air quality improvement  
16 area projects to address attainment of a national ambient air  
17 quality standard in the nonattainment areas of the state;

18 (6) Category 6 Structures Replacement and Rehabilitation  
19 - replacement and rehabilitation of deficient existing bridges  
20 located on the public highways, roads, and streets in the state,  
21 construction of grade separations at existing highway-railroad  
22 grade crossings, and rehabilitation of deficient railroad  
23 underpasses on the state highway system;

1           (7) Category 7 Metropolitan Mobility and Rehabilitation  
2 (TMA) - transportation needs within the boundaries of designated  
3 metropolitan planning areas of metropolitan planning  
4 organizations located in a transportation management area;

5           (8) Category 8 Safety - safety related projects both on  
6 and off the state highway system including the federal Highway  
7 Safety Improvement Program, Railway-Highway Crossing Program,  
8 Safety Bond Program, [~~Safe Routes To School Program,~~] and High  
9 Risk Rural Roads Program;

10           (9) Category 9 Transportation Alternatives [~~Enhancement~~]  
11 - transportation related activities as described in Chapter 11,  
12 Subchapter F, of this title (relating to the Transportation  
13 Alternatives Program);[~~projects, including;~~]

14           [~~(A) categories outlined in federal law; and~~]

15           [~~(B) building new safety rest areas and visitor centers~~  
16 ~~along the state highway system;~~]

17           (10) Category 10 Supplemental Transportation Projects -  
18 transportation related projects that do not qualify for funding  
19 in other categories, including landscape and aesthetic  
20 improvement, erosion control and environmental mitigation,  
21 construction and rehabilitation of roadways within or adjacent  
22 to state parks, fish hatcheries, and similar facilities,  
23 replacement of railroad crossing surfaces, maintenance of

1 railroad signals, construction or replacement of curb ramps for  
2 accessibility to pedestrians with disabilities, and  
3 miscellaneous federal programs;

4 (11) Category 11 District Discretionary - projects  
5 eligible for federal or state funding selected at the district  
6 engineer's discretion; and

7 (12) Category 12 Strategic Priority - projects with  
8 specific importance to the state including those that generally  
9 promote economic opportunity, increase efficiency on military  
10 deployment routes or to retain military assets in response to  
11 the federal military base realignment and closure reports, and  
12 maintain the ability to respond to both man-made and natural  
13 emergencies.

14 (b) Program funding categories for other modes of  
15 transportation and transportation infrastructure. The UTP will  
16 contain the following program funding categories for aviation,  
17 public transportation, rail, and the state's waterways and  
18 coastal waters projects:

19 (1) Aviation Capital Improvement Program - projects based  
20 on the anticipated funding levels of the Federal Aviation  
21 Administration Airport Improvement Program and the Texas  
22 Aviation Facilities Development Program for general aviation  
23 airport development in Texas;

1           (2) Public transportation - projects based on the  
2 anticipated funding levels for public transportation including  
3 fixed route city bus service, rural demand response service,  
4 special transit service for elderly and persons with  
5 disabilities, and intercity bus service from city to city;

6           (3) Rail - rail related projects including light rail,  
7 freight rail, passenger rail, and high-speed rail; and

8           (4) State waterways and coastal waters - water related  
9 projects including lands, easements, and rights of way for the  
10 widening, deepening, and expansion of the main channel of the  
11 Gulf Intracoastal Waterway (GIWW), including beneficial use  
12 projects of dredged material, and other maritime related  
13 projects.

14           (c) Determination of funding allocations. The commission  
15 will determine, subject to the mandates of state and federal law  
16 and specific requirements contained in other chapters of this  
17 title for programs and projects described in subsection (b) of  
18 this section, the amount of funds to be allocated to each  
19 program funding category for the appropriate period of time.

20

21 §16.154. Transportation Allocation Funding Formulas.

22           (a) Formula allocations. The commission will, subject to  
23 the mandates of state and federal law, allocate funds from

1 program funding Categories 1, 2, 4, 5, 7, 9, and 11, as  
2 described in §16.153 of this subchapter (relating to Funding  
3 Categories), to the districts and metropolitan planning  
4 organizations (MPO) as follows:

5 (1) Category 1 Preventive Maintenance and Rehabilitation  
6 - will be allocated to all districts as an allocation program  
7 according to the following formulas:

8 (A) Preventive maintenance.

9 (i) Ninety-eight percent for roadway maintenance with  
10 65 percent based on on-system lane miles, and 33 percent based  
11 on the pavement distress score Pace factor; and

12 (ii) Two percent for bridge maintenance based on  
13 square footage of on-system span bridge deck area;

14 (B) Rehabilitation. Thirty-two and one half percent  
15 based on three-year average lane miles of pavement distress  
16 scores less than 70, 20 percent based on on-system vehicle miles  
17 traveled per lane mile, 32.5 percent based on equivalent single  
18 axle load miles for on-system, off-system, and interstate, and  
19 15 percent based on the pavement distress score Pace factor;

20 (2) Category 2 Metropolitan and Urban Corridor Projects -  
21 will be allocated to MPOs for specific projects in the following  
22 manner:

23 (A) 87 percent to MPOs operating in areas that are

1 transportation management areas, according to the following  
2 formula: 30 percent based on total vehicle miles traveled on and  
3 off the state highway system, 17 percent based on estimated  
4 population within the boundaries of the metropolitan planning  
5 area using data derived from the most recent census provided by  
6 the U.S. Bureau of the Census (census population), 10 percent  
7 based on lane miles on-system, 14 percent based on truck vehicle  
8 miles traveled on-system, 7 percent based on percentage of  
9 census population below the federal poverty level, 15 percent  
10 based on congestion, and 7 percent based on fatal and  
11 incapacitating vehicle crashes;

12 (B) 13 percent to MPOs operating in areas that are not  
13 transportation management areas, according to the following  
14 formula: 20 percent based on total vehicle miles traveled on and  
15 off the state highway system, 25 percent based on estimated  
16 population within the boundaries of the metropolitan planning  
17 area using data derived from the most recent census provided by  
18 the U.S. Bureau of the Census (census population), 8 percent  
19 based on lane miles on-system, 15 percent based on truck vehicle  
20 miles traveled on-system, 4 percent based on percentage of  
21 census population below the federal poverty level, 8 percent  
22 based on centerline miles on-system, 10 percent based on  
23 congestion, and 10 percent based on fatal and incapacitating

1 vehicle crashes;

2 (3) Category 4 Statewide Connectivity Corridor Projects -  
3 will be allocated to districts for specific projects selected by  
4 the commission based on engineering analysis of projects on  
5 three corridor types:

6 (A) Mobility corridors - congestion considerations in  
7 areas that are not in the boundaries of an MPO;

8 (B) Connectivity corridors - two-lane roadways  
9 requiring upgrade to four-lane divided roadways to connect the  
10 urban areas of the state; and

11 (C) Strategic corridors - strategic corridor additions  
12 to the state highway network;

13 (4) Category 5 Congestion Mitigation and Air Quality  
14 Improvement - will be allocated to districts and MPOs as an  
15 allocation program for projects in a nonattainment area  
16 population weighted by ozone and carbon monoxide pollutant  
17 severity;

18 (5) Category 7 Metropolitan Mobility and Rehabilitation  
19 (TMA) - will be allocated to MPOs operating in areas that are  
20 transportation management areas as an allocation program based  
21 on the applicable federal formula;

22 (6) Category 9 Transportation Alternatives [~~Enhancement~~]  
23 - a portion [~~One-half~~] of the funds in this category will be

1 allocated to MPOs serving urbanized areas with populations over  
2 200,000 [~~operating in transportation management areas~~] as an  
3 allocation program based on the areas' relative share of  
4 [estimated] population, unless FHWA approves a joint request  
5 from the department and the relevant MPOs to use other factors  
6 in determining the allocation [~~within the boundaries of the~~  
7 ~~metropolitan planning area using data derived from the most~~  
8 ~~recent census provided by the U.S. Bureau of the Census~~]; and

9 (7) Category 11 District Discretionary - will be  
10 allocated to all districts as an allocation program based on  
11 state legislative mandates, but if there is no mandate or the  
12 amount of available funding in this category exceeds the minimum  
13 required by a mandate, the funding allocation for this category  
14 or the excess funding, as applicable, will be allocated  
15 according to the following formula: 70 percent based on annual  
16 on-system vehicle miles traveled, 20 percent based on annual on-  
17 system lane miles, and 10 percent based on annual on-system  
18 truck vehicle miles traveled.

19 (b) Pace factor calculation. For purposes of subsection  
20 (a)(1) of this section, the Pace factor is a calculation used to  
21 adjust funding among districts according to increases or  
22 decreases in a district's need to improve its pavement distress  
23 scores. It will slow the rate of improvement for districts with

1 the highest condition scores and accelerate the rate of  
2 improvement for districts with the lowest condition scores. The  
3 Pace factor is calculated by:

4 (1) determining the district with the highest distress  
5 score;

6 (2) determining the deviation of a district's distress  
7 score from the highest score;

8 (3) totaling the deviations for all districts as  
9 determined by paragraph (2) of this subsection.

10 (c) Non-formula allocations. The commission, subject to  
11 the mandates of state and federal law and specific requirements  
12 contained in other chapters of this title for programs and  
13 projects described in subsection (a) of this section, will  
14 determine the amount of funding to be allocated to a district,  
15 metropolitan planning organization, political subdivision,  
16 governmental agency, local governmental body, ~~[or]~~ recipient of  
17 a governmental transportation grant, or other eligible entity  
18 from each of the following program funding categories described  
19 in §16.153 of this subchapter:

20 (1) Category 3 Non-Traditionally Funded Transportation  
21 Projects for specific projects;

22 (2) Category 6 Structures Replacement and Rehabilitation  
23 as an allocation program;

1           (3) Category 8 Safety Projects generally funded as an  
2 allocation program with some specific projects designated under  
3 the Safety Bond Program;

4           (4) Category 9 Transportation Alternatives [~~Enhancement~~]  
5 - of the remaining [~~one-half of the~~] funds in this category, a  
6 portion will be allocated to certain areas of the state, for  
7 specific projects, based on the areas' relative share of the  
8 population, and a portion may be allocated in any area of the  
9 state for specific projects or transferred to other eligible  
10 federal programs, as authorized by law; [~~under this subsection~~  
11 ~~as an allocation program;~~]

12           (5) Category 10 Supplemental Transportation Projects  
13 generally funded as an allocation program with some specific  
14 projects designated under miscellaneous federal programs;

15           (6) Category 12 Strategic Priority for specific projects;

16           (7) Aviation Capital Improvement Program;

17           (8) Public transportation;

18           (9) Rail; and

19           (10) State waterways and coastal waters.

20           (d) Allocation program. For the purposes of this chapter,  
21 the term "allocation program" refers to a type of program  
22 funding category identified in the unified transportation  
23 program for which the responsibility for selecting projects and

1 managing the allocation of funds has been delegated to  
2 department districts, selected administrative offices of the  
3 department, and MPOs. Within the applicable program funding  
4 category, each district, selected administrative office, or MPO  
5 is allocated a funding amount and projects can be selected,  
6 developed, and let to contract with the cost of each project to  
7 be deducted from the allocated funds available for that  
8 category.

9 (e) Listing of projects. The department will list the  
10 projects that the department intends to develop and let during  
11 the ten-year unified transportation program (UTP) under §16.105  
12 of this chapter (relating to Unified Transportation Program  
13 (UTP)), and reference for each listed project the program  
14 funding category to which it is assigned. If a program funding  
15 category is an allocation program, the listing is for  
16 informational purposes only and contains those projects  
17 reasonably expected at the time the UTP is adopted or updated to  
18 be selected for development or letting during the applicable  
19 period. For the purpose of listing projects in the UTP,  
20 "project" does not include preventive maintenance and  
21 rehabilitation under Category 1 Preventive Maintenance and  
22 Rehabilitation as described in subsection (a) of this section.

23 (f) Limitation on distribution. In distributing funds to

1 the districts, metropolitan planning organizations, and other  
2 entities described in subsections (a) and (c) of this section,  
3 the department may not exceed the cash flow forecast prepared  
4 and published in accordance with §16.152 of this subchapter  
5 (relating to Cash Flow Forecast).

6 (g) Formula revisions. The commission will review and, if  
7 determined appropriate, revise both the formulas and criteria  
8 for allocation of funds under subsections (a) - (c) of this  
9 section at least as frequently as every four years.