

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

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:

  
\_\_\_\_\_  
Director, Transportation Planning  
and Programming Division

Recommended by:

  
\_\_\_\_\_  
Executive Director

**113972 JUN 26 14**

Minute Number Date Passed

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.