

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

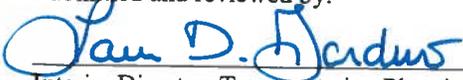
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §16.105 relating to Transportation Programs, and §§16.152 – 16.154, and 16.160, relating to Transportation Funding, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A, B, and C, 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 §§16.105, 16.152 – 16.154, and 16.160 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:


Interim Director, Transportation Planning
and Programming Division

Recommended by:


Executive Director

114714 SEPT. 29 '16

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §16.105, concerning Transportation Programs, and
4 §§16.152 - 16.154, and 16.160, concerning Transportation
5 Funding.

6

7 EXPLANATION OF PROPOSED AMENDMENTS

8 House Bill (HB) 20, 84th Legislature, Regular Session, 2015,
9 requires changes be made to several of the planning and
10 programming processes that the Texas Transportation Commission
11 (commission) and the department use to prioritize and finance
12 transportation projects. HB 20 also requires the commission to
13 adopt a performance-based planning and programming process with
14 performance metrics, measures and scoring for project selection.

15

16 In response to HB 20, and as a part of the implementation
17 effort, the department created the Planning Organization
18 Stakeholder Committee (POSC) in July of 2015. The POSC is
19 comprised of representatives from seven metropolitan planning
20 organizations as well as representatives from seven department
21 districts. The objectives of the committee are to: (1) support
22 the development of an implementation strategy focused on the
23 programming, performance measure, and planning components of HB
24 20, along with coordination with legislative and stakeholder
25 committees; (2) provide input for, and comments on, the

1 department's HB 20 Initial Report and Preliminary Report; (3)
2 assist in the development and implementation of updates to
3 transportation funding categories and formulas; and (4) provide
4 review and input to the development of the department's cash
5 flow projections.

6
7 In addition to the POSC, the department formed a Core Strategy
8 Team (CST) charged with reviewing and updating the agency's
9 mission, vision, values and goals in order to set the foundation
10 for the performance measures and metrics to be used in a
11 performance-based planning process. The new values, vision,
12 mission and goals developed by the CST were adopted by the
13 commission on February 25, 2016. The new goals and objectives
14 are as follows: (1) deliver the right projects - implement
15 effective planning and forecasting processes that deliver the
16 right projects on-time and on-budget; (2) focus on the customer
17 - people are at the center of everything we do; (3) foster
18 stewardship - ensure efficient use of state resources; (4)
19 optimize system performance - develop and operate an integrated
20 transportation system that provides reliable and accessible
21 mobility, and enables economic growth; (5) preserve our assets -
22 deliver preventive maintenance for the department's system and
23 capital assets to protect our investments; (6) promote safety -
24 champion a culture of safety; and (7) value our employees -
25 respect and care for the well-being and development of our

1 employees.

2

3 The proposed amendments are necessary to implement the
4 performance-based planning requirements of HB 20, integrate the
5 department's new strategic goals and objectives, and respond to
6 considerations of the POSC regarding improvements to the
7 planning and forecasting processes related to the Unified
8 Transportation Program (UTP). As the department continues to
9 collaborate with planning partners, legislative committees and
10 the POSC in the development of the specific performance
11 measures, metrics and processes that will guide project
12 selection criteria and funding distributions, additional rule
13 changes are expected.

14

15 Amendments to §16.105(b)(1) clarify that the financial
16 constraint associated with the development of the UTP is based
17 on the planning cash flow forecast prepared and published in
18 accordance with §16.152(a). This clarification is necessary in
19 light of proposed amendments to §16.152, which provide for the
20 use of separate financial forecasts for purposes of planning and
21 letting.

22

23 Amendments to §16.105(b)(3) remove specific requirements related
24 to the organization of the UTP document. This change will
25 provide the department with increased flexibility to organize

1 and publish the UTP in the most user-friendly and readily-
2 accessible format.

3
4 Amendments to §16.105(d)(1)(A) revise the project selection
5 criteria to incorporate language contained in the department's
6 new strategic goals and objectives, as adopted by the commission
7 in February 2016.

8
9 Amendments to §16.105(d)(2) address the requirements of
10 Transportation Code §201.9991, as added by HB 20, with respect
11 to the department's use of performance metrics and measures to
12 evaluate and rank projects listed in the UTP. The amendments
13 specify that the department will consider performance metrics
14 and measures to evaluate and rank the priority of each project
15 listed in the UTP. Furthermore, projects will be ranked using a
16 performance-based scoring system and the scoring system will be
17 used for prioritizing projects for which financial assistance is
18 sought from the commission. The amendments also provide that
19 the scoring system must account for the diverse needs of the
20 state so as to fairly allocate funding to all regions of the
21 state.

22
23 Amendments to §16.105(e) provide guidance with regard to what
24 constitutes a "major change" for purposes of updating the UTP,
25 which requires a formal update to the program and an opportunity

1 for public involvement. The amendments also require the
2 department to present information regarding the development of
3 the UTP and any updates to the commission the month prior to
4 final adoption of the UTP and any updates. These changes are
5 intended to focus public engagement on significant modifications
6 to UTP.

7
8 Amendments to §16.105(f) modify the process for administratively
9 revising the UTP and describe the types of changes that qualify
10 as administrative revisions to the program. The existing
11 process for handling administrative revisions is overly
12 cumbersome and difficult to administer.

13
14 Amendments to §16.152 distinguish between the two types of
15 financial forecasts to be used by the department for purposes of
16 planning and letting. Amendments to §16.152(a) provide that
17 the long-range financial forecast currently known as the cash
18 flow forecast will be identified as the planning cash flow
19 forecast. Amendments to §16.152(b) require the chief financial
20 officer to issue a base cash flow forecast to be used for the
21 development of the letting schedule, which will cover a period
22 of not less than two years following the date the forecast is
23 issued. The distinction between these two financial forecasts
24 is critical since the planning cash flow forecast will include
25 additional funding projections beyond those contained in the

1 base cash flow forecast. In addition, the base cash flow
2 forecast will provide constraints to the letting of projects
3 funded under allocation programs, as further described in
4 proposed amendments to §16.154(d). Amendments to §16.152(f)
5 reflect recent changes in nomenclature within the department;
6 specifically, the Finance Division is now referred to as the
7 Financial Management Division. Amendments to §16.152(g) specify
8 that the planning cash flow forecast is to be used for
9 development of the UTP.

10

11 Amendments to §16.153(a)(9) are necessary due to the transition
12 from the Transportation Alternatives Program to the
13 Transportation Alternatives Set-Aside Program, as required by
14 federal law.

15

16 Amendments to §16.153(c) address the requirements of
17 Transportation Code §201.9991, as added by HB 20, and provide
18 that the commission will use a performance-based process,
19 subject to the mandates of state and federal law, to determine
20 the amount to be allocated to each program funding category for
21 the appropriate period of time in order to achieve established
22 performance outcomes. The amendments also clarify the
23 distinction between highway program funding categories and
24 program funding categories for other modes of transportation and
25 transportation infrastructure, for purposes of determining

1 funding allocations.

2

3 Amendments to §16.154(a)(3) specify that funds under Category 4
4 (Statewide Connectivity Corridor Projects) will be allocated to
5 districts as an allocation program for specific corridors as
6 opposed to specific projects. As in the past, the allocation
7 will be based on an engineering analysis of three corridor
8 types. However, if applicable to the particular corridor type,
9 the commission will also consider the formula used for
10 allocating funds under Category 2 (Metropolitan and Urban
11 Corridor Projects). The amendments further provide that, with
12 regard to mobility corridors, the analysis will include
13 congestion considerations throughout the state. These changes
14 emphasize the need for a corridor-level plan for connectivity
15 while also providing flexibility to allocate funds to districts
16 for use on projects along the commission-approved corridors.

17

18 Amendments to §16.154(d) provide that the letting of projects
19 funded within allocation programs is subject to the constraints
20 established by the base cash flow forecast described in
21 §16.152(b). The current language implies that all projects
22 within UTP allocation programs could be let without constraint.
23 In light of the proposed amendments to §16.152, which
24 distinguish between the two different forecasts governing the
25 planning and letting processes, this change was needed to

1 clarify that the base cash flow forecast is the constraint for
2 letting projects within allocation programs.

3
4 Amendments to §16.154(e) revise the definition of "project," for
5 purposes of listing projects in the UTP, to mean a connectivity
6 or new capacity roadway project. This change is consistent with
7 the definitions contained in Transportation Code §201.9901, as
8 added by HB 20.

9
10 Amendments to §16.154(f) clarify that the department may not
11 exceed the planning cash flow forecast in distributing funds in
12 the twelve categories of the UTP and may not exceed the base
13 cash flow forecast in distributing funds for purposes of
14 letting. These changes are necessary in light of the amendments
15 to §16.152, as previously described.

16
17 Amendments to §16.160(a) specify that changes in UTP category
18 funding levels may also result from consideration of performance
19 results. These revisions are necessary to comply with
20 Transportation Code §201.9991, as added by HB 20, which requires
21 the commission to establish a performance-based process for
22 setting funding levels for the categories of projects in the
23 UTP.

24
25 Amendments to §16.160(b) update references to the planning cash

1 flow forecast in light of the amendments to §16.152, as
2 previously described. Amendments to this section also ensure
3 that performance results are considered in a determination to
4 increase or decrease the allocation of funds to one or more
5 categories. These changes are necessary to comply with
6 Transportation Code §201.9991, as added by HB 20, which requires
7 the commission to establish a performance-based process for
8 setting funding levels for the categories of projects in the
9 UTP.

10

11 Amendments to §16.160(d) provide that significant changes to the
12 base cash flow forecast may result in changes to the letting
13 schedule in order to maintain fiscal constraint. The amendments
14 also specify that projects eligible for letting include all
15 authorized projects or allocation programs covered in the UTP
16 and STIP and that specific projects will be advanced or delayed
17 relative to the order of listed priorities in the applicable
18 programs, fund source eligibility and the completion of project
19 benchmarks sufficient to proceed to construction. These changes
20 are needed to clarify the relationship between the letting
21 schedule and the base cash flow forecast, as explained in the
22 proposed amendments to §16.152, and how changes to the letting
23 schedule will be handled in relation to the changing base cash
24 flow forecast. In addition, this language supports the
25 provisions of Transportation Code §201.809, as amended by HB 20,

1 which require the department to include performance metrics and
2 measures in the evaluation of project delivery for projects in
3 the letting schedule. The preference for allocation of funding
4 increases has been eliminated, as this process is to be governed
5 by the use of performance results in accordance with the
6 provisions of Transportation Code §201.9991, as added by HB 20.
7
8 Amendments to §16.160(f) reflect recent changes in nomenclature
9 within the department, as previously described.

10

11 FISCAL NOTE

12 Brian Ragland, Chief Financial Officer, has determined that for
13 each of the first five years in which the amendments as proposed
14 are in effect, there will be no fiscal implications for state or
15 local governments as a result of enforcing or administering the
16 amendments.

17

18 Mr. Lauren Garduño, Interim Director, Transportation Planning
19 and Programming Division, has certified that there will be no
20 significant impact on local economies or overall employment as a
21 result of enforcing or administering the amendments.

22

23 PUBLIC BENEFIT AND COST

24 Mr. Garduño has also determined that for each year of the first
25 five years in which the sections are in effect, the public

1 benefit anticipated as a result of enforcing or administering
2 the amendments will be clarity on how the department is
3 incorporating the newly-adopted strategic goals and performance-
4 based planning and forecasting processes required by HB 20 into
5 the department's UTP and letting schedule. There are no
6 anticipated economic costs for persons required to comply with
7 the sections as proposed. There will be no adverse economic
8 effect on small businesses.

9

10 SUBMITTAL OF COMMENTS

11 Written comments on the proposed amendments to §§16.105, 16.152
12 - 16.154, and 16.160 may be submitted to Rule Comments, General
13 Counsel Division, Texas Department of Transportation, 125 East
14 11th Street, Austin, Texas 78701-2483 or to
15 RuleComments@txdot.gov with the subject line "Transportation
16 Projects Rules" The deadline for receipt of comments is 5:00
17 p.m. on November 14, 2016. In accordance with Transportation
18 Code, §201.811(a)(5), a person who submits comments must
19 disclose, in writing with the comments, whether the person does
20 business with the department, may benefit monetarily from the
21 proposed amendments, or is an employee of the department.

22

23 STATUTORY AUTHORITY

24 The amendments are proposed under Transportation Code, §201.101,
25 which provides the Texas Transportation Commission (commission)

1 with the authority to establish rules for the conduct of the
2 work of the department, and more specifically, Transportation
3 Code, §201.809, which requires the commission to adopt rules to
4 develop and implement a performance-based planning and
5 programming process and performance metrics and performance
6 measures; §201.991, which requires the commission to adopt rules
7 related to the unified transportation program; and §201.9991,
8 which requires the commission to adopt rules to prioritize and
9 approve projects included in the statewide transportation plan.

10

11 CROSS REFERENCE TO STATUTE

12 Transportation Code, §§201.809, 201.991 and 201.9991.

1 SUBCHAPTER C. TRANSPORTATION PROGRAMS

2 §16.105. Unified Transportation Program (UTP).

3 (a) General. The department will develop a unified
4 transportation program (UTP) that covers a period of ten years
5 to guide the development and authorize construction and
6 maintenance of transportation projects and projects involving
7 aviation, public transportation, and the state's waterways and
8 coastal waters. In developing the UTP, the department will
9 collaborate with local transportation entities and public
10 transportation operators as defined by 23 C.F.R. Part 450.

11 (b) Requirements. The UTP will:

12 (1) be financially constrained for planning and
13 development purposes based on the planning cash flow forecast
14 prepared and published in accordance with §16.152(a) of this
15 subchapter (relating to Cash Flow Forecasts) and estimate
16 funding levels and the allocation of funds to each district,
17 metropolitan planning organization (MPO), and other authorized
18 entity for each year in accordance with Subchapter D of this
19 chapter (relating to Transportation Funding);

20 (2) list all projects and programs that the department
21 intends to develop, or on which the department intends to
22 initiate construction or maintenance, during the UTP period, and
23 the applicable funding category to which a project or program is

1 assigned, after consideration of the:

2 (A) statewide long-range transportation plan

3 (SLRTP);

4 (B) metropolitan transportation plans (MTP);

5 (C) transportation improvement programs (TIP);

6 (D) MPO annual reevaluations of project selection

7 in MTPs and TIPs, if any, in accordance with subsection (c) of

8 this section;

9 (E) statewide transportation improvement programs

10 (STIP);

11 (F) recommendations of rural planning

12 organizations (RPO) as provided in this subchapter; and

13 (G) list of major transportation projects in

14 accordance with §16.106 of this subchapter (relating to Major

15 Transportation Projects); and

16 ~~(3) [be organized by funding category, district, mode~~

17 ~~of transportation, and the year a project is scheduled for~~

18 ~~development or letting; and]~~

19 [+4+] designate the priority ranking within a program

20 funding category of each listed project in accordance with

21 subsection (d)(2) of this section.

22 (c) MPO annual reevaluation of project selection. An MPO

23 may annually reevaluate the status of project priorities and

NOTE: Additions underlined

Exhibit B

Deletions in []

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1 selection in its approved metropolitan transportation plan (MTP)
2 and transportation improvement program (TIP) and provide a
3 report of any changes to the department at the times and in the
4 manner and format established by the department. The
5 reevaluation must be consistent with criteria applicable to
6 development of the MTP and TIP in accordance with federal
7 requirements.

8 (d) Project selection.

9 (1) The commission will consider the following
10 criteria for project selection in the UTP as applicable to the
11 program funding categories described in §16.153 of this chapter
12 (relating to Funding Categories):

13 (A) the potential of the project to meet
14 transportation goals for the state, including efforts to:

15 (i) maintain a safe transportation system
16 for all transportation users;

17 (ii) optimize system performance by
18 mitigating congestion, enhancing connectivity and mobility,
19 improving the reliability of the system, facilitating the
20 movement of freight and international trade, and fostering
21 economic competitiveness through infrastructure investments

22 [~~address travel congestion~~];

23 (iii) maintain and preserve system

1 infrastructure [~~connect Texas communities~~]; and

2 (iv) accomplish any additional
3 transportation goals for the state identified in the statewide
4 long-range transportation plans as provided in §16.54 of this
5 chapter (relating to Statewide Long-Range Transportation Plan
6 (SLRTP));

7 (B) the potential of the project to assist the
8 department in attainment of the measurable targets for the
9 transportation goals identified in subparagraph (A) of this
10 paragraph; and

11 (C) adherence to all accepted department design
12 standards as well as applicable state and federal law and
13 regulations.

14 (2) The department will consider performance metrics
15 and measures to evaluate and [~~establish criteria to~~] rank the
16 priority of each project listed in the UTP based on the
17 transportation needs for the state and the goals identified in
18 paragraph (1)(A) of this subsection. A project will be ranked
19 within its applicable program funding category, using a
20 performance-based scoring system, and classified as tier one,
21 tier two, or tier three for ranking purposes. The scoring
22 system will be used for prioritizing projects for which
23 financial assistance is sought from the commission and must

1 account for the diverse needs of the state so as to fairly
2 allocate funding to all regions of the state. Major
3 transportation projects will have a tier one classification and
4 be designated as the highest priority projects within an
5 applicable funding category. A project that is designated for
6 development or construction in accordance with the mandates of
7 state or federal law or specific requirements contained in other
8 chapters of this title may be prioritized in a funding category
9 as a designated project in lieu of a tier one, tier two, or tier
10 three ranking.

11 (3) The commission will determine and approve the
12 final selection of projects and programs to be included in the
13 UTP, except for the selection of federally funded projects by an
14 MPO serving in an area designated as a transportation management
15 area (TMA) as provided in §16.101(n) of this subchapter
16 (relating to Transportation Improvement Program (TIP)). A
17 federally funded project selected by an MPO designated as a TMA
18 will be approved by the commission, subject to:

19 (A) satisfaction of the project selection
20 criteria in paragraph (1) of this subsection;

21 (B) compliance with federal law; and

22 (C) the district's and MPO's allocation of funds
23 for the applicable years.

1 (e) Approval of unified transportation program (UTP). Not
2 later than August 31 of each year, the commission will adopt the
3 unified transportation program for the next fiscal year. The
4 UTP may be updated more frequently if necessary to authorize a
5 major change to one or more funding allocations or project
6 listings in the most recent UTP. For the purpose of updating
7 the UTP, the term "major change" refers to the authorization of
8 new projects or the revision of project funding allocations
9 which exceed 10 percent of the project cost or \$500,000,
10 whichever is greater, occurring in non-allocation program
11 categories, excluding revisions to local funding contributions
12 and projects designated under miscellaneous state and federal
13 programs. The foregoing does not apply to project funding
14 allocations in Category 4 Statewide Connectivity Corridor
15 Projects and Category 12 Strategic Priority as described in
16 §16.153(a) of this subchapter (relating to Funding Categories)
17 and all revisions to projects funded in those categories must be
18 first included in an update to the UTP approved by the
19 commission. The department will present information regarding
20 the development of the UTP and any updates to the commission the
21 month prior to final adoption of the UTP and any updates. The
22 department will hold a hearing prior to:

23 (1) final adoption of the UTP and any updates; and

1 (2) approval of any adjustments to the program
2 resulting from changes to the allocation of funds under §16.160
3 of this chapter (relating to Funding Allocation Adjustments).

4 (f) Administrative revisions. The UTP may be
5 administratively revised at any time and for any reason that
6 does not constitute a major change as described in subsection
7 (e) of this section, with the exception of project funding
8 allocations in Category 4 Statewide Connectivity Corridor
9 Projects and Category 12 Strategic Priority as described in
10 subsection (e).

11 ~~[(1)The UTP may be administratively revised at any~~
12 ~~time for minor or nondiscretionary changes to funding~~
13 ~~allocations and project listings, including the changes~~
14 ~~specified in this paragraph.]~~

15 ~~[(A) A project may be added to the UTP, or a~~
16 ~~project within the UTP may be moved forward or delayed if:]~~

17 ~~[(i) the status of a listed project or~~
18 ~~projects change, and if the moved or added project can be~~
19 ~~developed and let during a two-year period within the district's~~
20 ~~or MPO's allocated funds in the applicable program funding~~
21 ~~category for that period;]~~

22 ~~[(ii) the project and funding for the~~
23 ~~project is specifically identified in a commission minute order~~

1 ~~for pass through toll financing; or]~~

2 ~~[(iii) the project and funding for the~~
3 ~~project is specifically identified in a federal or state~~
4 ~~legislative act or appropriation, including a federal earmark.]~~

5 ~~[(B) A district or MPO, subject to the mandates~~
6 ~~of state and federal law and specific requirements contained in~~
7 ~~other sections of this chapter for selection of projects and~~
8 ~~management of funds, may transfer all or a portion of its~~
9 ~~allocated funds either within a program funding category or~~
10 ~~between program funding categories during the first two years of~~
11 ~~the UTP if the transferred funds are returned to the~~
12 ~~contributing program funding category within the same two year~~
13 ~~period and the two year total allocation for each applicable~~
14 ~~program funding category as listed in the UTP is not exceeded or~~
15 ~~reduced.]~~

16 ~~[(C) A district or MPO, subject to the mandates~~
17 ~~of state and federal law and specific requirements contained in~~
18 ~~other sections of this chapter for selection of projects and~~
19 ~~management of funds, may transfer all or a portion of its~~
20 ~~allocated funds from a program funding category to another~~
21 ~~district or MPO during the first two years of the UTP if the~~
22 ~~transferred funds are returned to the contributing program~~
23 ~~funding category within the same two year period and the two~~

1 ~~year total allocation for each applicable program funding~~
2 ~~category for each district and MPO as listed in the UTP is not~~
3 ~~exceeded or reduced.]~~

4 ~~[(D) A local government may provide additional~~
5 ~~funding contribution or participation for a project.]~~

6 ~~[(E) A district may transfer all or a portion of~~
7 ~~its allocated funds in a program funding category to an~~
8 ~~adjoining district for a project that extends across the~~
9 ~~districts' common boundary.]~~

10 ~~[(F) A district or MPO, subject to the mandates~~
11 ~~of state and federal law and specific requirements contained in~~
12 ~~other sections of this chapter for selection of projects and~~
13 ~~management of funds, may transfer any unspent excess allocated~~
14 ~~funds remaining in a program funding category at the end of a~~
15 ~~fiscal year to the same program funding category for the next~~
16 ~~fiscal year.]~~

17 ~~[(G) Projects that are listed only for~~
18 ~~informational purposes in program funding categories identified~~
19 ~~as allocation programs in §16.154 of this chapter (relating to~~
20 ~~Transportation Allocation Funding Formulas) may be added to or~~
21 ~~deleted from the categories.]~~

22 ~~[(2) The department, an MPO, an RPO, or a public~~
23 ~~transportation operator as defined by 23 C.F.R. Part 450 may~~

1 ~~request an administrative revision of the UTP. A revision~~
2 ~~request by a public transportation operator must be applicable~~
3 ~~to projects in the public transportation portion of the UTP and,~~
4 ~~if the public transportation operator is located within the~~
5 ~~boundaries of an MPO or RPO, it must obtain consent of the~~
6 ~~applicable MPO or RPO prior to making the request.]~~

7 ~~[(3) If an administrative revision is requested, the~~
8 ~~department will, in coordination with the other affected~~
9 ~~parties, determine whether a revision is appropriate and may,~~
10 ~~consistent with the authority to select projects under~~
11 ~~subsection (d) of this section, develop a revised list of~~
12 ~~projects for the applicable period.]~~

13 ~~[(4) An administrative revision under this subsection~~
14 ~~is not an update or adjustment to which subsections (e), (g),~~
15 ~~and (h) of this section apply.]~~

16 ~~[(5) The department will incorporate an administrative~~
17 ~~revision into the UTP if the request complies with the~~
18 ~~requirements of this subsection and compliance is confirmed by~~
19 ~~the chief planning and project officer. If a requested revision~~
20 ~~is a minor or nondiscretionary change to a funding allocation or~~
21 ~~project listing in the UTP, but does not comply with the~~
22 ~~specific requirements described for changes in paragraph (1) of~~
23 ~~this subsection, the requested revision may not be incorporated~~

1 ~~into the UTP unless it is also approved by the chief financial~~
2 ~~officer. In determining whether to approve the administrative~~
3 ~~revision request, the chief financial officer shall consider the~~
4 ~~fiscal impact of the requested revision in the context of the~~
5 ~~current cash flow forecast.]~~

6 ~~[(6) Department staff will provide a written report to~~
7 ~~the commission within two months after the end of each quarter~~
8 ~~identifying all administrative revisions implemented under this~~
9 ~~subsection during that quarter.]~~

10 (g) Public involvement during development of the unified
11 transportation program.

12 (1) The department will seek to effectively engage the
13 general public and stakeholders in development of the UTP.

14 (2) The department will hold public meetings
15 throughout the state that will cover each district during
16 development of the UTP as early as the department determines is
17 feasible to assure public input into the process. The
18 department will also hold public meetings throughout applicable
19 areas of the state during development of each update to the
20 program that will cover each district affected by the update.
21 The department will publish notice of each public meeting as
22 appropriate to maximize attendance at the meeting.

23 (3) The department will report its progress on the

1 program and provide an opportunity for a free exchange of ideas,
2 views, and concerns relating to project selection, funding
3 categories, level of funding in each category, the allocation of
4 funds for each year of the program, and the relative importance
5 of the various selection criteria. A representative from each
6 district will attend each public meeting applicable to the
7 district and be available for the discussion.

8 (4) The department may conduct a public meeting by
9 video-teleconference or other electronic means that provide for
10 direct communication among the participants.

11 (h) Public involvement prior to final adoption. The
12 department, prior to adoption of the unified transportation
13 program and approval of any updates to the program, will hold at
14 least one statewide hearing on its project selection process
15 including the UTP's funding categories, the level of funding in
16 each category, the allocation of funds for each year of the
17 program, and the relative importance of the various selection
18 criteria.

19 (1) The department will publish a notice of the
20 applicable hearing in the *Texas Register* a minimum of 15 days
21 prior to it being held and will inform the public where to send
22 any written comments.

23 (2) The department will accept written public comments

1 for a period of at least 30 days after the date the notice
2 appears in the *Texas Register*.

3 (3) A copy of the proposed project selection process,
4 the UTP, and any adjustments to the plan, as applicable, will be
5 available for review at the time the notice of hearing is
6 published at each of the district offices and at the
7 department's Transportation Planning and Programming Division
8 offices in Austin. A copy will also be available on the
9 department website.

10 (i) Publication. The department will publish the entire
11 approved unified transportation program, updates, adjustments,
12 and administrative revisions together with any summary documents
13 highlighting project benchmarks, priorities, and forecasts on
14 the department's website. The documents will also be available
15 for review at each of the district offices and at the
16 department's Transportation Planning and Programming Division
17 offices in Austin.

18

1 SUBCHAPTER D. TRANSPORTATION FUNDING

2 §16.152. Cash Flow Forecasts [~~Forecast~~].

3 (a) Planning cash flow forecast [~~Forecast~~]. On or before
4 September 1 of each year, the department's chief financial
5 officer will issue a planning cash flow forecast for each source
6 of funding that covers a period of not less than the 20 years
7 following the date the forecast is issued and is based on the
8 funding assumptions developed under §16.151 of this subchapter
9 (relating to Long-Term Planning Assumptions).

10 (b) Base cash flow forecast. On or before September 1 of
11 each year, the department's chief financial officer will issue a
12 base cash flow forecast for each source of funding to guide the
13 development of the letting schedule that covers a period of not
14 less than two years following the date the forecast is issued.

15 (c) Requirements. Each [~~The~~] forecast must identify:

16 (1) all state and federal sources of funding available
17 for transportation projects and projects involving aviation,
18 public transportation, rail, and the state's waterways and
19 coastal waters, including bond proceeds; and

20 (2) any limitations imposed by state or federal law on
21 the use of the identified source.

22 (d)[~~e~~] First two years. The first year or two years of
23 each [~~the~~] forecast, as appropriate, must be based on the

1 amounts appropriated by the legislature to the department for
2 that period.

3 (e)~~(d)~~ Updates. The department's chief financial officer
4 will update each ~~the~~ forecast more frequently than annually if
5 significant changes in the department's funding occur.

6 (f)~~(e)~~ Publication. Each ~~cash-flow~~ forecast and update
7 will be available on the department's website for viewing by the
8 public and the documents will be available for review at each of
9 the district offices and at the department's Financial
10 Management ~~Finance~~ Division offices in Austin.

11 (g)~~(f)~~ Uses of planning cash flow forecast. The
12 commission will use the planning cash flow forecast to estimate
13 funding levels for each year of the unified transportation
14 program as provided in §16.105 of this chapter (relating to
15 Unified Transportation Program (UTP)), to determine the annual
16 amount of funding in each of the program funding categories
17 described in §16.153 of this subchapter (relating to Funding
18 Categories), and to allocate funding to the districts,
19 metropolitan planning organizations, and other authorized
20 entities in accordance with §16.154 of this subchapter (relating
21 to Transportation Allocation Funding Formulas).

22 (h)~~(g)~~ Funding definition. In this subchapter, unless
23 the context clearly indicates otherwise, "funds" or "funding"

1 means the estimates of federal, state, and local money
2 reasonably expected to be available for expenditure on
3 transportation projects and projects involving aviation, public
4 transportation, rail, and the state's waterways and coastal
5 waters during the relevant period.

6

7 §16.153. Funding Categories.

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

13 (1) Category 1 Preventive Maintenance and
14 Rehabilitation - preventive maintenance and rehabilitation on
15 the existing state highway system, including:

16 (A) Preventive maintenance - minor roadway
17 modifications to improve operations and safety; and

18 (B) Rehabilitation - installation,
19 rehabilitation, replacement, and maintenance of pavement,
20 bridges, traffic control devices, traffic management systems,
21 and ancillary traffic devices;

22 (2) Category 2 Metropolitan and Urban Corridor
23 Projects - mobility and added capacity projects along a corridor

1 that improve transportation facilities in order to decrease
2 travel time and the level or duration of traffic congestion, and
3 safety, maintenance, or rehabilitation projects that increase
4 the safe and efficient movement of people and freight in
5 metropolitan and urbanized areas;

6 (3) Category 3 Non-Traditionally Funded Transportation
7 Projects - transportation related projects that qualify for
8 funding from sources not traditionally part of the state highway
9 fund including state bond financing under programs such as
10 Proposition 12 (General Obligation Bonds), Texas Mobility Fund,
11 pass-through toll financing, unique federal funding, regional
12 toll revenue, and local participation funding;

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

21 (5) Category 5 Congestion Mitigation and Air Quality
22 Improvement - congestion mitigation and air quality improvement
23 area projects to address attainment of a national ambient air

1 quality standard in the nonattainment areas of the state;

2 (6) Category 6 Structures Replacement and
3 Rehabilitation - replacement and rehabilitation of deficient
4 existing bridges located on the public highways, roads, and
5 streets in the state, construction of grade separations at
6 existing highway-railroad grade crossings, and rehabilitation of
7 deficient railroad underpasses on the state highway system;

8 (7) Category 7 Metropolitan Mobility and
9 Rehabilitation (TMA) - transportation needs within the
10 boundaries of designated metropolitan planning areas of
11 metropolitan planning organizations located in a transportation
12 management area;

13 (8) Category 8 Safety - safety related projects both
14 on and off the state highway system including the federal
15 Highway Safety Improvement Program, Railway-Highway Crossing
16 Program, Safety Bond Program, and High Risk Rural Roads Program;

17 (9) Category 9 Transportation Alternatives -
18 transportation related activities as described in Chapter 11,
19 Subchapter G [~~F~~], of this title (relating to the Transportation
20 Alternatives Set-Aside Program);

21 (10) Category 10 Supplemental Transportation Projects
22 -transportation related projects that do not qualify for funding
23 in other categories, including landscape and aesthetic

1 improvement, erosion control and environmental mitigation,
2 construction and rehabilitation of roadways within or adjacent
3 to state parks, fish hatcheries, and similar facilities,
4 replacement of railroad crossing surfaces, maintenance of
5 railroad signals, construction or replacement of curb ramps for
6 accessibility to pedestrians with disabilities, and
7 miscellaneous federal programs;

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

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

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

23 (1) Aviation Capital Improvement Program - projects

1 based on the anticipated funding levels of the Federal Aviation
2 Administration Airport Improvement Program and the Texas
3 Aviation Facilities Development Program for general aviation
4 airport development in Texas;

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

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

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

18 (c) Determination of funding allocations. The commission
19 will use a performance-based process to determine, subject to
20 the mandates of state and federal law, the amount of funds to be
21 allocated to each program funding category described in
22 subsection (a) of this section for the appropriate period of
23 time, in order to achieve established performance outcomes. The

1 commission will determine, subject to the mandates of state and
2 federal law and specific requirements contained in other
3 chapters of this title, ~~[for programs and projects described in~~
4 ~~subsection (b) of this section,~~] the amount of funds to be
5 allocated to each program funding category described in
6 subsection (b) of this section for the appropriate period of
7 time.

8

9 §16.154. Transportation Allocation Funding Formulas.

10 (a) Formula allocations. The commission will, subject to
11 the mandates of state and federal law, allocate funds from
12 program funding Categories 1, 2, 4, 5, 7, 9, and 11, as
13 described in §16.153 of this subchapter (relating to Funding
14 Categories), to the districts and metropolitan planning
15 organizations (MPO) as follows:

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

19 (A) Preventive maintenance.

20 (i) Ninety-eight percent for roadway
21 maintenance with 65 percent based on on-system lane miles, and
22 33 percent based on the pavement distress score Pace factor; and

23 (ii) Two percent for bridge maintenance

1 based on square footage of on-system span bridge deck area;

2 (B) Rehabilitation. Thirty-two and one half
3 percent based on three-year average lane miles of pavement
4 distress scores less than 70, 20 percent based on on-system
5 vehicle miles traveled per lane mile, 32.5 percent based on
6 equivalent single axle load miles for on-system, off-system, and
7 interstate, and 15 percent based on the pavement distress score
8 Pace factor;

9 (2) Category 2 Metropolitan and Urban Corridor
10 Projects - will be allocated to MPOs for specific projects in
11 the following manner:

12 (A) 87 percent to MPOs operating in areas that
13 are transportation management areas, according to the following
14 formula: 30 percent based on total vehicle miles traveled on
15 and off the state highway system, 17 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), 10 percent
19 based on lane miles on-system, 14 percent based on truck vehicle
20 miles traveled on-system, 7 percent based on percentage of
21 census population below the federal poverty level, 15 percent
22 based on congestion, and 7 percent based on fatal and
23 incapacitating vehicle crashes;

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

14 (3) Category 4 Statewide Connectivity Corridor
15 Projects - will be allocated to districts as an allocation
16 program for specific corridors [~~projects~~] selected by the
17 commission based on engineering analysis of [~~projects on~~] three
18 corridor types and, if applicable to the particular corridor
19 type, considering the formula specified in subsection (a)(2) of
20 this section:

21 (A) Mobility corridors - congestion
22 considerations throughout the state [~~in areas that are not in~~
23 ~~the boundaries of an MPO~~];

1 (B) Connectivity corridors - two-lane roadways
2 requiring upgrade to four-lane divided roadways to connect the
3 urban areas of the state; and

4 (C) Strategic corridors - strategic corridors on
5 the state highway network that provide statewide connectivity;

6 (4) Category 5 Congestion Mitigation and Air Quality
7 Improvement - will be allocated to districts and MPOs as an
8 allocation program for projects in a nonattainment area
9 population weighted by ozone and carbon monoxide pollutant
10 severity;

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

15 (6) Category 9 Transportation Alternatives - a portion
16 of the funds in this category will be allocated to MPOs serving
17 urbanized areas with populations over 200,000 as an allocation
18 program based on the areas' relative share of population, unless
19 FHWA approves a joint request from the department and the
20 relevant MPOs to use other factors in determining the
21 allocation; and

22 (7) Category 11 District Discretionary - will be
23 allocated to all districts as an allocation program based on

1 state legislative mandates, but if there is no mandate or the
2 amount of available funding in this category exceeds the minimum
3 required by a mandate, the funding allocation for this category
4 or the excess funding, as applicable, will be allocated
5 according to the following formula: 70 percent based on annual
6 on-system vehicle miles traveled, 20 percent based on annual on-
7 system lane miles, and 10 percent based on annual on-system
8 truck vehicle miles traveled. The commission may supplement the
9 funds allocated to individual districts on a case-by-case basis
10 to cover project cost overruns.

11 (b) Pace factor calculation. For purposes of subsection
12 (a)(1) of this section, the Pace factor is a calculation used to
13 adjust funding among districts according to increases or
14 decreases in a district's need to improve its pavement distress
15 scores. It will slow the rate of improvement for districts with
16 the highest condition scores and accelerate the rate of
17 improvement for districts with the lowest condition scores. The
18 Pace factor is calculated by:

19 (1) determining the district with the highest distress
20 score;

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

23 (3) totaling the deviations for all districts as

1 determined by paragraph (2) of this subsection.

2 (c) Non-formula allocations. The commission, subject to
3 the mandates of state and federal law and specific requirements
4 contained in other chapters of this title for programs and
5 projects described in subsection (a) of this section, will
6 determine the amount of funding to be allocated to a district,
7 metropolitan planning organization, political subdivision,
8 governmental agency, local governmental body, recipient of a
9 governmental transportation grant, or other eligible entity from
10 each of the following program funding categories described in
11 §16.153 of this subchapter:

12 (1) Category 3 Non-Traditionally Funded Transportation
13 Projects for specific projects;

14 (2) Category 6 Structures Replacement and
15 Rehabilitation as an allocation program;

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

19 (4) Category 9 Transportation Alternatives - of the
20 remaining funds in this category, a portion will be allocated to
21 certain areas of the state, for specific projects, based on the
22 areas' relative share of the population, and a portion may be
23 allocated in any area of the state for specific projects or

1 transferred to other eligible federal programs, as authorized by
2 law;

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

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

8 (7) Aviation Capital Improvement Program;

9 (8) Public transportation;

10 (9) Rail; and

11 (10) State waterways and coastal waters.

12 (d) Allocation program. For the purposes of this chapter,
13 the term "allocation program" refers to a type of program
14 funding category identified in the unified transportation
15 program for which the responsibility for selecting projects and
16 managing the allocation of funds has been delegated to
17 department districts, selected administrative offices of the
18 department, and MPOs. Within the applicable program funding
19 category, each district, selected administrative office, or MPO
20 is allocated a funding amount and projects can be selected,
21 developed, and, subject to the base cash flow forecast prepared
22 and published in accordance with §16.152(b) of this subchapter
23 (relating to Cash Flow Forecasts), let to contract with the cost

1 of each project to be deducted from the allocated funds
2 available for that category.

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

21 (f) Limitation on distribution. In distributing funds to
22 the districts, metropolitan planning organizations, and other
23 entities described in subsections (a) and (c) of this section,

1 the department may not exceed the planning cash flow forecast
2 prepared and published in accordance with §16.152(a) [~~§16.152~~]
3 of this subchapter (relating to Cash Flow Forecasts [~~Forecast~~]).
4 In developing and distributing funds for purposes of letting,
5 the department may not exceed the base cash flow forecast
6 prepared and published in accordance with §16.152(b) of this
7 subchapter.

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

12 (h) Supplemental allocations. The commission may
13 supplement the funds allocated to individual districts under
14 subsections (a)(1) and (7) of this section in response to
15 special initiatives, safety issues, or unforeseen environmental
16 factors. Supplemental funding under this subsection is not
17 required to be allocated proportionately among the districts and
18 is not required to be allocated according to the formulas
19 specified in subsections (a)(1) and (7) of this section. In
20 determining whether to allocate supplemental funds to a
21 particular district, the commission may consider safety issues,
22 traffic volumes, pavement widths, pavement conditions, oil and
23 gas production, well completion, or any other relevant factors.

1

2 §16.160. Funding Allocation Adjustments.

3 (a) Changes in funding. Changes in the allocation of funds
4 under §16.153 or §16.154 of this subchapter (relating to Funding
5 Categories and Transportation Allocation Funding Formulas,
6 respectively) may result from significant changes in the
7 department's funding and consideration of performance results.

8 (b) Allocation revisions. If a significant change in
9 funding is identified by the department's chief financial
10 officer in an updated planning cash flow forecast prepared and
11 published in accordance with §16.152(a) of this subchapter
12 (relating to Cash Flow Forecasts), the commission may revise the
13 allocation of funds to each program funding category or from the
14 program funding categories to the districts and metropolitan
15 planning organizations (MPO) and may approve:

16 (1) a specific percentage increase or decrease in the
17 allocation of funds and, subject to the mandates of state and
18 federal law, apply the percentage change equally to each program
19 funding category; or

20 (2) an increase or decrease in the allocation of funds
21 to one or more program funding categories, after considering
22 the:

23 (A) total amount of the change;

1 (B) priority of the funding category based on
2 performance results and the category's relationship to the
3 stated commission goals as provided in the statewide long-range
4 transportation plan under §16.54 of this chapter (relating to
5 Statewide Long-Range Transportation Plan (SLRTP));

6 (C) mandates of state and federal law; and

7 (D) best interests of the state.

8 (c) Adjustment of programs. After the commission approves
9 a change in the allocation of funds to a program funding
10 category under subsection (b) of this section, the funds
11 allocated to individual districts and MPOs will be adjusted and
12 the unified transportation program, statewide transportation
13 improvement program, and metropolitan transportation improvement
14 programs will be revised in accordance with the applicable
15 change in funding. Specific projects will be advanced or
16 delayed in the order of the planning organization's and
17 department's listed priorities in the applicable programs.

18 (d) Letting. If a significant change in funding is
19 identified by the department's chief financial officer in an
20 updated base cash flow forecast prepared and published in
21 accordance with §16.152(b) of this subchapter (relating to Cash
22 Flow Forecasts), the chief financial officer may revise the
23 letting schedule to maintain the constraint of the base cash

1 flow forecast. Projects eligible for letting include all
2 authorized projects or allocation programs covered in the
3 unified transportation program or the statewide transportation
4 improvement program. Specific projects will be advanced or
5 delayed relative to the order of listed priorities in the
6 applicable programs, fund source eligibility, and the completion
7 of project benchmarks sufficient to proceed to construction.

8 ~~[Preference for allocation of funding increases. If the~~
9 ~~allocation of funds to a district or MPO is reduced under~~
10 ~~subsection (c) of this section, any subsequent increase in the~~
11 ~~allocation of funds to the applicable program funding category~~
12 ~~will be allocated first to the accounts of the districts and~~
13 ~~MPOs that were previously reduced.]~~

14 (e) Public involvement. The department will hold at least
15 one statewide public hearing regarding a proposed change in the
16 allocation of funds to a program funding category under this
17 section with an available comment period of at least 30 days
18 after the date the hearing notice appears in the *Texas Register*
19 in accordance with the procedures set forth in §16.105(h) of
20 this chapter (relating to Unified Transportation Program (UTP)).

21 (f) Publication. Documents describing each change in the
22 allocation of funds to a program funding category will be
23 available for viewing by the public on the department's website

- 1 and at each of the district offices and at the department's
- 2 Financial Management [~~Finance~~] Division offices in Austin.