

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

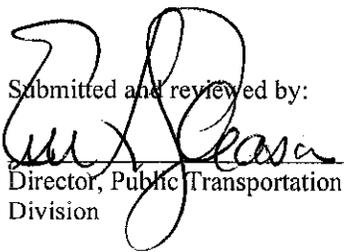
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §31.11, relating to formula programs, and §31.36, relating to section 5311 grant programs, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A - C are incorporated by reference as though set forth at length verbatim in this minute order.

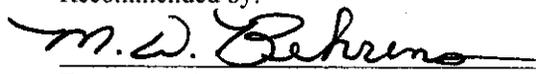
IT IS THEREFORE ORDERED by the commission that the amendments to §31.11, and §31.36 are adopted and are authorized for filing with the Office of the Secretary of State.

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, Public Transportation  
Division

Recommended by:

  
Executive Director

**110572 JUN 29 06**

Minute  
Number

Date  
Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts  
3 amendments to §31.11, Formula Program, and §31.36, Section 5311  
4 Grant Program. The amendments to §31.11 and §31.36 are adopted  
5 without changes to the proposed text as published in the April  
6 14, 2006 issue of the *Texas Register* (31 TexReg 3241) and will  
7 not be republished.

8

9 EXPLANATION OF ADOPTED AMENDMENTS

10 Transportation Code, §456.022 requires the Texas Transportation  
11 Commission (commission) to adopt rules to establish a formula  
12 allocating state and federal funds among individual eligible  
13 public transportation providers. The statute states that the  
14 formula may take into account a transportation provider's  
15 performance, the number of its riders, the need of residents in  
16 its service area for public transportation, population,  
17 population density, land area, and other factors established by  
18 the commission. Transportation Code, §456.008 states that the  
19 commission may establish different performance measures for  
20 different sectors of the transit industry and also states that  
21 the performance measures shall assess the efficiency,  
22 effectiveness, and safety of the public transportation  
23 providers.

24

25 On May 26, 2005, the commission amended §31.11 and §31.36

1 regarding formulas for the distribution of state and federal  
2 funds. The commission now desires to further refine the  
3 formulas to better allocate funding resources; to better reflect  
4 the requirements of state and federal law; and to reflect the  
5 department's goals to reduce congestion, enhance safety, expand  
6 economic opportunity, improve air quality, and increase the  
7 value of transportation assets.

8  
9 The amendments to §31.11, Formula Program, revise the current  
10 formula for state funds. Amendments to §31.11(b)(1)(A) provide  
11 that funds for small urban transit providers be divided into two  
12 tiers. Tier one will include transit providers that restrict  
13 transit eligibility for all public transportation services to  
14 the elderly and persons with disabilities. State funding  
15 available in tier one is calculated by multiplying the available  
16 urban funding by the population of elderly and persons with  
17 disabilities in tier one providers, divided by the service  
18 eligible population of urbanized areas receiving funding under  
19 this subchapter. Tier two will include transit providers that  
20 provide any service to the general population. The funds for  
21 tier two will be the remaining balance of the available funds  
22 after the funds for tier one have been allocated. Funds within  
23 each tier will be allocated to transit providers based on  
24 §31.11(b)(1)(B) and (C). The changes will assist in the  
25 allocation of available funding by more accurately reflecting

1 the nature of the service provided. The changes will also  
2 reflect the requirements of state and federal law and will  
3 reflect an assessment of public transportation provider  
4 efficiency, effectiveness, and safety.

5  
6 Amendments to §31.11(b)(1)(B) and (C) provide that any further  
7 distribution of state funds allocated to urban areas be based on  
8 the relative proportion of urbanized area population and a  
9 weighted average of four performance criteria: local funds per  
10 operating expense; ridership per capita; ridership per revenue  
11 mile and revenue miles per operating expense. The relative  
12 proportion of urbanized area is intended to capture the need of  
13 the transit operator, and the weighted average of the four  
14 criteria is intended to capture the performance of the transit  
15 operator. The revised allocation of transportation funding will  
16 be based on 80% need and 20% performance for fiscal year 2007  
17 (the second year of the 2006-2007 biennium); 65% need and 35%  
18 performance for the 2008-2009 biennium; and 50% need and 50%  
19 performance for each biennium thereafter. This further  
20 emphasizes the performance of individual public transportation  
21 providers in allocating funding. The commission recognizes  
22 performance as an important aspect of providing public  
23 transportation services in an effective and efficient manner,  
24 and wishes to increase the emphasis on performance in the  
25 allocation of transportation funding as part of the department's

1 plan to improve statewide transportation, enhance safety, and  
2 improve air quality.

3

4 Section 31.11(b)(1)(B) changes the consideration of population  
5 for tier one providers to 199,999, or the city population,  
6 whichever is less. The reason for this change is that the  
7 urbanized area population may be significantly larger than the  
8 population reported for the incorporated jurisdiction. This  
9 reflects the actual population eligible to receive service from  
10 a particular transit provider and this change more fairly  
11 allocates funds to account for that smaller population eligible  
12 to receive services.

13

14 Section 31.11(b)(1)(C) changes the method for calculating the  
15 criterion called "ridership per capita." Formerly, for urban  
16 areas with populations greater than 199,999, this criterion was  
17 adjusted to limit the impact of the population to 199,999. The  
18 department eliminates the provision that defines this criterion.  
19 The impact would be to use the total applicable population, and  
20 therefore calculate more fairly this performance indicator for  
21 those providers in areas with populations greater than 199,999.  
22 The department adopts the state funds performance criteria for  
23 the urban areas based on the following weighted criteria: 30%  
24 local funds per operating expense, 20% ridership per capita, 30%  
25 ridership per revenue mile, and 20% revenue miles per operating

1 expense. This amendment to the formula adds two new measures,  
2 revenue miles per operating expense and passengers per revenue  
3 mile, while deleting one measure, revenue miles per capita.  
4 This also changes the allocation from an even distribution to a  
5 distribution emphasizing local support and service  
6 effectiveness. These changes establish a broader set of  
7 measures to emphasize service effectiveness and efficiency. A  
8 broader set of measures will create more opportunities for the  
9 diverse small urban transit providers to show improvements in  
10 performance.

11  
12 The department deletes provisions that give the commission the  
13 authority to allocate a portion of the funds to address  
14 strategic priorities. These revisions ensure all funds in these  
15 programs are allocated according to the established formula,  
16 while retaining the requirement that recipients of funding under  
17 this subparagraph be in good standing with the department.

18  
19 Section 31.11(b)(2)(A) and (B) changes the allocation of state  
20 funds for the rural providers based on a figure that represents  
21 75% population and 25% land area, relative to all other rural  
22 public transportation providers and on an equally weighted  
23 formula of three criteria: local funds per operating expense,  
24 ridership per revenue mile, and revenue miles per operating  
25 expense. The figure that represents 75% population and 25% land

1 area is intended to capture the need of the transit operator,  
2 and application of the equally weighted criteria is intended to  
3 capture performance of the transit operator. The new provisions  
4 state that the allocation of transportation funding will be  
5 based on 80% need and 20% performance for fiscal years 2007 and  
6 2008; and 65% need and 35% performance for fiscal year 2009 and  
7 each fiscal year thereafter. These changes increase the  
8 emphasis on performance, and reward providers who improve the  
9 efficiency or effectiveness of their service.

10

11 Section 31.11(b)(2)(B) changes the performance criteria for the  
12 rural areas. Currently, the formula considers local funds per  
13 operating expense, operating expenses per mile, and operating  
14 expense per passenger. The department changes the measure of  
15 operating expense per passenger to passengers per revenue mile,  
16 and the measure of operating expense per mile to revenue miles  
17 per operating expense. The relative weights of the three  
18 criteria will not change, but will remain at one third each for  
19 the following criteria: local funds per operating expense,  
20 ridership per revenue mile and revenue miles per operating  
21 expense. These changes provide a measure of service  
22 effectiveness. It is an acknowledged goal of the commission to  
23 improve service effectiveness, which represents an increase in  
24 services provided to the public.

25

1 Amendments to §31.11(c) provide that annual adjustments are  
2 limited to a maximum 10% decrease from year to year for both the  
3 urban and rural providers to provide funding stability. The  
4 purpose of this change is to assist public transportation  
5 providers in planning for future year funding allocations and to  
6 enable continuity of service. The department also adopts  
7 changes in purchasing power as an eligible consideration for the  
8 award of additional funds. The base year to the state fiscal  
9 biennium 2006-2007 is also reset.

10

11 Section 31.36, Title 49 USC 5311 Grant Program, changes the  
12 current formula and also reflects the federal statutory  
13 requirement that the department consult with intercity bus  
14 service providers.

15

16 Amendments to §31.36(g)(1)(B) concerning inter-city bus  
17 regulation reflect changes to federal statutes, which now  
18 require the state to consult with the intercity bus service  
19 providers under certain circumstances. The changes were enacted  
20 in Safe, Accountable, Flexible, Efficient Transportation Equity  
21 Act: A Legacy for Users, (Pub. L. No. 109-59) (2005), known as  
22 "SAFETEA-LU."

23

24 Section 31.36(g)(2)(A) and (B) states that federal funds for the  
25 rural providers are allocated based on a figure that represents

1 75% population and 25% land area, relative to all other rural  
2 public transportation providers and on an equally weighted  
3 formula of three criteria: local funds per operating expense,  
4 ridership per revenue mile and revenue miles per operating  
5 expense. The figure that represents 75% population and 25% land  
6 area is intended to capture the need of the transit operator,  
7 and application of the equally weighted criteria is intended to  
8 capture performance of the transit operator. The new provisions  
9 provide that the allocation of transportation funding will be  
10 based on 80% need and 20% performance for fiscal years 2007 and  
11 2008; and 65% need and 35% performance for fiscal year 2009 and  
12 each fiscal year thereafter. These changes increase the  
13 emphasis on performance, and reward providers who improve the  
14 efficiency or effectiveness of their service. Further changes  
15 to the performance criteria for the rural areas match the  
16 formula for state rural funding allocation. Currently, the  
17 formula considers local funds per operating expense, operating  
18 expenses per mile, and operating expense per passenger. The  
19 department changes the measure of operating expense per  
20 passenger to passengers per revenue mile, and the measure of  
21 operating expense per mile to revenue miles per operating  
22 expense. The relative weights of the three criteria will not  
23 change, but will remain at one third each for the following  
24 criteria: local funds per operating expense, ridership per  
25 revenue mile, and revenue miles per operating expense. The

1 provisions provide a measure of service effectiveness. It is an  
2 acknowledged goal of the commission to improve service  
3 effectiveness, which represents an increase in services provided  
4 to the public.

5  
6 Section 31.36(g)(3) provides that consideration be made to  
7 account for changes in the relative purchasing power of the  
8 amounts from year-to-year. The provisions concerning the  
9 allocation of excess funds are revised to include consideration  
10 of adjustments if changes in purchasing power occur. The  
11 department changes the funding baseline from a particular fiscal  
12 year to a set level of funding for purposes of determining if  
13 additional funds exist. The impact of the change is to increase  
14 the baseline by \$7,000,000, and move allocation levels closer to  
15 the amount determined by the allocation formula, considering  
16 both transportation provider need and performance.

17  
18 The Public Transportation Advisory Committee (PTAC) has met  
19 numerous times to discuss the changes to the existing formulas  
20 and rules, and to make recommendations to the commission. Four  
21 PTAC committee members represent a diverse cross-section of  
22 public transportation providers; three members represent a  
23 diverse cross-section of public transportation users; three  
24 members represent the general public; and one member is  
25 designated to have experience in the transportation of clients

1 of health and human services programs. Advice and  
2 recommendations expressed by the committee provide the  
3 department and the commission with a broader perspective  
4 regarding public transportation matters that will be considered  
5 in formulating department policies.

6  
7 PTAC's duties include advising the commission on the needs and  
8 problems of the state's public transportation providers,  
9 including recommending methods for allocating state public  
10 transportation funds, and commenting on rules or rule changes  
11 involving public transportation matters during their development  
12 and prior to final adoption.

13  
14 PTAC met on May 19, 2006, and by motion recommended adoption of  
15 the amendments.

16  
17 COMMENTS

18 The Texas Department of Transportation conducted a public  
19 hearing to receive comments concerning the proposed rules. A  
20 public hearing was held at 1:30 p.m. on May 4, 2006, in the  
21 first floor hearing room of the Dewitt C. Greer State Highway  
22 Building, 125 East 11th Street, Austin, Texas. This hearing was  
23 conducted in accordance with the procedures specified in §1.5 of  
24 this title. In addition to comments presented at the public  
25 hearing, the department received written comments on adoption of

1 the rule.

2

3 COMMENT

4 The Texas Transit Association (TTA) stated that it "cautiously  
5 supported" the rules as proposed. TTA stated that the new  
6 formula provides an equitable distribution of funds to the  
7 transit operators, however, under the revised formula the  
8 majority of both the urban and rural operators will experience a  
9 decrease in state funding. TTA further expressed the opinion  
10 that the cost is ultimately going to be a loss of service in  
11 those communities that have a decrease in both state and federal  
12 funding.

13

14 RESPONSE

15 For forecasting the fiscal impact of the proposed changes,  
16 appropriations of state funds for public transportation grants  
17 were kept at the FY 2006-2007 level. Future appropriations are  
18 contingent on legislative actions. Holding the level of funding  
19 constant establishes that for any system to increase funding,  
20 other systems must receive less. Actual allocations will be  
21 based on available funding. Regarding transit service, the type  
22 and level of service provided by urban and rural transit  
23 districts is determined locally. The allocation formula  
24 provides funding in proportion to the need, determined by  
25 population or population and land area and performance, to

1 promote effective and efficient delivery of service. No change  
2 was made to the rule as a result of the comments.

3

4 COMMENT

5 One commenter stated that the intent of using performance  
6 measures tied directly to funding is an excellent plan. Two  
7 commenters also noted the critical need to have an accurate and  
8 verifiable performance measure evaluation system that defines  
9 and measures each performance criterion.

10

11 RESPONSE

12 The department has contracted with the Texas Transportation  
13 Institute to facilitate improvements in the collection of  
14 accurate performance data. No change to the rule was made as a  
15 result of these comments.

16

17 COMMENT

18 Regarding §31.11(b)(1)(C), §31.11(b)(2)(B) and §31.36(g)(2)(B),  
19 one commenter recommended removing the requirement that transit  
20 operators have no deficiencies and no findings of non compliance  
21 from the rule, stating the wording is ambiguous and could cause  
22 a transit operator to lose funding for the smallest of  
23 infractions or errors in any area of compliance. The commenter  
24 further stated that the provision requiring the transit operator  
25 to be in good standing with the department is sufficient

1 language.

2

3 RESPONSE

4 The referenced requirements currently exist in the sections  
5 noted by the commenter and the proposed changes retain that  
6 current language. In specifying that a transit operator not  
7 only be in good standing with the department, but also have no  
8 deficiencies and no findings of noncompliance, the requirements  
9 are stated unambiguously. The requirements are intended to  
10 promote effective and efficient delivery of service, to provide  
11 funding in proportion to the need, and to reward effective and  
12 efficient performance. The requirement is consistent with the  
13 intent of the rules to tie performance measures directly to  
14 funding. No change to the rule was made as a result of these  
15 comments.

16

17 COMMENT

18 Regarding §31.11(c), two commenters suggested removing the  
19 language that references funding exceeding \$57,482,135 because  
20 this would mean any additional state funds provided by the  
21 legislature would be placed into a commission discretionary  
22 fund. The commenters state that any state funds provided by the  
23 legislature should go directly to the transit operators, not to  
24 the commission and they state opposition to a discretionary fund  
25 that will potentially grow annually. The commenters suggested

1 instead that the commission discretionary fund be established as  
2 a specific dollar amount to be set aside each year or, as an  
3 alternative, a maximum percentage of the annual apportioned  
4 funds.

5

6 RESPONSE

7 Language establishing a discretionary fund as part of the  
8 allocation formula rules was adopted two years ago. The rule  
9 sets an explicit dollar amount instead of using a reference to a  
10 prior fiscal biennium in order to quantify the funding by a  
11 dollar amount rather than by reference to the previous biennium.  
12 If additional funds exist, the commission must award the funds  
13 to transit providers on a pro rata basis, competitively or a  
14 combination of both, in accordance with the rule. Consideration  
15 for the award of the additional funds may include, but is not  
16 limited to, coordination and technical support activities,  
17 compensation for unforeseen funding anomalies, assistance with  
18 eliminating waste and ensuring efficiency, maximum coverage in  
19 the provision of public transportation services, adjustments for  
20 reductions in purchasing power, and reductions in air pollution.  
21 The rule already requires that additional funding go to transit  
22 operators. The rule establishes a method of distribution that  
23 is consistent with accomplishing the department's stated goals  
24 and addresses the needs of transit operators for any additional  
25 funding that may exist. No change was made to the rule as a

1 result of this comment.

2

3 COMMENT

4 One commenter stated its opposition to the transition for  
5 distribution of available funds from 80 percent/20 percent  
6 needs-versus-performance to 50 percent/50 percent funds  
7 distribution, as set forth in §31.11, for small urban operators.  
8 The commenter recommended retaining the 80 percent/20 percent  
9 needs-versus-performance distribution of funding until further  
10 assessment of the effectiveness of the rule can be made. The  
11 commenter also stated its opposition to the proposed transition  
12 in distribution of funding for non-urbanized or rural transit  
13 operators from 80 percent/20 percent needs-versus-performance to  
14 a 65 percent/35 percent split for fiscal year 2009 and  
15 thereafter, for the same reasons. Another commenter supports  
16 the use of performance measures as a basis of funding, however  
17 they believe that the increase in the weighted value of  
18 performance measures to 50 percent is premature.

19

20 RESPONSE

21 After much study and public discussion, the Public  
22 Transportation Advisory Committee recommended the transitions in  
23 funding distribution to transit operators based on a need versus  
24 performance ratio, with an increasing emphasis on performance  
25 versus need. The department supports this position because it

1 awards a greater share of funds to transit systems that have  
2 greater-than-average public transportation service  
3 effectiveness, efficiency, or both. The department also  
4 recognizes the difference between small urban and rural systems  
5 and as such the proposed change in weight between need and  
6 performance for rural systems is scheduled to occur after more  
7 time has passed. No change to the rule was made as a result of  
8 the comment.

9

10 COMMENT

11 One commenter stated concerns regarding the elimination of the  
12 five-year transition period, as proposed. The commenter states  
13 that the potential impact of "dramatic changes" is particularly  
14 critical given other proposed changes and regional service  
15 planning.

16

17 RESPONSE

18 The rule does not eliminate the transition period. Instead, the  
19 rule removes the five-year limit on the term of the transition  
20 period. The rule institutionalizes the transition and provides  
21 for a more stable funding environment. No change to the rule was  
22 made as a result of the comment.

23

24 COMMENT

25 Just Transportation Alliances stated its support of the proposed

1 changes to the funding of the so-called "enclave cities,"  
2 referring to the establishment of two funding tiers in the state  
3 urban program.

4

5 RESPONSE

6 No change to the rule was made as a result of this comment.

7

8 STATUTORY AUTHORITY

9 The amendments are adopted under Transportation Code, §201.101,  
10 which provides the commission with the authority to establish  
11 rules for the conduct of the work of the department, and  
12 Transportation Code, §456.022, which requires the commission to  
13 adopt rules establishing a formula allocating funds among  
14 eligible public transportation providers.

15

16 CROSS REFERENCE TO STATUTE

17 Transportation Code, Chapter 456.

1 SUBCHAPTER B. STATE PROGRAMS

2 §31.11. Formula Program.

3 (a) Purpose. Transportation Code, Chapter 456 requires the  
4 commission to allocate, at the beginning of each fiscal  
5 biennium, certain ~~[appropriated]~~ amounts appropriated for public  
6 transportation ~~[from the public transportation fund]~~. This  
7 section sets out the policies, procedures, and requirements for  
8 that allocation.

9 (b) Formula allocation. At the beginning of each state  
10 fiscal biennium, an amount equal to the amount appropriated from  
11 all sources to the commission by the legislature for that  
12 biennium for public transportation, other than federal funds and  
13 amounts specifically appropriated for coordination, technical  
14 support, or other costs of administration, will be allocated to  
15 urban and rural transit districts ~~[designated recipients]~~. The  
16 commission will allocate ~~[these funds between small urban and~~  
17 ~~rural providers, with]~~ 35% of the funding to urban transit  
18 districts ~~[allocated to small urban providers]~~ and 65% of the  
19 funding to rural transit districts ~~[allocated to rural~~  
20 ~~providers]~~.

21 (1) Urban funds available under this section will be  
22 allocated to urban transit districts ~~[municipalities]~~ that are  
23 designated recipients or transit providers in urbanized areas

1 that are not served by an authority and to designated recipients  
2 that received state transit funding during the fiscal biennium  
3 ending August 31, 1997, that are not served by an authority but  
4 are located in urbanized areas that include one or more  
5 authorities. Any local governmental entity having the power to  
6 operate or maintain a public transportation system, except an  
7 authority, may receive formula program funds. The commission  
8 will distribute the money in the following manner.

9           (A) Urban funds will be divided into two tiers. Tier  
10 one will include urban transit districts that restrict transit  
11 eligibility for all public transportation services to the  
12 elderly and persons with disabilities. Funding available in  
13 tier one is calculated by multiplying the available urban  
14 funding by the population of elderly and persons with  
15 disabilities in tier one providers, divided by the service  
16 eligible population of urbanized areas receiving funding under  
17 this subchapter. Tier two will include urban transit districts  
18 that provide any service to the general population. The funds  
19 for tier two will be the remaining balance of the available  
20 funds after the funds for tier one have been allocated. Funds  
21 within each tier will be allocated to urban transit districts  
22 based on subparagraphs (B) and (C) of this paragraph.

23           (B) The need based allocation is determined as follows:

1 80% of urban funds will be awarded for 2007, 65% for the 2008 -  
2 2009 biennium, and 50% for each biennium thereafter, based on  
3 ~~[Eighty percent will be awarded giving consideration to]~~  
4 population by using the latest census data available from, and  
5 as defined by, the U.S. Census Bureau for each urbanized area  
6 relative to the sum of all urbanized areas. Any urban transit  
7 district ~~[provider]~~ whose urbanized area population is 200,000  
8 or greater will have the population adjusted to reflect a  
9 population level of 199,999; except that any urban transit  
10 district receiving funds in tier one, as described in  
11 subparagraph (A) of this paragraph, will have the population  
12 adjusted to reflect a population level of 199,999, or the  
13 urbanized area population of the place as defined by the U.S.  
14 Census Bureau, whichever is less.

15 (C) ~~[(B)]~~ The performance based allocation will be 20%  
16 for fiscal year 2007, 35% for the 2008 - 2009 biennium, and 50%  
17 for each biennium thereafter. An urban transit district is  
18 eligible for funding under this subparagraph if it is in good  
19 standing with the department and has no deficiencies and no  
20 findings of noncompliance. ~~[If the urban transit district is in~~  
21 ~~good standing with the department and has no deficiencies and no~~  
22 ~~findings of noncompliance, 20% will be awarded under clause (i)~~  
23 ~~or (ii) of this subparagraph as follows.]~~

1           ~~[(i) The commission, using all or a portion of the~~  
2 ~~funds, may award funding to address strategic priorities for the~~  
3 ~~urbanized public transportation program. These amounts are not~~  
4 ~~subject to the transition funding allocation process described~~  
5 ~~in subsection (c) of this section in succeeding fiscal years,~~  
6 ~~and will be awarded on a competitive basis unless they are~~  
7 ~~needed to compensate for funding anomalies arising under this~~  
8 ~~subsection.]~~

9           ~~[(ii)]~~ The commission will award the funding based on  
10 the following weighted criteria: 30% for local funds per  
11 operating expense, 20% for ridership per capita, 30% for  
12 ridership per revenue mile, and 20% for revenue miles per  
13 operating expense ~~[by giving equal consideration to local funds~~  
14 ~~per operating expense, vehicle revenue miles per capita, and~~  
15 ~~ridership per capita. Any urban provider whose urbanized area~~  
16 ~~population is 200,000 or greater will have the aforementioned~~  
17 ~~criteria adjusted on a pro rata basis to reflect a population~~  
18 ~~level of 199,999].~~ These criteria may be calculated using the  
19 urban transit district's ~~[subrecipient's]~~ annual audit for the  
20 previously completed fiscal year, data from other sources, or  
21 from the department's records.

22           (2) Rural funds available under this section will be  
23 allocated to rural transit districts in nonurbanized areas. Any

1 eligible recipient may receive formula program funds. The  
2 funding will be allocated to rural transit districts based upon  
3 need and performance as described in subparagraphs (A) and (B)  
4 of this paragraph [~~Of the money allocated under this paragraph,~~  
5 ~~the commission will distribute the money in the following~~  
6 ~~manner]~~.

7 (A) The need based allocation is determined as follows:  
8 80% [Eighty percent] will be awarded for fiscal years 2007 and  
9 2008, and 65% for each fiscal year thereafter giving  
10 consideration to population weighted at 75% and on land area  
11 weighted at 25% [by using the latest census data available from,  
12 ~~and as defined by, the U.S. Census Bureau]~~ for each nonurbanized  
13 ~~area relative to the sum of all nonurbanized areas.~~

14 (B) The performance based allocation will be 20% for  
15 fiscal years 2007 and 2008, and 35% for each biennium  
16 thereafter. A rural transit district is eligible for funding  
17 under this subparagraph if it is in good standing with the  
18 department and has no deficiencies and no findings of  
19 noncompliance [~~If the transit district is in good standing with~~  
20 ~~the department and has no deficiencies and no findings of~~  
21 ~~noncompliance, 20% will be awarded under clause (i) or (ii) of~~  
22 ~~this subparagraph as follows]~~.

23 [~~(i) The commission, using all or a portion of the~~

1 ~~funds, may award funding to address strategic priorities for the~~  
2 ~~nonurbanized public transportation program. These amounts are~~  
3 ~~not subject to the transition funding allocation process~~  
4 ~~described in subsection (c) of this section in succeeding fiscal~~  
5 ~~years, and will be awarded on a competitive basis unless they~~  
6 ~~are needed to compensate for funding anomalies arising under~~  
7 ~~this subsection.]~~

8           [~~(ii)~~] The commission will award the funding by  
9 giving equal consideration to local funds per operating expense,  
10 ridership per revenue mile, and revenue miles per operating  
11 expense [~~operating expenses per mile and operating expense per~~  
12 ~~passenger~~]. These criteria may be calculated using the rural  
13 transit district's [~~subrecipient's~~] annual audit for the  
14 previously completed fiscal year, data from other sources, or  
15 from the department's records.

16           (3) Funds allocated under this section and any local  
17 funds may be used for any transit-related activity except that a  
18 designated recipient not included in a transit authority but  
19 located in an urbanized area that includes one or more transit  
20 authorities may only use funds to provide:

21           (A) 65% of the local share requirement for federally  
22 financed projects for capital improvements;

23           (B) 50% of the local share requirement for projects for

1 operating expenses and administrative costs;

2 (C) 50% of the total cost of a public transportation  
3 capital improvement, if the designated recipient certifies that  
4 federal money is unavailable for the proposed project and the  
5 commission finds that the proposed project is vitally important  
6 to the development of public transportation in the state; and

7 (D) 65% of the local share requirement for federally  
8 financed planning activities.

9 (c) Funding stability [~~Transition~~]. Subject to available  
10 appropriation, [~~Each agency will have five years to transition~~  
11 ~~to full formula allocation and during the five years after the~~  
12 ~~first application of new census data from the United States~~  
13 ~~Census Bureau, the allocations under subsection (b) (1) and (2)~~  
14 ~~of this section will be adjusted to avoid extreme short term~~  
15 ~~disruptions in the continuity of funding. During this time] no  
16 award to an urban or rural [a] transit district under this  
17 section will be less than 90% of the award to that transit  
18 district for the previous fiscal year[, ~~except that fiscal year~~  
19 ~~2004 will be used as the base year when calculating allocations~~  
20 ~~for fiscal year 2006 allocation of funds, after which succeeding~~  
21 ~~allocations will be based on previous fiscal years]. All  
22 allocations under subsection (b) (1) and (2) of this section are  
23 subject to revision to comply with this standard. If available~~~~

1 funding exceeds \$57,482,135 [~~the allocations allocated in fiscal~~  
2 ~~years 2004 and 2005~~], additional funding will be awarded by the  
3 commission on a pro rata basis, competitively, or a combination  
4 of both. Consideration for the award of these additional funds  
5 may include, but is not limited to, coordination and technical  
6 support activities, compensation for unforeseen funding  
7 anomalies, assistance with eliminating waste and ensuring  
8 efficiency, maximum coverage in the provision of public  
9 transportation services, adjustment for reductions in purchasing  
10 power, and reductions in air pollution. These additional awards  
11 are not subject to the [~~transition~~] funding stability allocation  
12 process in succeeding fiscal years.

13 (d) Change in service area. If part of an urban or rural  
14 [a] transit district's service area is changed due to  
15 declaration by the United States Census Bureau, or if the  
16 service area is otherwise altered, the department and the urban  
17 or rural transit district [~~subrecipient~~] shall negotiate an  
18 appropriate adjustment in the funding awarded to that urban or  
19 rural transit district [~~subrecipient~~] for that funding year or  
20 any subsequent year, as appropriate. This negotiated adjustment  
21 is not subject to the minimum and maximum standards set forth in  
22 subsection (c) of this section.

23 (e) Unobligated funds. Any money under this section that

1 the designated recipient has not applied for before the November  
2 commission meeting in the second year of a state fiscal biennium  
3 will be administered by the commission under the discretionary  
4 program described in §31.13 of this subchapter.

5 (f) Returned funds. Any money under this section that the  
6 designated recipient agrees to return to the department will be  
7 administered by the commission under the discretionary program  
8 described in §31.13 of this subchapter.

9 (g) Application. To receive funds allocated under this  
10 section, a designated recipient must first submit a completed  
11 application, in the form prescribed by the department, to the  
12 appropriate district. The application must include  
13 certification that the proposed public transportation project is  
14 consistent with continuing, cooperating, and comprehensive  
15 regional transportation planning implemented in accordance with  
16 49 USC §5301 and §1602a. Federal approval of a proposed public  
17 transportation project will be accepted as a determination that  
18 all federal planning requirements have been met.

19 (h) Project evaluation. In evaluating a project under this  
20 section, the department will consider the need for fast, safe,  
21 efficient, and economical public transportation and the approval  
22 of the FTA, or its successor.

1 SUBCHAPTER C. FEDERAL PROGRAMS

2 §31.36. Section 5311 Grant Program.

3 (a) Purpose. The Federal Transit Act, codified at 49 USC  
4 §5311, authorizes the Secretary of the United States Department  
5 of Transportation to make grants for public transportation  
6 projects in nonurbanized areas. The department has been  
7 designated by the governor to administer the Section 5311  
8 program.

9 (b) Goal and objectives. The Department's goal in  
10 administering the Section 5311 program is to promote the  
11 availability of professional, cost-effective, efficient, and  
12 coordinated passenger transportation services to the general  
13 public in nonurbanized areas using the most efficient  
14 combination of financial and other resources. To achieve this  
15 goal, the objectives of the department are to:

16 (1) promote the development and maintenance of a network  
17 of general public transportation services in nonurbanized areas  
18 throughout the state, in partnership with local officials;

19 (2) fully integrate the Section 5311 program with other  
20 federal, state, and local resources that are designed to serve  
21 nonurbanized populations;

22 (3) improve the efficiency, effectiveness, and safety of  
23 Section 5311 systems through the provision of technical

1 assistance; and

2 (4) include private sector operators in the overall plan  
3 to provide public transportation services.

4 (c) Department role. The department acts as the designated  
5 recipient for all Section 5311 funds appropriated to the state  
6 and has an oversight responsibility for all nonurbanized transit  
7 services within the state. The department, however, recognizes  
8 the subrecipients as partners who shall retain control of daily  
9 operations. As the administering agency, the department will:

10 (1) develop application materials and disseminate  
11 information to prospective applicants and other interested  
12 parties;

13 (2) allocate the available program funds in a fair and  
14 equitable manner as described in subsection (g) of this section  
15 (the department will not provide Section 5311 funds to more than  
16 one transit system in a geographical area);

17 (3) develop evaluation criteria and select projects for  
18 funding;

19 (4) prepare the state's annual program of projects and  
20 funding application and submit that material to the FTA for  
21 approval;

22 (5) negotiate and execute contracts with local Section  
23 5311 subrecipients;

1 (6) prepare requests for federal reimbursement, and  
2 process payment requests from Section 5311 subrecipients;

3 (7) monitor and evaluate the progress of ongoing  
4 transportation operations, including compliance with federal  
5 regulations; and

6 (8) provide technical assistance to Section 5311  
7 subrecipients to aid them in improving transit services.

8 (d) Eligible subrecipients. State agencies, local public  
9 bodies, private nonprofit organizations, Native American tribes  
10 and organizations, and operators of public transportation  
11 services are eligible to receive Section 5311 funds through the  
12 department. Private for-profit operators of public  
13 transportation services may participate in the program through  
14 contracts with eligible subrecipients. An entity must be a  
15 rural transit district to receive Section 5311 funds except that  
16 private for-profit operators of public transportation services  
17 and entities that are not rural transit districts are eligible  
18 to receive Section 5311 funds through the department under the  
19 intercity bus program, as set forth in subsections (g) (1) and  
20 (i) of this section.

21 (e) Eligible assistance categories. The following  
22 categories of expenses are eligible for federal reimbursement  
23 under the Section 5311 program.

1           (1) State administrative expenses. The department may  
2 use up to 15% of the annual federal apportionment to defray its  
3 expenses incurred for the administration of Section 5311  
4 program. These funds may also be used to provide technical  
5 assistance to subrecipients. Technical assistance may include  
6 project planning, program development, management development,  
7 coordination of public transportation projects, and related  
8 research. Projects are solicited from subrecipients and other  
9 interested parties. State administrative and technical  
10 assistance expenses do not require a non-federal match.

11           (2) Capital expenses.

12           (A) Eligible items include, but are not limited to:

13           (i) buses;

14           (ii) vans or other paratransit vehicles;

15           (iii) radios and communications equipment;

16           (iv) passenger shelters, bus stop signs, and similar  
17 passenger amenities;

18           (v) wheelchair lifts and restraints;

19           (vi) vehicle rehabilitation, remanufacture, or  
20 overhaul;

21           (vii) preventive maintenance, including all  
22 maintenance costs;

23           (viii) extended warranties that do not exceed the

1 industry standard;

2 (ix) the mass transit portion of ferry boats and

3 terminals;

4 (x) operational support such as computer hardware or

5 software;

6 (xi) installation costs and vehicle procurement,

7 testing, inspection, and acceptance costs;

8 (xii) construction or rehabilitation of transit

9 facilities, including design, engineering, and land acquisition;

10 (xiii) facilities to provide access for bicycles to

11 mass transit facilities and equipment for transporting bicycles

12 on mass transit vehicles;

13 (xiv) the lease of equipment or facilities, provided

14 that the local subrecipient, with the concurrence of the

15 department, determines that a lease is more cost effective than

16 the purchase of equipment or facilities after considering

17 management efficiency, availability of equipment, staffing

18 capabilities and guidelines on capital leases as contained in 49

19 CFR Part 639;

20 (xv) the capital portions of costs for service under

21 contract;

22 (xvi) joint development projects (FTA Circular

23 9300.1A, or its latest version, provides guidelines for joint

1 development projects);

2 (xvii) the introduction of new technology, through  
3 innovative and improved products, into mass transportation;

4 (xviii) transit-related intelligent transportation  
5 systems; and

6 (xix) the provision of ADA paratransit service, which  
7 shall not exceed 10% of the state's annual apportionment of  
8 Section 5311 funds and shall be used only by subrecipients that  
9 are in compliance with ADA requirements for both fixed route and  
10 demand responsive service.

11 (B) The capital cost of contracting includes  
12 depreciation, interest on facilities and equipment, and those  
13 allowable capital costs that would otherwise be incurred  
14 directly, including maintenance. No capital assets (vehicle,  
15 equipment, or facility) that have any remaining federal interest  
16 in them and no items purchased with state or local government  
17 funds may be capitalized under the grant agreement.

18 (C) Based on funding availability, federal funds may be  
19 used to reimburse up to 80% of eligible capital expenditures.

20 The federal share may increase to up to 90% for bicycle  
21 facilities projects or for incremental costs related to  
22 compliance with the Clean Air Act or with the Americans with  
23 Disabilities Act of 1990. Eligibility standards for the higher

1 federal share are defined in FTA Circular 9040.1E, or its latest  
2 version. The local subrecipient must provide a 20% or 10% cash  
3 match at the time the equipment is delivered or the services are  
4 received.

5 (3) Project administrative expenses. Costs not directly  
6 tied, but essential, to the operations of passenger  
7 transportation systems may be reimbursed at up to 80% with  
8 federal funds. The local subrecipient must provide a 20% match,  
9 either in cash or with in-kind donations.

10 (4) Operating expenses. Those costs directly tied to  
11 systems operations, such as fuel, oil, drivers', mechanics', and  
12 dispatchers' salaries, and replacement parts may be reimbursed  
13 at 50% of net operating costs. The local subrecipient must  
14 provide a 50% match, either in cash or with in-kind donations.

15 (f) Local share requirements. FTA program funds cannot be  
16 used as the local share required for Section 5311 grants.  
17 Eligible match sources include local or state programs, or  
18 unrestricted federal funds. At least half of the local share  
19 for both net operating and non-operating expenses must be cash  
20 or cash equivalent from sources other than unrestricted federal  
21 funds. In-kind contributions, volunteer services, and donations  
22 are eligible as local share if the value is documented.

23 (g) Allocation of funds. As part of its administration of

1 the Section 5311 program, the department is charged with  
2 ensuring that there is a fair and equitable distribution of  
3 program funds within the state (FTA Circular 9040.1E, or its  
4 latest version). The department will allocate Section 5311  
5 funds to local subrecipients in the following manner.

6 (1) Reserve. Unless the governor certifies to the  
7 Secretary of the United States Department of Transportation that  
8 the intercity bus service needs of the state are being  
9 adequately met, the department will reserve not less than 15% of  
10 the Section 5311 federal apportionment for the development and  
11 support of intercity bus transportation to be allocated under  
12 subsection (i) of this section. If it is determined that all or  
13 a portion of the set-aside monies is not required for intercity  
14 bus service, those funds will be applied to the formula  
15 apportionment process described in paragraph (2) of this  
16 subsection. Procedures for determining if a certification of  
17 adequacy is warranted are as follows.

18 (A) The department will review all data on intercity  
19 bus service availability, including outstanding requests from  
20 intercity operators, and levels of service.

21 (B) The department will consult with affected intercity  
22 bus service providers.

23 (C) The department will consult with other state

1 agencies that have jurisdiction with respect to intercity bus  
2 regulation and seek their recommendations as to the adequacy of  
3 current service.

4 (D) [~~(E)~~] Based on the findings of subparagraphs (A),  
5 [~~and~~] (B), and (C) of this paragraph, the commission may certify  
6 or recommend that the governor certify to the adequacy of  
7 intercity bus service.

8 (2) Remaining balance allocation. Except as provided in  
9 paragraph (1) of this subsection, the balance of the annual  
10 Section 5311 federal apportionment, plus the remaining balance  
11 of previous Section 5311 federal apportionments, and any state  
12 funds appropriated specifically for the purpose of funding  
13 nonurbanized public transportation services will be allocated to  
14 transit providers as described in subparagraphs (A) and (B) of  
15 this paragraph [in the following manner].

16 (A) The need based allocation is determined as follows:  
17 80% [Eighty percent] will be awarded for fiscal years 2007 and  
18 2008, and 65% for each fiscal year thereafter giving  
19 consideration to population weighted at 75% and on land area  
20 weighted at 25% by using the latest census data available from,  
21 and as defined by, the U.S. Census Bureau for each nonurbanized  
22 area relative to the sum of all nonurbanized areas.

23 (B) The performance based allocation will be 20% for

1 fiscal years 2007 and 2008, and 35% for each fiscal year  
2 thereafter. The subrecipient is eligible for funding under this  
3 subparagraph if it is in good standing with the department and  
4 has no deficiencies and no findings of noncompliance [~~if the~~  
5 ~~transit district is in good standing with the department and has~~  
6 ~~no deficiencies and no findings of noncompliance, 20% will be~~  
7 ~~awarded under clause (i) or (ii) of this subparagraph as~~  
8 ~~follows].~~

9 ~~[(i) The commission, using all or a portion of the~~  
10 ~~funds, may award funding to address strategic priorities for the~~  
11 ~~nonurbanized public transportation program. These amounts are~~  
12 ~~not subject to the transition funding allocation process~~  
13 ~~described in paragraph (3) of this subsection in succeeding~~  
14 ~~fiscal years, and will be awarded on a competitive basis unless~~  
15 ~~they are needed to compensate for funding anomalies arising~~  
16 ~~under this subsection.]~~

17 ~~[(ii)]~~ The commission will award the funding by  
18 giving equal consideration to local funds per operating expense,  
19 ridership per revenue mile, and revenue miles per operating  
20 expense [~~operating expenses per mile and operating expense per~~  
21 ~~passenger]. These criteria may be calculated using the~~  
22 subrecipient's annual audit for the previously completed fiscal  
23 year, data from other sources, or from the department's records.

1           (3) Funding stability [~~Transition~~]. Subject to available  
2 appropriation, [~~Each agency will have five years to transition~~  
3 ~~to full formula allocation and during the five years after the~~  
4 ~~first application of new census data from the United States~~  
5 ~~Census Bureau, the allocations under paragraphs (1) and (2) of~~  
6 ~~this subsection will be adjusted to avoid extreme short term~~  
7 ~~disruptions in the continuity of funding. During this time] no  
8 award to a transit district under this section will be less than  
9 90% of the award to that transit district for the previous  
10 fiscal year[, ~~except that fiscal year 2004 will be used as the~~  
11 ~~base year when calculating allocations for the next allocation~~  
12 ~~of funds, after which succeeding allocations will be based on~~  
13 ~~previous fiscal years]~~. All allocations under paragraphs (1)  
14 and (2) of this subsection are subject to revision to comply  
15 with this standard. If available funding exceeds \$20,104,352  
16 [~~the allocations allocated in fiscal year 2004~~], additional  
17 funding will be awarded by the commission on a pro rata basis,  
18 competitively, or a combination of both. Consideration for the  
19 award of these additional funds may include, but is not limited  
20 to, coordination and technical support activities, compensation  
21 for unforeseen funding anomalies, assistance with eliminating  
22 waste and ensuring efficiency, maximum coverage in the provision  
23 of public transportation services, adjustment for reductions in~~

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Exhibit C

1 purchasing power, and reductions in air pollution. These  
2 additional awards are not subject to the [~~transition~~] funding  
3 stability allocation process in succeeding fiscal years.

4 (4) Adjustments to allocation.

5 (A) If part of a transit district's service area is  
6 changed due to declaration by the United States Census Bureau or  
7 the service area is otherwise altered, the department and that  
8 subrecipient shall negotiate an appropriate adjustment in the  
9 funding year or any subsequent year, as appropriate. This  
10 negotiated adjustment is not subject to the minimum and maximum  
11 standards set forth in paragraph (3) of this subsection.

12 (B) If a previously designated urbanized area is  
13 declared nonurbanized by the United States Census Bureau, a  
14 public transportation subrecipient serving that area must apply  
15 for funds in accordance with paragraph (5) of this subsection.

16 (5) Application and contract. Prior to receiving funds a  
17 subrecipient must complete and comply with all application  
18 requirements, rules, and regulations applicable to the Section  
19 5311 program. A completed application must be submitted, in a  
20 form prescribed by the department, to the appropriate district  
21 office, and document the need and demand for general public  
22 passenger transportation services. A contract shall be for no  
23 less than 12 months unless authorized by the department.

1           (h) Program of projects. All projects for a fiscal year  
2 will be identified in accordance with the allocation rules  
3 included in subsection (g) of this section. After commission  
4 approval of the allocation, these projects will be submitted to  
5 the FTA as the annual program of projects for the fiscal year.

6           (i) Intercity bus. If the governor does not certify to the  
7 adequacy of intercity bus transportation within the state, funds  
8 will be made available in accordance with subsection (g)(1) of  
9 this section. An annual request for proposals will be issued  
10 for projects complying with FTA definitions of intercity bus  
11 transportation.

12