

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

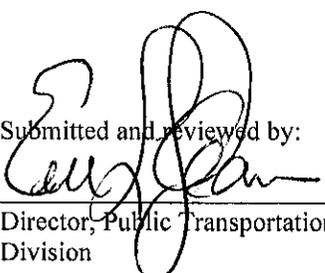
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §31.11, relating to formula programs, and §31.36, relating to section 5311 grant programs, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed 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.

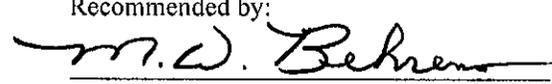
IT IS THEREFORE ORDERED by the commission that the amendments to §31.11, and §31.36 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

Submitted and reviewed by:

  
\_\_\_\_\_  
Director, Public Transportation  
Division

Recommended by:

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

**110476 MAR 30 06**

Minute  
Number

Date  
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes  
3 amendments to §31.11, Formula Program, and §31.36, Section 5311  
4 Grant Program.

5

6 EXPLANATION OF PROPOSED AMENDMENTS

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

21

22 On May 26, 2005, the commission amended §31.11 and §31.36  
23 regarding formulas for the distribution of state and federal  
24 funds. The commission now desires to further refine the  
25 formulas to better allocate funding resources; to better reflect

1 the requirements of state and federal law; and to reflect the  
2 department's goals to reduce congestion, enhance safety, expand  
3 economic opportunity, improve air quality, and increase the  
4 value of transportation assets.

5  
6 The amendments to §31.11, Formula Program, revise the current  
7 formula for state funds. Section 31.11(b)(1)(A) proposes that  
8 funds for small urban transit providers be divided into two  
9 tiers. Tier one will include transit providers that restrict  
10 transit eligibility for all public transportation services to  
11 the elderly and persons with disabilities. State funding  
12 available in tier one is calculated by multiplying the available  
13 urban funding by the population of elderly and persons with  
14 disabilities in tier one providers, divided by the service  
15 eligible population of urbanized areas receiving funding under  
16 this subchapter. Tier two will include transit providers that  
17 provide any service to the general population. The funds for  
18 tier two will be the remaining balance of the available funds  
19 after the funds for the tier one have been allocated. Funds  
20 within each tier will be allocated to transit providers based on  
21 §31.11(b)(1)(B) and (C). The proposal will assist in the  
22 allocation of available funding by more accurately reflecting  
23 the nature of the service provided. The proposal will also  
24 reflect the requirements of state and federal law and will  
25 reflect an assessment of public transportation provider

1 efficiency, effectiveness, and safety.

2  
3 Section 31.11(b)(1)(B) and (C) propose that any further  
4 distribution of state funds allocated to urban areas be based on  
5 the relative proportion of urbanized area population and a  
6 weighted average of four performance criteria: local funds per  
7 operating expense; ridership per capita; ridership per revenue  
8 mile and revenue miles per operating expense. The relative  
9 proportion of urbanized area is intended to capture the need of  
10 the transit operator, and the weighted average of the four  
11 criteria is intended to capture the performance of the transit  
12 operator. The new provisions propose that the allocation of  
13 transportation funding will be based on 80% need and 20%  
14 performance for fiscal year 2007 (the second year of the 2006-  
15 2007 biennium); 65% need and 35% performance for the 2008-2009  
16 biennium; and 50% need and 50% performance for each biennium  
17 thereafter. This proposal will further emphasize the  
18 performance of individual public transportation providers in  
19 allocating funding. The commission recognizes performance as an  
20 important aspect of providing public transportation services in  
21 an effective and efficient manner, and wishes to increase the  
22 emphasis on performance in the allocation of transportation  
23 funding as part of the department's plan to improve statewide  
24 transportation, enhance safety, and improve air quality.

25

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

11  
12 Section 31.11(b)(1) proposes to change the method for calculating  
13 the criterion called "ridership per capita." Formerly, for  
14 urban areas with populations greater than 199,999, this  
15 criterion was adjusted to limit the impact of the population to  
16 199,999. The department proposes to repeal the provision that  
17 defines this criterion. The impact would be to use the total  
18 applicable population, and therefore calculate more fairly this  
19 performance indicator for those providers in areas with  
20 populations greater than 199,999. The department further  
21 proposes that state funds performance criteria for the urban  
22 areas be based on the following weighted criteria: 30% local  
23 funds per operating expense, 20% ridership per capita, 30%  
24 ridership per revenue mile, and 20% revenue miles per operating  
25 expense. This amendment to the formula would add two new

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

10

11 The department proposes to repeal provisions that gave the  
12 commission the authority to allocate a portion of the funds to  
13 address strategic priorities. This proposed amendment would  
14 help ensure all funds in these programs would be allocated  
15 according to the established formula, while retaining the  
16 requirement that recipients of funding under this subparagraph  
17 be in good standing with the department.

18

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

1 and 25% land area is intended to capture the need of the transit  
2 operator, and application of the equally weighted criteria is  
3 intended to capture performance of the transit operator. The  
4 new provisions propose that the allocation of transportation  
5 funding will be based on 80% need and 20% performance for fiscal  
6 years 2007 and 2008; and 65% need and 35% performance for fiscal  
7 year 2009 and each fiscal year thereafter. This change would  
8 increase the emphasis on performance, and reward providers who  
9 improve the efficiency or effectiveness of their service.

10  
11 Section 31.11(b)(2) further proposes that the performance  
12 criteria for the rural areas be changed. Currently, the formula  
13 considers local funds per operating expense, operating expenses  
14 per mile, and operating expense per passenger. The department  
15 proposes to change the measure of operating expense per  
16 passenger to passengers per revenue mile, and the measure of  
17 operating expense per mile to revenue miles per operating  
18 expense. The relative weights of the three criteria will not  
19 change, but will remain at one third each for the following  
20 criteria: local funds per operating expense, ridership per  
21 revenue mile and revenue miles per operating expense. The  
22 proposal will provide a measure of service effectiveness. It is  
23 an acknowledged goal of the commission to improve service  
24 effectiveness, which represents an increase in services provided  
25 to the public.

1

2 Section 31.11(c) proposes that annual adjustments be limited to  
3 a maximum 10% decrease from year to year for both the urban and  
4 rural providers to provide funding stability. The purpose of  
5 this change is to assist public transportation providers in  
6 planning for future year funding allocations and enabling  
7 continuity of service. The department further proposes that  
8 consideration be made to account for changes in the relative  
9 purchasing power of the amounts from year-to-year. This intent  
10 is accomplished by amending the provisions concerning allocation  
11 of excess funds to include adjustment due to changes in  
12 purchasing power as an eligible consideration. The department  
13 also proposes to reset the base year to the state fiscal  
14 biennium 2006-2007.

15

16 Section 31.36, the Title 49 USC 5311 Grant Program, proposes  
17 changes to the current formula and also reflects the federal  
18 statutory requirement that the department consult with intercity  
19 bus service providers.

20

21 Subsections 31.36(g)(2)(A) and (B) propose that federal funds  
22 for the rural providers be allocated based on a figure that  
23 represents 75% population and 25% land area, relative to all  
24 other rural public transportation providers and on an equally  
25 weighted formula of three criteria: local funds per operating

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

1 effectiveness, which represents an increase in services provided  
2 to the public.

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

16  
17 Section 31.36(g)(1)(B) proposes amendments concerning inter-city  
18 bus regulation in order to reflect changes to federal statutes,  
19 which now require the state to consult with the intercity bus  
20 service providers under certain circumstances. The changes were  
21 enacted in "Safe, Accountable, Flexible, Efficient  
22 Transportation Equity Act: A Legacy for Users," known as  
23 "SAFETEA-LU."

24  
25 The Public Transportation Advisory Committee (PTAC) has met

1 numerous times to discuss the changes to the existing formulas  
2 and rules, and to make recommendations to the commission. Four  
3 PTAC committee members represent a diverse cross-section of  
4 public transportation providers; three members represent a  
5 diverse cross-section of public transportation users; three  
6 members represent the general public; and one member is  
7 designated to have experience in the transportation of clients  
8 of health and human services programs. Advice and  
9 recommendations expressed by the committee provide the  
10 department and the commission with a broader perspective  
11 regarding public transportation matters that will be considered  
12 in formulating department policies.

13  
14 PTAC's duties include advising the commission on the needs and  
15 problems of the state's public transportation providers,  
16 including recommending methods for allocating state public  
17 transportation funds, and commenting on proposed rules or rule  
18 changes involving public transportation matters during their  
19 development and prior to final adoption.

20  
21 PTAC met on March 9, 2006, and by motion recommended to the  
22 commission all of the above amendments in the allocation funding  
23 formula.

24

25 FISCAL NOTE

1 James Bass, Chief Financial Officer, has determined that for  
2 each of the first five years the amendments as proposed are in  
3 effect, there will be no fiscal implications for state or local  
4 governments as a result of enforcing or administering the  
5 amendments. There are no anticipated economic costs for persons  
6 required to comply with the sections as proposed.

7

8 Eric L. Gleason, Director, Public Transportation Division has  
9 certified that there will be no significant impact on local  
10 economies or overall employment as a result of enforcing or  
11 administering the amendments.

12

13 PUBLIC BENEFIT

14 Mr. Gleason has also determined that for each year of the first  
15 five years the sections are in effect, the public benefit  
16 anticipated as a result of enforcing or administering the  
17 amendments will be a more fair and equitable allocation of  
18 public transportation funding as administered by these  
19 subchapters, as well as more fully implementing current state  
20 and federal law to improve the efficiency, effectiveness and  
21 safety of public transportation providers and to increase the  
22 availability of transportation services to the public. There  
23 will be no adverse economic effect on small businesses.

24

25

1 PUBLIC HEARING

2 Pursuant to the Administrative Procedure Act, Government Code,  
3 Chapter 2001, the Texas Department of Transportation will  
4 conduct a public hearing to receive comments concerning the  
5 proposed rules. The public hearing will be held at 1:30 p.m. on  
6 Thursday, May 4, 2006, in the first floor hearing room of the  
7 Dewitt C. Greer State Highway Building, 125 East 11th Street,  
8 Austin, Texas and will be conducted in accordance with the  
9 procedures specified in 43 TAC §1.5. Those desiring to make  
10 comments or presentations may register starting at 1:00 p.m.  
11 Any interested persons may appear and offer comments, either  
12 orally or in writing; however, questioning of those making  
13 presentations will be reserved exclusively to the presiding  
14 officer as may be necessary to ensure a complete record. While  
15 any person with pertinent comments will be granted an  
16 opportunity to present them during the course of the hearing,  
17 the presiding officer reserves the right to restrict testimony  
18 in terms of time and repetitive content. Organizations,  
19 associations, or groups are encouraged to present their commonly  
20 held views and identical or similar comments through a  
21 representative member when possible. Comments on the proposed  
22 text should include appropriate citations to sections,  
23 subsections, paragraphs, etc. for proper reference. Any  
24 suggestions or requests for alternative language or other  
25 revisions to the proposed text should be submitted in written

1 form. Presentations must remain pertinent to the issues being  
2 discussed. A person may not assign a portion of his or her time  
3 to another speaker. Persons with disabilities who plan to  
4 attend this meeting and who may need auxiliary aids or services  
5 such as interpreters for persons who are deaf or hearing  
6 impaired, readers, large print or Braille, are requested to  
7 contact Randall Dillard, Director, Public Information Office,  
8 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at  
9 least two working days prior to the hearing so that appropriate  
10 services can be provided.

11

12 SUBMITTAL OF COMMENTS

13 Written comments on the proposed amendments may be submitted to  
14 Eric Gleason, Public Transportation Division, Texas Department  
15 of Transportation, 125 East 11th Street, Austin, Texas 78701-  
16 2483. The deadline for receipt of comments is 5:00 p.m. on May  
17 15, 2006.

18

19 STATUTORY AUTHORITY

20 The amendments are proposed under Transportation Code, §201.101,  
21 which provides the commission with the authority to establish  
22 rules for the conduct of the work of the department, and  
23 Transportation Code, §456.022, which requires the commission to  
24 adopt rules establishing a formula allocating funds among  
25 eligible public transportation providers.

- 1
- 2 CROSS REFERENCE TO STATUTE
- 3 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 ~~[those 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. ~~[If the urban transit district is~~  
18 ~~in good standing with the department and has no deficiencies and~~  
19 ~~no findings of noncompliance, 20% will be awarded under clause~~  
20 ~~(i) or (ii) of this subparagraph as follows].~~ An urban transit  
21 district is eligible for funding under this subparagraph if it  
22 is in good standing with the department and has no deficiencies  
23 and no findings of noncompliance.

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[~~7~~ ~~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) [~~(G)~~] 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~~~~

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.