

1 SUBCHAPTER D. TRANSPORTATION FUNDING

2 §16.151. Long-Term Planning Assumptions.

3 (a) Development. The department, in cooperation with  
4 metropolitan planning organizations (MPO), will develop mutually  
5 acceptable assumptions for the purposes of long-range federal  
6 and state funding forecasts that are consistent with the project  
7 selection criteria prescribed under §16.105(d) of this chapter  
8 (relating to Unified Transportation Program (UTP)). The  
9 department and each planning organization will use those funding  
10 assumptions to guide development of the metropolitan  
11 transportation plans and statewide long-range transportation  
12 plan under §16.53 and §16.54 of this chapter (relating to  
13 Metropolitan Transportation Plan (MTP) and Statewide Long-Range  
14 Transportation Plan (SLRTP), respectively).

15 (b) Factors. The assumptions will include the following  
16 factors:

17 (1) anticipated level of available state gas tax revenues  
18 to be deposited to the credit of the state highway fund;

19 (2) anticipated level of registration fees and other  
20 state non-gas tax revenues to be deposited to the credit of the  
21 state highway fund and the Texas Mobility Fund;

22 (3) anticipated level of federal transportation funding;  
23 and

1           (4) other factors considered appropriate by the  
2 commission for projection of available revenue.

3           (c) Optional factors. In addition to the funding forecasts  
4 developed under subsection (b) of this section, an MPO may, in  
5 order to guide development of a separate supplement to the MPO's  
6 metropolitan transportation plan and its portion of the  
7 statewide long-range transportation plan, also include  
8 reasonable funding assumptions based on local funding options  
9 and contingent state, federal, and local funding sources.

10           (1) The supplement must:

11           (A) clearly identify and separate the funding forecasts  
12 developed by the department under subsection (b) of this section  
13 from the forecasts using assumptions based on local funding  
14 options and contingent funding sources;

15           (B) describe the rationale for incorporating each  
16 additional funding option and source; and

17           (C) be approved by the MPO policy board.

18           (2) The MPO will cooperate with the department in  
19 development of the additional funding assumptions.

20

21 §16.152. Cash Flow Forecast.

22           (a) Forecast. On or before September 1 of each year, the  
23 department's chief financial officer will issue a cash flow

1 forecast for each source of funding that covers a period of not  
2 less than the 20 years following the date the forecast is issued  
3 and is based on the funding assumptions developed under §16.151  
4 of this subchapter (relating to Long-Term Planning Assumptions).

5 (b) Requirements. The forecast must identify:

6 (1) all sources of funding available for transportation  
7 projects and projects involving aviation, public transportation,  
8 rail, and the state's waterways and coastal waters, including  
9 bond proceeds; and

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

12 (c) First two years. The first year or two years of the  
13 forecast, as appropriate, must be based on the amounts  
14 appropriated by the legislature to the department for that  
15 period.

16 (d) Updates. The department's chief financial officer will  
17 update the forecast more frequently than annually if significant  
18 changes in the department's funding occur.

19 (e) Publication. Each cash flow forecast and update will  
20 be available on the department's website for viewing by the  
21 public and the documents will be available for review at each of  
22 the district offices and at the department's Finance Division  
23 offices in Austin.

1 (f) Uses of forecast. The commission will use the cash  
2 flow forecast to estimate funding levels for each year, to  
3 determine the annual amount of funding in each of the program  
4 funding categories described in §16.153 of this subchapter  
5 (relating to Funding Categories), and to allocate funding to the  
6 districts, metropolitan planning organizations, and other  
7 authorized entities in accordance with §16.154 of this  
8 subchapter (relating to Transportation Allocation Funding  
9 Formulas).

10 (g) Funding definition. In this subchapter, unless the  
11 context clearly indicates otherwise, "funds" or "funding" means  
12 the estimates of federal, state, and local money reasonably  
13 expected to be available for expenditure on transportation  
14 projects and projects involving aviation, public transportation,  
15 rail, and the state's waterways and coastal waters during the  
16 relevant period.

17

18 §16.153. Funding Categories.

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

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

4           (A) Preventive maintenance - minor roadway  
5 modifications to improve operations and safety; and

6           (B) Rehabilitation - installation, rehabilitation,  
7 replacement, and maintenance of pavement, bridges, traffic  
8 control devices, traffic management systems, and ancillary  
9 traffic devices;

10          (2) Category 2 Metropolitan and Urban Corridor Projects -  
11 mobility and added capacity projects along a corridor that  
12 improve transportation facilities in order to decrease travel  
13 time and the level or duration of traffic congestion, and to  
14 increase the safe and efficient movement of people and freight  
15 in metropolitan and urbanized areas;

16          (3) Category 3 Non-Traditionally Funded Transportation  
17 Projects - transportation related projects that qualify for  
18 funding from sources not traditionally part of the state highway  
19 fund including state bond financing under programs such as  
20 Proposition 12 (General Obligation Bonds), pass-through toll  
21 financing, unique federal funding, regional toll revenue, and  
22 local participation funding;

23          (4) Category 4 Statewide Connectivity Corridor Projects -

1 mobility and added capacity projects on major state highway  
2 system corridors which provide statewide connectivity between  
3 urban areas and corridors, to create a highway connectivity  
4 network composed of the Texas Highway Trunk System, National  
5 Highway System, and connections from those two systems to major  
6 ports of entry on international borders and Texas water ports;

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

11 (6) Category 6 Structures Replacement and  
12 Rehabilitation - replacement and rehabilitation of deficient  
13 existing bridges located on the public highways, roads, and  
14 streets in the state, construction of grade separations at  
15 existing highway-railroad grade crossings, and rehabilitation of  
16 deficient railroad underpasses on the state highway system;

17 (7) Category 7 Metropolitan Mobility and Rehabilitation  
18 (TMA) - transportation needs within the boundaries of designated  
19 metropolitan planning areas of metropolitan planning  
20 organizations located in a transportation management area;

21 (8) Category 8 Safety - safety related projects both on  
22 and off the state highway system including the federal Highway  
23 Safety Improvement Program, Railway-Highway Crossing Program,

1 Safety Bond Program, Safe Routes To School Program, and High  
2 Risk Rural Roads Program;

3 (9) Category 9 Transportation Enhancement -  
4 transportation related projects, including:

5 (A) categories outlined in federal law; and

6 (B) building new safety rest areas and visitor centers  
7 along the state highway system;

8 (10) Category 10 Supplemental Transportation Projects -  
9 transportation related projects that do not qualify for funding  
10 in other categories, including landscape and aesthetic  
11 improvement, erosion control and environmental mitigation,  
12 construction and rehabilitation of roadways within or adjacent  
13 to state parks, fish hatcheries, and similar facilities,  
14 replacement of railroad crossing surfaces, maintenance of  
15 railroad signals, construction or replacement of curb ramps for  
16 accessibility to pedestrians with disabilities, and  
17 miscellaneous federal programs;

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

21 (12) Category 12 Strategic Priority - projects with  
22 specific importance to the state including those that generally  
23 promote economic opportunity, increase efficiency on military

1 deployment routes or to retain military assets in response to  
2 the federal military base realignment and closure reports,  
3 maintain the ability to respond to both man-made and natural  
4 emergencies, and provide pass-through toll financing for local  
5 communities.

6 (b) Program funding categories for other modes of  
7 transportation and transportation infrastructure. The ten-year  
8 unified transportation program described in §16.105 of this  
9 chapter (relating to Unified Transportation Program (UTP)) will  
10 contain the following program funding categories for aviation,  
11 public transportation, rail, and the state's waterways and  
12 coastal waters projects:

13 (1) Aviation Capital Improvement Program - projects based  
14 on the anticipated funding levels of the Federal Aviation  
15 Administration Airport Improvement Program and the Texas  
16 Aviation Facilities Development Program for general aviation  
17 airport development in Texas;

18 (2) Public Transportation - multimodal related projects  
19 based on the anticipated federal funding levels for public  
20 transportation including fixed route city bus service, rural  
21 demand response service, special transit service for elderly and  
22 persons with disabilities, and intercity bus service from city  
23 to city;

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

3           (4) State waterways and coastal waters - lands,  
4 easements, and rights of way for the widening, deepening, and  
5 expansion of the main channel of the Gulf Intracoastal Waterway  
6 (GIWW), including beneficial use projects of dredged material,  
7 and other maritime related projects.

8           (c) Determination of funding allocations. The commission  
9 will determine, subject to the mandates of state and federal law  
10 and specific requirements contained in other chapters of this  
11 title for programs and projects described in subsection (b) of  
12 this section, the amount of funds to be allocated to each  
13 program funding category for the appropriate period of time.

14

15 §16.154. Transportation Allocation Funding Formulas.

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

22           (1) Category 1 Preventive Maintenance and  
23 Rehabilitation - will be allocated to all districts according to

1 the following formulas:

2 (A) Preventive maintenance.

3 (i) Ninety-eight percent for roadway maintenance with  
4 65 percent based on on-system lane miles, and 33 percent based  
5 on the pavement distress score Pace factor; and

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

8 (B) Rehabilitation. Thirty-two and one half percent  
9 based on three-year average lane miles of pavement distress  
10 scores less than 70, 20 percent based on on-system vehicle miles  
11 traveled per lane mile, 32.5 percent based on equivalent single  
12 axle load miles for on-system, off-system, and interstate, and  
13 15 percent based on the pavement distress score Pace factor;

14 (2) Category 2 Metropolitan and Urban Corridor Projects -  
15 will be allocated to MPOs in the following manner:

16 (A) 87 percent to MPOs operating in areas that are  
17 transportation management areas, according to the following  
18 formula: 30 percent based on total vehicle miles traveled on and  
19 off the state highway system, 17 percent based on estimated  
20 population within the boundaries of the metropolitan planning  
21 area using data derived from the most recent census provided by  
22 the U.S. Bureau of the Census (census population), 10 percent  
23 based on lane miles on-system, 14 percent based on truck vehicle

1 miles traveled on-system, 7 percent based on percentage of  
2 census population below the federal poverty level, 15 percent  
3 based on congestion, and 7 percent based on fatal and  
4 incapacitating vehicle crashes;

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

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

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

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

4 (C) Strategic corridors - strategic corridor additions  
5 to the state highway network;

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

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

14 (6) Category 9 Transportation Enhancement - One-half of  
15 the funds in this category will be allocated to MPOs operating  
16 in transportation management areas based on estimated population  
17 within the boundaries of the metropolitan planning area using  
18 data derived from the most recent census provided by the U.S.  
19 Bureau of the Census; and

20 (7) Category 11 District Discretionary - will be  
21 allocated to all districts based on state legislative mandates,  
22 but if there is no mandate or the amount of available funding in  
23 this category exceeds the minimum required by a mandate, the

1 funding allocation for this category or the excess funding, as  
2 applicable, will be allocated according to the following  
3 formula: 70 percent based on annual on-system vehicle miles  
4 traveled, 20 percent based on annual on-system lane miles, and  
5 10 percent based on annual on-system truck vehicle miles  
6 traveled.

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

15 (1) determining the district with the highest distress  
16 score;

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

19 (3) totaling the deviations for all districts as  
20 determined by subsection (b)(2) of this section.

21 (c) Non-formula allocations. The commission, subject to  
22 the mandates of state and federal law and specific requirements  
23 contained in other chapters of this title for programs and

1 projects described in subsection (a) of this section, will  
2 determine the amount of funding to be allocated to a district,  
3 metropolitan planning organization, political subdivision,  
4 governmental agency, local governmental body, or recipient of a  
5 governmental transportation grant, from each of the following  
6 program funding categories described in §16.153 of this  
7 subchapter:

8 (1) Category 3 Non-Traditionally Funded Transportation  
9 Projects;

10 (2) Category 6 Structures Replacement and Rehabilitation;

11 (3) Category 8 Safety;

12 (4) Category 9 Transportation Enhancement - one-half of  
13 the funds in this category will be allocated under this  
14 subsection;

15 (5) Category 10 Supplemental Transportation Projects;

16 (6) Category 12 Strategic Priority;

17 (7) Aviation Capital Improvement Program;

18 (8) Public Transportation;

19 (9) Rail; and

20 (10) State waterways and coastal waters.

21 (d) Formula revisions. The commission will review and, if  
22 determined appropriate, revise both the formulas and criteria  
23 for allocation of funds under subsections (a) - (c) of this

1 section at least as frequently as every four years.

2

3 §16.155. Surplus Revenue and Contract Payments Not Allocated by  
4 Formula. Revenue to which Transportation Code, Chapter 228  
5 applies is allocated in accordance with that chapter and is not  
6 considered revenue to be allocated by a formula under §16.154 of  
7 this subchapter (relating to Transportation Allocation Funding  
8 Formulas).

9

10 §16.156. Limitation on Allocation of Funds.

11 (a) Toll project conditions. Neither the commission nor  
12 the department may require that a toll project be included in a  
13 region's transportation plan or program as a condition for the  
14 allocation of funds for the construction of projects in the  
15 region.

16 (b) Limitations on allocation decrease. Neither the  
17 commission nor the department may:

18 (1) revise a formula as provided in the unified  
19 transportation program under §16.105 of this chapter (relating  
20 to Unified Transportation Program (UTP)), or a successor  
21 program, in a manner that results in a decrease of an allocation  
22 to a district or metropolitan planning organization (MPO)  
23 because of:

1 (A) the failure of a region to include toll projects in  
2 a region's transportation plan or program;

3 (B) participation by a political subdivision in the  
4 funding of a transportation project in the region, including the  
5 use of money collected in a transportation reinvestment zone  
6 under Transportation Code, §§222.106 or 222.107; or

7 (C) payments, project savings, refinancing dividends,  
8 and any other revenue received by the commission or the  
9 department under a comprehensive development agreement and used  
10 to finance the construction, maintenance, or operation of  
11 transportation projects or air quality projects in the region;  
12 or

13 (2) take any other action that would reduce funding  
14 allocated to a district or MPO without the prior consent of the  
15 MPO because of:

16 (A) the failure of a region to include toll projects in  
17 a region's transportation plan or program; or

18 (B) receipt by a region of payments, project savings,  
19 refinancing dividends, and any other revenue received by the  
20 commission or the department under a comprehensive development  
21 agreement; or

22 (C) the need of another district or MPO for increased  
23 funding to complete a pending project.

1 (c) Financial assistance for toll projects. Nothing in  
2 this section precludes the commission or the department from  
3 using funds to design, develop, finance, construct, maintain,  
4 repair, or operate, or assist in the design, development,  
5 financing, construction, maintenance, repair, or operation of a  
6 toll project in a region.

7

8 §16.157. Use of Allocated Funds. The funds allocated to a  
9 district or metropolitan planning organization (MPO) under  
10 §16.154 of this subchapter (relating to Transportation  
11 Allocation Funding Formulas) may be used to:

12 (1) pay project costs, provide toll equity, or make  
13 payments under a pass-through toll agreement, for selected  
14 transportation projects; or

15 (2) fund operation costs of an MPO in accordance with  
16 §16.52 of this chapter (relating to Unified Planning Work  
17 Program (UPWP)).

18

19 §16.158. Encumbrance of Allocated Funds. The allocation of  
20 funds to a district or metropolitan planning organization will  
21 be encumbered in an amount equal to the district engineer's  
22 estimate of the project cost and periodically adjusted to  
23 reflect:

1 (1) the bid award;

2 (2) any change orders issued during construction that  
3 modify the bid award; and

4 (3) the total amount paid for a project when it is  
5 completed and closed out.

6

7 §16.159. Voluntary Transfer of Allocated Funds.

8 (a) Transfer of allocated funds. Under this section, a  
9 metropolitan planning organization (MPO) may voluntarily  
10 transfer funds allocated to it under §16.154 of this subchapter  
11 (relating to Transportation Allocation Funding Formulas) to  
12 another MPO.

13 (b) Transfer agreement. An agreement for the transfer of  
14 allocated funds must be written, executed by both MPOs, and  
15 approved by the executive director. The agreement must include:

16 (1) the amount of funding to be transferred and the  
17 program funding category described in §16.153 of this subchapter  
18 (relating to Funding Categories) from which it will be re-  
19 allocated;

20 (2) the total amount of funds to be reimbursed from  
21 allocations to the recipient MPO in future years, the applicable  
22 program funding category, the reimbursement period, and the  
23 payment schedule; and

1           (3) a description of the project or projects to be  
2 developed with the transferred funds, including the project  
3 limits, connections with other transportation facilities, and  
4 the geographic area affected.

5           (c) Commission approval. In determining whether to approve  
6 the transfer, the commission will consider the:

7           (1) transportation need for and anticipated public  
8 benefit of the transfer, including:

9           (A) possible loss of federal obligation authority or  
10 apportionment in one or more fiscal years; and

11           (B) need of the recipient MPO for increased funding to  
12 complete a pending project;

13           (2) reasonableness of the financial terms contained in  
14 the transfer agreement; and

15           (3) relationship of the transfer to furthering the  
16 purposes of this chapter.

17           (d) Reimbursement priority. The obligation of a recipient  
18 MPO to reimburse the lending MPO in accordance with the transfer  
19 agreement has priority over all other considerations relating to  
20 the allocation of future funding in the applicable program  
21 funding category to each of the participating MPOs. If, in any  
22 fiscal year, funds in the applicable program funding category  
23 are not available to the recipient MPO in an amount sufficient

1 to reimburse the scheduled payment or payments, all of the  
2 recipient MPO's available funds in that category for that fiscal  
3 year will be re-allocated to the lending MPO. Any remaining  
4 unpaid balance of the scheduled reimbursement has priority in  
5 the next fiscal year over all other considerations relating to  
6 the recipient MPO's allocation of funding from the applicable  
7 program funding category. The priorities described in this  
8 subsection may be changed by written consent of all parties to  
9 the transfer agreement.

10 (e) Federal requirements. The transfer and reimbursement  
11 of funds under this section are subject to all applicable  
12 federal requirements.

13

14 §16.160. Funding Allocation Adjustments.

15 (a) Changes in funding. Changes in the allocation of funds  
16 under §16.153 or §16.154 of this subchapter (relating to Funding  
17 Categories and Transportation Allocation Funding Formulas,  
18 respectively) may result from significant changes in the  
19 department's funding.

20 (b) Allocation revisions. If a significant change in  
21 funding is identified by the department's chief financial  
22 officer in an updated cash flow forecast, the commission may  
23 revise the allocation of funds to each program funding category

1 or from the program funding categories to the districts and  
2 metropolitan planning organizations (MPO) and may approve:

3 (1) a specific percentage increase or decrease in the  
4 allocation of funds and, subject to the mandates of state and  
5 federal law, apply the percentage change equally to each program  
6 funding category; or

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

9 (A) total amount of the change;

10 (B) priority of the funding category based on the  
11 category's relationship to the stated commission goals as  
12 provided in the statewide long-range transportation plan under  
13 §16.54 of this chapter (relating to Statewide Long-Range  
14 Transportation Plan (SLRTP));

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

16 (D) best interests of the state.

17 (c) Adjustment of programs. After the commission approves  
18 a change in the allocation of funds to a program funding  
19 category under subsection (b) of this section, the funds  
20 allocated to individual districts and MPOs will be  
21 proportionally adjusted and the unified transportation program,  
22 statewide transportation improvement program, and metropolitan  
23 transportation improvement programs will be revised in

1 accordance with the applicable change in funding. Specific  
2 projects will be advanced or delayed in the order of the  
3 planning organization's and department's listed priorities in  
4 the applicable programs.

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

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

18 (f) Publication. Documents describing each change in the  
19 allocation of funds to a program funding category will be  
20 available for viewing by the public on the department's website  
21 and at each of the district offices and at the department's  
22 Finance Division offices in Austin.