

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

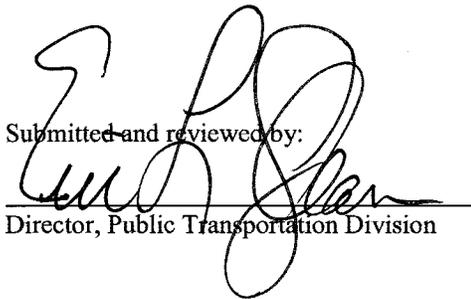
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §31.11 relating to formula program to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

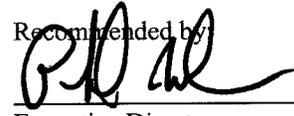
IT IS THEREFORE ORDERED by the commission that the amendments to §31.11 are adopted and are authorized for filing with the Office of the Secretary of State.

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

113041 MAR 29 12

Minute
Number

Date
Passed

Adoption Preamble

The Texas Department of Transportation (department) adopts amendments to §31.11, concerning Formula Program. The amendments to §31.11 are adopted with changes to the proposed text as published in the December 30, 2011 issue of the *Texas Register* (36 TexReg 9275).

EXPLANATION OF ADOPTED AMENDMENTS

In the General Appropriations Act, the 82nd Texas Legislature, Regular Session, 2011, appropriated additional state funds for public transportation grants that may be used to assist rural and urban transit districts with impacts resulting from the use of 2010 census data in state grant formula allocations. The amendments to §31.11 allow the Texas Transportation Commission (commission) to target the distribution of additional grant funding by adjusting the total funding amount subject to a funding split between rural and urban transit districts to \$57,482,135, which historically is the average level of appropriated state grant funds, and by adding, if funds are available, an additional allocation for systems realizing decreased funding allocations from using the 2010 census data in the need and performance based allocations portion of the formula. Also, clarification is added regarding any remaining funds to provide that the commission may award funds needed to initiate public transportation service in new designated

1 urbanized areas.

2

3 Amendments to §31.11(b) add new paragraph (1) that specifies
4 that the maximum amount of appropriated funds subject to a 35
5 percent urban and 65 percent rural transit district funding
6 split is \$57,482,135, which is the historical average biennial
7 amount of state funds appropriated for public transportation
8 grants. The addition of this new paragraph causes the
9 redesignation of the current subdivisions within subsection (b).

10

11 Amendments to §31.11(b) redesignate current paragraph (1) as
12 paragraph (1)(A) and specify the urban systems that are eligible
13 to receive state funding under this program, as stated in
14 Transportation Code, Chapter 456.

15

16 Amendments to §31.11(b) redesignate current paragraph (1)(A) as
17 paragraph (1)(A)(i) and conform the language within that clause
18 to changes made elsewhere in subsection (b).

19

20 Amendments to §31.11(b) redesignate current paragraph (1)(B) as
21 paragraph (1)(A)(ii), conform the language within that clause to
22 changes made elsewhere in subsection (b), and delete outdated
23 references to requirements for prior fiscal years.

24

25 Amendments to §31.11(b) redesignate current paragraph (1)(C) as

1 paragraph (1)(A)(iii), conform the language within that clause
2 to changes made elsewhere in subsection (b), and delete outdated
3 references to requirements for prior fiscal years. The
4 amendments also change the symbol "%" to the word "percent" to
5 conform to the style currently used for rules.

6
7 Amendments to §31.11(b) redesignate current paragraph (2) as
8 paragraph (1)(B) and clarify that the appropriated funds
9 allocated under subsection (b)(1) to rural transit districts
10 will be allocated only to rural transit districts in
11 nonurbanized areas.

12
13 Amendments to §31.11(b) redesignate current paragraph (2)(A) as
14 paragraph (1)(B)(i), delete outdated references to requirements
15 for a prior fiscal year, and change the symbol "%" to the word
16 "percent" to conform to the style currently used for rules.

17
18 Amendments to §31.11(b) redesignate current paragraph (2)(B) as
19 paragraph (1)(B)(ii) and delete outdated references to
20 requirements for a prior fiscal year.

21
22 Amendments to §31.11(b) redesignate current paragraph (3) as
23 paragraph (1)(C), redesignate divisions within that subparagraph
24 appropriately, and change the symbol "%" to the word "percent"
25 to conform to the style currently used for rules. The

1 amendments clarify that the percentages specified within the
2 subparagraph provide the maximum amounts for which a designated
3 recipient that is not included in a transit authority but that
4 is located in an urbanized area that includes one or more
5 transit authorities may use the allocated funds.

6
7 Amendments to §31.11 redesignate current subsection (c) as
8 subsection (b)(1)(D), conform the language within that
9 subparagraph to changes made in subsection (b), and change the
10 symbol "%" to the word "percent" to conform to the style
11 currently used for rules. The amendments also delete language
12 providing for the allocation of funds in excess of \$57,482,135.
13 The allocation of those funds is addressed in new §31.11(b)(2)
14 and (3).

15
16 Amendments to §31.11 add new §31.11(b)(2) that provides the
17 process to be used for determining an additional allocation for
18 systems realizing decreased funding allocations from using the
19 2010 census data in the need and performance based allocations
20 portion of the formula. The process will be used only if the
21 amount of the funds appropriated for a state fiscal biennium for
22 public transportation to which §31.11(b) applies is more than
23 \$57,482,135. The allocation will be calculated by comparing the
24 summed need and performance based allocations using the 2000
25 census data and 2010 performance data, to the summed need and

1 performance based allocations using the 2010 census data and
2 2010 performance data. Subparagraph (A) provides the allocation
3 for urban transit districts and subparagraph (B) for rural
4 transit districts. Subparagraph (C) specifies that the
5 additional allocations are not subject to new §31.11(b)(1)(D).
6 Subsection (b)(2) expires on August 31, 2017.

7
8 Amendments to §31.11 add new §31.11(b)(3) that provides for the
9 commission award of any remaining state grant funds after
10 allocations under §31.11(b)(1) and (2) have been considered. In
11 addition, clarification language is also added regarding the
12 type of awards the commission may make by including funds needed
13 to initiate public transportation service in new designated
14 urbanized areas. After an award is made under paragraph (3) it
15 is not subject to new §31.11(b)(1)(D) in succeeding fiscal
16 years.

17
18 Amendments to §31.11 redesignate current subsections (d) - (f)
19 as subsections (c) - (e). The amendments also redesignate
20 current subsection (g) as subsection (f) and delete text
21 referring to the department's districts because former district
22 personnel who were performing public transportation duties now
23 are employees of the Public Transportation Division. Finally,
24 the amendments redesignate current subsection (h) as subsection
25 (g).

1
2 The statutory duties of the Public Transportation Advisory
3 Committee (PTAC) include advising the commission on the needs
4 and problems of the state's public transportation providers,
5 including recommending methods for allocating public
6 transportation funds, and providing feedback on rule changes
7 involving public transportation matters during development and
8 prior to final adoption.

9
10 The Public Transportation Advisory Committee (PTAC) met on
11 February 9, 2012 to review the draft rules and by motion
12 recommended to the commission that the amended rules be filed
13 with the Office of the Secretary of State. PTAC also considered
14 public comment regarding the August 31, 2023 expiration date in
15 §31.11(b)(2)(D) and recommended the date be changed to
16 August 31, 2017. PTAC further recognizes the immediate need to
17 address the allocation of the additional appropriated state
18 funds and that as an advisory committee it will need to
19 reevaluate the Formula Program rules in conjunction with the
20 release of 2010 census data, any federal reauthorization, and
21 prior to the expiration date of August 31, 2017.

22
23 COMMENTS

24 The department conducted a public hearing on January 11, 2012.
25 No comments on the proposed amendments were received at the

1 public hearing.

2

3 Written comments on the proposed amendments were received from
4 Russell Devorsky of Heart of Texas Council of Governments,
5 Paulette Shelton of Fort Bend County Public Transportation
6 Programs, Vastene Olier of Colorado Valley Transit, and D'Juana
7 Davillier of South East Texas Regional Planning Commission.

8

9 Comment: The commenter from Heart of Texas Council of
10 Governments supports the rule change.

11

12 Comment: Fort Bend County Public Transportation Programs,
13 Colorado Valley Transit, and South East Texas Regional Planning
14 Commission provided written comments regarding the proposed
15 expiration date of August 31, 2023, specified in
16 §31.11(b)(2)(D). Each commenter indicated the time period until
17 the expiration date was too lengthy and suggested an earlier
18 expiration date of August 31, 2017.

19

20 Response: The department agrees with the comments and PTAC's
21 recommendation and has changed the final version of the rules in
22 §31.11(b)(2)(D) to reflect an expiration date of August 31,
23 2017.

24

1 STATUTORY AUTHORITY

2 The amendments are adopted under Transportation Code, §201.101,
3 which provides the commission with the authority to establish
4 rules for the conduct of the work of the department, and more
5 specifically, Transportation Code, §456.022, which requires the
6 commission to adopt rules establishing a formula allocating
7 funds among eligible public transportation providers.

8

9 CROSS REFERENCE TO STATUTE

10 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 amounts appropriated for public
6 transportation. This section sets out the policies, procedures,
7 and requirements for that allocation.

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

17 (1) If the appropriated amount to which this subsection
18 applies is \$57,482,135 or less, the commission will allocate 35
19 percent of the appropriated amount to urban transit districts
20 and 65 percent of the appropriated amount to rural transit
21 districts.

22 (A) [(+)] Urban funds available under this section will
23 be allocated to urban transit districts that are designated

1 recipients or transit providers in urbanized areas that are not
2 served by an authority and to designated recipients that
3 received state transit funding during the fiscal biennium ending
4 August 31, 1997, that are not served by an authority but are
5 located in urbanized areas that include one or more authorities.
6 A transit authority is ineligible to participate in the formula
7 program provided by this section unless the authority was
8 created under Transportation Code, Chapter 453 or former Article
9 1118z, Revised Statutes, by a municipality having a population
10 of less than 200,000. [~~Any local governmental entity having the~~
11 ~~power to operate or maintain a public transportation system,~~
12 ~~except an authority, may receive formula program funds.~~] The
13 commission will distribute the money in the following manner.

14 (i) [~~(A)~~] Urban funds allocated under this paragraph
15 will be divided into two tiers. Tier one will include urban
16 transit districts that restrict transit eligibility for all
17 public transportation services to the elderly and persons with
18 disabilities. Funding available in tier one is calculated by
19 multiplying the available urban funding by the population of
20 elderly and persons with disabilities in tier one providers,
21 divided by the service eligible population of urbanized areas
22 receiving funding under this subchapter. Tier two will include
23 urban transit districts that provide any service to the general

1 population. The funds for tier two will be the remaining
2 balance of the available funds after the funds for tier one have
3 been allocated. [~~Funds within each tier will be allocated to~~
4 ~~urban transit districts based on subparagraphs (B) and (C) of~~
5 ~~this paragraph~~].

6 (ii) [~~(B)~~] One-half of the funds allocated within
7 each tier provided under clause (i) of this subparagraph will be
8 allocated to urban transit districts as a need based allocation
9 [~~The need based allocation is determined as follows: 65% for~~
10 ~~the 2008—2009 biennium, and 50 % for each biennium~~
11 ~~thereafter,~~] based on population by using the latest census data
12 available from, and as defined by, the U.S. Census Bureau for
13 each urbanized area relative to the sum of all urbanized areas.
14 Any urban transit district whose urbanized area population is
15 200,000 or greater will have the population adjusted to reflect
16 a population level of 199,999; except that any urban transit
17 district receiving funds in tier one, as described in clause (i)
18 of this subparagraph [~~(A) of this paragraph~~], will have the
19 population adjusted to reflect a population level of 199,999, or
20 the urbanized area population of the place as defined by the
21 U.S. Census Bureau, whichever is less.

22 (iii) [~~(C)~~] One-half of the funds allocated within
23 each tier provided under clause (i) of this subparagraph will be

1 allocated to urban transit districts as a performance based
2 allocation [~~The performance based allocation will be 35% for the~~
3 ~~2008 – 2009 biennium, and 50 % for each biennium thereafter~~].
4 An urban transit district is eligible for funding under this
5 clause [~~subparagraph~~] if it is in good standing with the
6 department and has no deficiencies and no findings of
7 noncompliance. The commission will award the funding based on
8 the following weighted criteria: 30 percent [~~30%~~] for local
9 funds per operating expense, 20 percent [~~20%~~] for ridership per
10 capita, 30 percent [~~30%~~] for ridership per revenue mile, and 20
11 percent [~~20%~~] for revenue miles per operating expense. These
12 criteria may be calculated using the urban transit district's
13 annual audit for the previously completed fiscal year, data from
14 other sources, or from the department's records.

15 (B) [~~(2)~~] Rural funds allocated under this paragraph
16 [~~available under this section~~] will be allocated only to rural
17 transit districts in nonurbanized areas[~~. Any eligible~~
18 ~~recipient may receive formula program funds. The funding will~~
19 ~~be allocated to rural transit districts~~] based upon need and
20 performance as described in clauses (i) and (ii) of this
21 subparagraph [~~subparagraphs (A) and (B) of this paragraph~~].

22 (i) [~~(A)~~] Sixty-five percent of the funding under
23 this subparagraph will be allocated to rural transit districts

1 as a need based allocation [~~The need based allocation is~~
2 ~~determined as follows: 80% will be awarded for fiscal year 2008,~~
3 ~~and 65% for each fiscal year thereafter]~~ giving consideration to
4 population weighted at 75 percent [75%] and on land area
5 weighted at 25 percent [25%] for each nonurbanized area relative
6 to the sum of all nonurbanized areas.

7 (ii) [~~(B)~~] Thirty-five percent of the funding under
8 this subparagraph will be allocated to rural transit districts
9 as a performance based allocation [~~The performance based~~
10 ~~allocation will be 20% for fiscal year 2008, and 35% for each~~
11 ~~biennium thereafter)]. A rural transit district is eligible for
12 funding under this clause [~~subparagraph~~] if it is in good
13 standing with the department and has no deficiencies and no
14 findings of noncompliance. The commission will award the
15 funding by giving equal consideration to local funds per
16 operating expense, ridership per revenue mile, and revenue miles
17 per operating expense. These criteria may be calculated using
18 the rural transit district's annual audit for the previously
19 completed fiscal year, data from other sources, or from the
20 department's records.~~

21 (C) [~~(3)~~] Funds allocated under this section and any
22 local funds may be used for any transit-related activity except
23 that a designated recipient not included in a transit authority

1 but located in an urbanized area that includes one or more
2 transit authorities may [~~only~~] use funds allocated under this
3 section only to provide up to:

4 (i) [~~(A)~~] 65 percent [~~65%~~] of the local share
5 requirement for federally financed projects for capital
6 improvements;

7 (ii) [~~(B)~~] 50 percent [~~50%~~] of the local share
8 requirement for projects for operating expenses and
9 administrative costs;

10 (iii) [~~(C)~~] 50 percent [~~50%~~] of the total cost of a
11 public transportation capital improvement, if the designated
12 recipient certifies that federal money is unavailable for the
13 proposed project and the commission finds that the proposed
14 project is vitally important to the development of public
15 transportation in the state; and

16 (iv) [~~(D)~~] 65 percent [~~65%~~] of the local share
17 requirement for federally financed planning activities.

18 (D) [~~(e) Funding stability.~~] Subject to available
19 appropriation, no award to an urban or rural transit district
20 under this paragraph [~~section~~] will be less than 90 percent
21 [~~90%~~] of the award to that transit district for the previous
22 fiscal year. All allocations under subsection (b)(1)(A) and (B)
23 [~~(b)(1) and (2)~~] of this section are subject to revision to

1 comply with this standard. [~~If available funding exceeds~~
2 ~~\$57,482,135, 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 funding stability allocation process in~~
12 ~~succeeding fiscal years.]~~

13 (2) If the appropriated amount to which this subsection
14 applies exceeds \$57,482,135, the commission will allocate
15 \$57,482,135 in accordance with paragraph (1) of this subsection
16 and will allocate all or a part of the excess amount, as
17 necessary to mitigate changes in formula allocations described
18 by subparagraph (A) or (B) of this paragraph, as appropriate,
19 resulting from the application of the 2010 census data.

20 (A) For an urban transit district, a formula allocation
21 impact may be mitigated if, using 2010 performance data, the
22 total allocation to the district for the need based allocation,
23 as described in subsection (b)(1)(A)(ii) of this section, plus

1 the performance based allocation, as described in subsection
2 (b)(1)(A)(iii) of this section, obtained using 2010 census data,
3 is less than the total corresponding allocation to the district
4 obtained using 2000 census data.

5 (B) For a rural transit district, a formula allocation
6 impact may be mitigated if, using 2010 performance data, the
7 total allocation to the district for the need based allocation,
8 as described in subsection (b)(1)(B)(i) of this section, plus
9 the performance based allocation, as described in subsection
10 (b)(1)(B)(ii) of this section, obtained using 2010 census data,
11 is less than the total corresponding allocation obtained using
12 2000 census data.

13 (C) Allocations under this paragraph are not subject to
14 subsection (b)(1)(D) of this section.

15 (D) This paragraph expires August 31, 2017.

16 (3) The commission will award on a pro rata basis,
17 competitively, or using a combination of both any appropriated
18 amount that remains after other allocations made under this
19 subsection. In awarding funds under this paragraph,
20 consideration may be given to coordination and technical support
21 activities, compensation for unforeseen funding anomalies,
22 assistance with eliminating waste and ensuring efficiency,
23 maximum coverage in the provision of public transportation

1 services, funds needed to initiate public transportation service
2 in new designated urbanized areas, adjustment for reductions in
3 purchasing power, reductions in air pollution, or any other
4 appropriate factor. Awards under this paragraph are not subject
5 to subsection (b)(1)(D) of this section in succeeding fiscal
6 years.

7 (c) [~~(d)~~] Change in service area. If part of an urban or
8 rural transit district's service area is changed due to
9 declaration by the U.S. [~~United States~~] Census Bureau, or if the
10 service area is otherwise altered, the department and the urban
11 or rural transit district shall negotiate an appropriate
12 adjustment in the funding awarded to that urban or rural transit
13 district for that funding year or any subsequent year, as
14 appropriate. This negotiated adjustment is not subject to
15 subsection (b)(1)(D) [~~the minimum and maximum standards set~~
16 ~~forth in subsection (e)~~] of this section.

17 (d) [~~(e)~~] Unobligated funds. Any money under this section
18 that the designated recipient has not applied for before the
19 November commission meeting in the second year of a state fiscal
20 biennium will be administered by the commission under the
21 discretionary program described in §31.13 of this subchapter
22 (relating to Discretionary Program).

23 (e) [~~(f)~~] Returned funds. Any money under this section

1 that the designated recipient agrees to return to the department
2 will be administered by the commission under the discretionary
3 program described in §31.13 of this subchapter.

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

15 (g) [~~(h)~~] Project evaluation. In evaluating a project
16 under this section, the department will consider the need for
17 fast, safe, efficient, and economical public transportation and
18 the approval of the FTA, or its successor.