

1 <td>Proposed Preamble
2 The Texas Department of Transportation (department) proposes
3 amendments to §16.105, concerning Transportation Programs, and
4 §§16.152 – 16.154, and 16.160, concerning Transportation
5 Funding.

6

7 EXPLANATION OF PROPOSED AMENDMENTS

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

15

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

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

6

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

1 employees.

2

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

14

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

22

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

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

3

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

8

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

22

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

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

7

8 Amendments to §16.105(f) modify the process for administratively
9 revising the UTP. Specifically, an amendment, update, or
10 revision to the Statewide Transportation Improvement Program
11 (STIP) or the department's letting schedule that does not
12 constitute a "major change" will be considered to be an
13 administrative revision. The existing process for handling
14 administrative revisions is overly cumbersome, difficult to
15 administer and redundant, since the STIP revision process and
16 letting schedule modification process already account for these
17 types of changes.

18

19 Amendments to §16.152 distinguish between the two types of
20 financial forecasts to be used by the department for purposes of
21 planning and letting. Amendments to §16.152(a) provide that
22 the long-range financial forecast currently known as the cash
23 flow forecast will be identified as the planning cash flow
24 forecast. Amendments to §16.152(b) require the chief financial
25 officer to issue a base cash flow forecast to be used for the

1 development of the letting schedule, which will cover a period
2 of not less than two years following the date the forecast is
3 issued. The distinction between these two financial forecasts
4 is critical since the planning cash flow forecast will include
5 additional funding projections beyond those contained in the
6 base cash flow forecast. In addition, the base cash flow
7 forecast will provide constraints to the letting of projects
8 funded under allocation programs, as further described in
9 proposed amendments to §16.154(d). Amendments to §16.152(f)
10 reflect recent changes in nomenclature within the department;
11 specifically, the Finance Division is now referred to as the
12 Financial Management Division. Amendments to §16.152(g) specify
13 that the planning cash flow forecast is to be used for
14 development of the UTP.

15

16 Amendments to §16.153(a)(9) are necessary due to the transition
17 from the Transportation Alternatives Program to the
18 Transportation Alternatives Set-Aside Program, as required by
19 federal law.

20

21 Amendments to §16.153(c) address the requirements of
22 Transportation Code §201.9991, as added by HB 20, and provide
23 that the commission will use a performance-based process,
24 subject to the mandates of state and federal law, to determine
25 the amount to be allocated to each program funding category for

1 the appropriate period of time in order to achieve established
2 performance outcomes. The amendments also clarify the
3 distinction between highway program funding categories and
4 program funding categories for other modes of transportation and
5 transportation infrastructure, for purposes of determining
6 funding allocations.

7

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

22

23 Amendments to §16.154(d) provide that the letting of projects
24 funded within allocation programs is subject to the constraints
25 established by the base cash flow forecast described in

1 §16.152(b). The current language implies that all projects
2 within UTP allocation programs could be let without constraint.
3 In light of the proposed amendments to §16.152, which
4 distinguish between the two different forecasts governing the
5 planning and letting processes, this change was needed to
6 clarify that the base cash flow forecast is the constraint for
7 letting projects within allocation programs.

8

9 Amendments to §16.154(e) revise the definition of "project," for
10 purposes of listing projects in the UTP, to mean a connectivity
11 or new capacity roadway project. This change is consistent with
12 the definitions contained in Transportation Code §201.9901, as
13 added by HB 20.

14

15 Amendments to §16.154(f) clarify that the department may not
16 exceed the planning cash flow forecast in distributing funds in
17 the twelve categories of the UTP and may not exceed the base
18 cash flow forecast in distributing funds for purposes of
19 letting. These changes are necessary in light of the amendments
20 to §16.152, as previously described.

21

22 Amendments to §16.160(a) specify that changes in UTP category
23 funding levels may also result from consideration of performance
24 results. These revisions are necessary to comply with
25 Transportation Code §201.9991, as added by HB 20, which requires

1 the commission to establish a performance-based process for
2 setting funding levels for the categories of projects in the
3 UTP.

4

5 Amendments to §16.160(b) update references to the planning cash
6 flow forecast in light of the amendments to §16.152, as
7 previously described. Amendments to this section also ensure
8 that performance results are considered in a determination to
9 increase or decrease the allocation of funds to one or more
10 categories. These changes are necessary to comply with
11 Transportation Code §201.9991, as added by HB 20, which requires
12 the commission to establish a performance-based process for
13 setting funding levels for the categories of projects in the
14 UTP.

15

16 Amendments to §16.160(d) provide that significant changes to the
17 base cash flow forecast may result in changes to the letting
18 schedule in order to maintain fiscal constraint. The amendments
19 also specify that projects eligible for letting include all
20 authorized projects or allocation programs covered in the UTP
21 and STIP and that specific projects will be advanced or delayed
22 relative to the order of listed priorities in the applicable
23 programs, fund source eligibility and the completion of project
24 benchmarks sufficient to proceed to construction. These changes
25 are needed to clarify the relationship between the letting

1 schedule and the base cash flow forecast, as explained in the
2 proposed amendments to §16.152, and how changes to the letting
3 schedule will be handled in relation to the changing base cash
4 flow forecast. In addition, this language supports the
5 provisions of Transportation Code §201.809, as amended by HB 20,
6 which require the department to include performance metrics and
7 measures in the evaluation of project delivery for projects in
8 the letting schedule. The preference for allocation of funding
9 increases has been eliminated, as this process is to be governed
10 by the use of performance results in accordance with the
11 provisions of Transportation Code §201.9991, as added by HB 20.

12

13 Amendments to §16.160(f) reflect recent changes in nomenclature
14 within the department, as previously described.

15

16 FISCAL NOTE

17 Brian Ragland, Chief Financial Officer, has determined that for
18 each of the first five years in which the amendments as proposed
19 are in effect, there will be no fiscal implications for state or
20 local governments as a result of enforcing or administering the
21 amendments.

22

23 Mr. Lauren Garduño, Interim Director, Transportation Planning
24 and Programming Division, has certified that there will be no
25 significant impact on local economies or overall employment as a

1 result of enforcing or administering the amendments.

2

3 PUBLIC BENEFIT AND COST

4 Mr. Garduño has also determined that for each year of the first
5 five years in which the sections are in effect, the public
6 benefit anticipated as a result of enforcing or administering
7 the amendments will be clarity on how the department is
8 incorporating the newly-adopted strategic goals and performance-
9 based planning and forecasting processes required by HB 20 into
10 the department's UTP and letting schedule. There are no
11 anticipated economic costs for persons required to comply with
12 the sections as proposed. There will be no adverse economic
13 effect on small businesses.

14

15 SUBMITTAL OF COMMENTS

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

1 proposed amendments, or is an employee of the department.

2

3 STATUTORY AUTHORITY

4 The amendments are proposed under Transportation Code, §201.101,
5 which provides the Texas Transportation Commission (commission)
6 with the authority to establish rules for the conduct of the
7 work of the department, and more specifically, Transportation
8 Code, §201.809, which requires the commission to adopt rules to
9 develop and implement a performance-based planning and
10 programming process and performance metrics and performance
11 measures; §201.991, which requires the commission to adopt rules
12 related to the unified transportation program; and §201.9991,
13 which requires the commission to adopt rules to prioritize and
14 approve projects included in the statewide transportation plan.

15

16 CROSS REFERENCE TO STATUTE

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