

This document has been prepared as part of the Legal Pathways to Deep Decarbonization Project (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see <https://lpdd.org>.

MODEL STATE LAW TO PRIORITIZE FUNDING OF CLEANER TRANSPORTATION ALTERNATIVES¹

I. FINDING; OBJECTIVES

- a. Transportation is the leading source of carbon emissions in the United States² and [the largest][one of the largest] contributor[s] to carbon pollution in [STATE NAME]. Clean transportation is also key to many other considerations, including economic, social and equity benefits.
- b. Motorized road travel accounts for approximately three-quarters of transportation-related carbon emissions.³
- c. By promoting meaningful alternatives to motorized vehicle transportation, including projects that better connect various transportation modes and expand transportation choices, the level of motorized road travel (and the accompanying carbon emissions) can be reduced, resulting in more efficient movement of people and goods while reducing climate impacts.
- d. Historically, transportation funds have not been allocated to promote or prioritize projects that could reduce overall carbon emissions by expanding alternatives to driving, enhancing intermodal connections, and promoting low-carbon or zero-carbon transportation choices.
- e. The legislature acknowledges the urgency of adopting a transportation funding process that prioritizes considerations including environmental quality, transportation efficiency, social equity and economic development. The purpose of this Act is to establish such a prioritization process and to incentivize the funding and implementation of projects that reduce carbon emissions from the transportation sector, including providing alternatives to motorized vehicle travel, intermodal connections, and low-carbon or zero-carbon transportation choices.
- f. It is in the best interest of the public of [STATE] to adopt a standardized prioritization process to select transportation projects to receive transportation funds [disbursed pursuant to [STATUTE]/[DIRECTIVE] and/or apportioned pursuant to [STATUTE]], taking into account measurement factors computed through a defined allocation metric, as further described in this Act, in order to reduce carbon emissions, improve the efficiency of the State's transportation

¹ This model statute is designed for states that do not currently have a transportation funding prioritization process.

² See United States Environmental Protection Agency, *Sources of Greenhouse Gas Emissions* (Aug. 25, 2023), <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>

³ See Hannah Ritchie, *Cars, planes, trains: where do CO2 emissions from transport come from?* (Oct. 6, 2020), <https://ourworldindata.org/co2-emissions-from-transport>

system, enhance intermodal connections, advance social equity and economic development and reduce the environmental impacts of motorized transportation (the “**Funding Objectives**”).

II. MEASUREMENT FACTORS AND ALLOCATION METRICS

- a. **Introduction.** The [STATE FUNDING AGENCY]/[STATE LIAISON FOR FEDERAL FUNDING] shall develop and adopt [in cooperation with [STATE AGENCY]], a statewide prioritization process for the allocation of transportation funds [disbursed pursuant to [STATUTE]/[DIRECTIVE] and/or apportioned pursuant to [STATUTE]] to further the Funding Objectives. Such prioritization process shall be used to assess and select all projects eligible to receive transportation funds [disbursed pursuant to [STATUTE]/[DIRECTIVE] and/or apportioned pursuant to [STATUTE]]. An initial benchmark study that produces objective and quantifiable analyses regarding the costs and benefits of all relevant transportation modes in terms of achieving the Funding Objectives delineated in Part I, including how each such mode of transportation measures against at a minimum [three] Measurement Factors (as defined below) (the “**Benchmark Study**”) may be commissioned or conducted to support development of the statewide prioritization process. Regardless of whether a Benchmark Study is conducted, an initial standardized weighted formula shall be developed that can be used to score and rank each candidate transportation project in an objective manner across all Measurement Factors to quantifiably determine how well each candidate project could achieve the Funding Objectives.
- b. **Measurement Factors.** For purposes of this Act, the “Measurement Factors” shall include the following: (1) measurement and projection of carbon dioxide emissions, (2) measurement and projection of aggregate change in automobile vehicle miles travelled (VMT), (3) measurement and projection of the degree of utilization of public transportation or other alternatives to driving, (4) measurement and projection of the ease of access to destinations by public transportation or alternative travel modes, including homes, jobs, services, stores, schools, child and health care providers, parks, and other recreational opportunities, (5) measurement and projection of the volume of people and/or goods transported in a given time/route, (6) measurement of impacts to natural resources (e.g. destruction of tree cover, wetlands, or other carbon sinks), and (7) measurement of impacts to local air quality index (AQI) or levels of certain pollutants used to calculate AQI (ground-level ozone, PM2.5 and PM10 particle pollution, carbon monoxide, sulfur dioxide, and nitrogen dioxide). The [STATE AGENCY] may conduct such additional research to consider any additional Measurement Factors that would advance the Funding Objectives set forth in Part I. If and when any additional factor is proposed, the [STATE AGENCY] shall publish such additional factor and solicit public feedback (including opinions and comments from localities, metropolitan and rural planning organizations, transit authorities, transportation authorities, public interest groups, and other stakeholders), after which any such additional Measurement Factor may be applied going forward.

- c. **Allocation Metrics.** The [STATE AGENCY] shall assign weight to each Measurement Factor and recommend a standardized weighted formula (the “Allocation Metrics”) which weighs certain factors positively (e.g., degree of utilization of alternatives to driving) and certain factors negatively (e.g., carbon dioxide emissions)⁴ in scoring and ranking each candidate transportation project in an objective manner across all Measurement Factors to quantify and determine how well each candidate project would achieve the Funding Objectives. The [ANNUAL or BIENNIAL] adoption of the Allocation Metrics should be accompanied by a policy guideline explaining how the weighting adopted in the Allocation Metrics promotes the achievement of the Funding Objectives, such as how the Allocation Metrics can objectively and quantifiably measure which candidate project would produce the least amount of environmental impact per person transported with similar costs (e.g. vehicle miles traveled and/or carbon emissions). Similar to the revision process for the Measurement Factors, the [STATE AGENCY] shall publish any recommended update to the Allocation Metrics along with the policy justification for the updates on a [ANNUAL or BIENNIAL] basis and solicit public feedback (including opinions and comments from localities, metropolitan and rural planning organizations, transit authorities, transportation authorities, public interest groups, and other stakeholders) before adopting any updates to the Allocation Metrics for use for the following [2] year[s].
- d. **[Benchmark Study Updates.** If a Benchmark Study is conducted, in every [THIRD]/[FOURTH]/[FIFTH] Fiscal Year, the [Governor] shall include in the [Annual Budget Bill] an appropriation needed to update the study. The Benchmark Study shall begin in [MONTH] of each fiscal year in which it is conducted, and shall not last longer than [XXX] months from start to completion, including time spent soliciting public feedback. When a new Benchmark Study is in progress, transportation funding shall continue to be allocated using the existing Measurement Factors and Allocation Metrics.]

III. PRIORITIZATION PROCESS

- a. **Applicant Self-Report.** As part of its funding request application, each applicant shall submit a self-report for the candidate project to the [STATE AGENCY] using the current year Measurement Factors, and a [three-year] projection of the candidate project’s performance measured against the Measurement Factors (i.e. how well each candidate project anticipates to achieve the Funding Objectives), taking into account any additional Measurement Factor announced by the [STATE AGENCY] as of the date of the self-report submission date. The self-report will provide the applicant’s self-score for each Measurement Factor, along with data to support such self-score.
- b. **Project Submission and Program Guidance.** All candidate projects and accompanying self-reports shall be submitted through [the State’s designated online application portal]. Any new Measurement Factor introduced and adopted,

⁴ See Appendix A to the Summary of Legislation for an example Allocation Metric.

any updates to Allocation Metrics, and the final results of any updated Benchmark Study shall be made available to applicants through the portal for download in the form of a program guidance (the “**Program Guidance**”). The Program Guidance shall also include a section discussing whether the aggregate carbon emissions reductions from the entire slate of selected candidate projects in the prior selection cycle meet or exceed the State’s carbon emissions reduction targets [in order to achieve the State’s goal of net-zero carbon emissions by 2050]. [STATE AGENCY] shall also publish the Program Guidance on its website.

- c. **Ranking and Assessment Report.** The [STATE AGENCY] shall review, score and rank the candidate projects in accordance with the Allocation Metrics, taking into consideration each candidate project’s self-report, and allocate eligible transportation funds [strictly/substantially/reasonably/in good faith] in accordance with the [STATE AGENCY]’s final ranking. The [STATE AGENCY] shall produce an assessment report at the end of the Prioritization Process, which report shall indicate the final score for each candidate project, the final ranking of each candidate project, and the total aggregate carbon emissions or reductions anticipated from the full slate of selected candidate projects. The assessment report, along with the final ranking and self-reports of all candidate projects, shall be made publicly available.
- d. **[Exclusions.]** The Prioritization Process shall not apply to the following: projects or activities undertaken pursuant to [STATUTE]; and projects funded by the [FUNDS/PROGRAM] apportioned to the State pursuant to [STATUTE] [and state/federal matching funds]. The [STATE AGENCY] may, at its discretion, develop a separate prioritization process for any of the funds or programs covered by this subsection, pursuant to and subject to planning and funding requirements of [STATUTE/PROGRAM REQUIREMENT/FEDERAL LAW]].

MODEL STATE LAW TO PRIORITIZE FUNDING OF CLEANER TRANSPORTATION ALTERNATIVES⁵

I. FINDING; OBJECTIVES

- a. Transportation is the leading source of carbon emissions in the United States⁶ and [the largest][one of the largest] contributor[s] to carbon pollution in [STATE NAME]. Clean transportation is also key to many other considerations, including economic, social and equity benefits.

⁵ This model statute is designed for states that already have adopted a transportation funding prioritization process.

⁶ See United States Environmental Protection Agency, *Sources of Greenhouse Gas Emissions* (Aug. 25, 2023), <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>

- b. Motorized road travel accounts for approximately three-quarters of transportation-related carbon emissions.⁷
- c. By promoting meaningful alternatives to motorized vehicle transportation, including projects that better connect various transportation modes and expand transportation choices, the level of motorized road travel (and the accompanying carbon emissions) can be reduced, resulting in more efficient movement of people and goods while reducing climate impacts.
- d. Historically, transportation funds have not been allocated to promote or prioritize projects that could reduce overall carbon emissions by expanding alternatives to driving, enhancing intermodal connections, and promoting low-carbon or zero-carbon transportation choices.
- e. The legislature acknowledges that it is both urgent and in the best interest of the public of [STATE] to ensure that the [STATE's] standardized prioritization process to select transportation projects to receive transportation funds [disbursed pursuant to [STATUTE]/[DIRECTIVE] and/or apportioned pursuant to [STATUTE/CODE SECTION]] includes measurement factors that assess the ability of the proposed transportation projects to reduce carbon emissions, improve the efficiency of the State's transportation system, enhance intermodal connections, advance social equity and economic development, and reduce the environmental impacts of motorized transportation.

II. ENVIRONMENTAL METRICS

The [STATE FUNDING AGENCY]/[STATE LIAISON FOR FEDERAL FUNDING] shall revise the statewide prioritization process for the allocation of transportation funds [established under [STATUTE / CODE SECTION] to include evaluation of the following factors for each transportation proposal assessed: (1) measurement and projection of carbon dioxide emissions, (2) measurement and projection of the aggregate change in automobile vehicle miles travelled (VMT), (3) measurement and projection of the degree of utilization of public transportation or other alternatives to driving, (4) measurement and projection of the ease of access to destinations by public transportation or alternative travel modes, including homes, jobs, services, stores, schools, child and health care providers, parks, and other recreational opportunities, (5) measurement and projection of the volume of people and/or goods transported in a given time/route, (6) measurement of impacts to natural resources (e.g. destruction of tree cover, wetlands, or other carbon sinks), and (7) measurement of impacts to local air quality index (AQI) or levels of certain pollutants used to calculate AQI (ground-level ozone, PM2.5 and PM10 particle pollution, carbon monoxide, sulfur dioxide, and nitrogen dioxide).

III. AGGREGATE CARBON EMISSIONS ASSESSMENT

⁷ See Hannah Ritchie, *Cars, planes, trains: where do CO2 emissions from transport come from?* (Oct. 6, 2020), <https://ourworldindata.org/co2-emissions-from-transport>

Prior to commencing each cycle of project evaluation and ranking, the [STATE FUNDING AGENCY]/[STATE LIAISON FOR FEDERAL FUNDING] shall determine, and make publicly available its findings on, whether the aggregate carbon emissions reductions from the entire slate of selected candidate projects in the prior selection cycle meet or exceed the State's carbon emissions reduction targets [in order to achieve the State's goal of net-zero carbon emissions by 2050].