Commission Book Item 4.2 (d)

DRAFT

AB 3090 POLICY CONSIDERATIONS

Issue:

What should be the Commission's policy for AB 3090 approvals? Under statute, there are two distinct types of AB 3090 arrangements, (1) AB 3090 replacement projects and (2) AB 3090 direct reimbursements. Under what circumstances and criteria should the Commission approve AB 3090 arrangements of one type or the other?

Both types have been used in the past, but neither has been used since the programming reforms of SB 45 (1997). When AB 3090 was last used, the STIP was governed by variable county minimums rather than fixed county shares and the STIP consisted primarily of State highway and major urban rail projects. The STIP now includes many smaller local road and transit projects. The need for policy applies particularly to the large number of potential AB 3090 proposals for local agency projects now programmed.

Recommendation:

The staff recommends that the Commission adopt a policy that:

- Encourages local agencies to use their own funds to advance the delivery of a STIP project when State funds are insufficient to support direct allocations.
- Gives preference to replacement projects rather than direct reimbursements, permitting the local agency to be programmed for an unidentified replacement project, in effect a placeholder, with the specific replacement project to be identified at a later date.
- Limits programming of direct reimbursements to cases where the programming of a replacement project is not practicable or would not serve the intended purpose of advancing the delivery of a project.
- Requires, as a condition of any AB 3090 approval, that the local agency commits to the timely delivery of the original project with its own funds.

The primary reason for giving preference to replacement projects and limiting direct reimbursements is that the programming of a reimbursement <u>locks in</u> programming priority for one project, <u>making all other programming more inflexible</u>, both for the region and for the Commission.

Background:

- For the first time in many years, the Commission is receiving requests for the approval of AB 3090 arrangements, most of them for local agency projects. Under Government Code Section 14529.7, as amended by AB 3090 (1992), the

Commission, Department, region, and local agency may enter into either one of two types of arrangements whereby a local agency pays for the delivery of a STIP project with its own funds earlier than the year in which the project is programmed.

- AB 3090 replacement projects. Under the first type of arrangement, which actually predates the enactment of AB 3090, the local agency that advances the STIP project has another project or projects of equivalent value programmed in its place. These arrangements are implemented by approval of a STIP amendment. In the past, these amendments usually designated the specified dollar amount as an "AB 3090 replacement project" without identifying the specific project to be implemented as the replacement. The actual replacement project could then be amended into the STIP at a later date.
- AB 3090 reimbursements. Under the second type of arrangement, first authorized by AB 3090, the local agency that advances the STIP project is programmed to receive a direct cash reimbursement. AB 3090 required the Commission to adopt guidelines to implement reimbursement arrangements. Under those Guidelines, which were updated in 2002, the Commission approves an AB 3090 reimbursement arrangement by approving a STIP amendment that (a) gives approval to the Department to execute a reimbursement agreement and (b) programs the reimbursement for the fiscal year in which the project was scheduled in the STIP. With the execution of the agreement between the Department and the local agency, the local agency is authorized to expend its own funds on the project and qualify those expenditures for later reimbursement. When the time for reimbursement arrives, the Commission approves an allocation for the reimbursement.

- Although AB 3090 required that the Commission adopt guidelines only for reimbursement arrangements, the original 1993 guidelines addressed both replacement projects and reimbursement arrangements. The AB 3090 Reimbursement Guidelines, as updated in 2002, dropped all references to replacement projects and addressed only reimbursement arrangements because:
  - The statutes required guidelines only for direct reimbursements, not for replacement projects.
  - The programming of replacement projects is simpler and does not require reimbursement agreements or other special procedures.
  - The inclusion of references to replacement projects made the reimbursement guidelines more complex.
- The establishment of fixed county shares under SB 45 would seem to have obviated much of the original need for AB 3090 replacement projects, since no county will lose funding if it chooses to fund a project locally and to drop that project from the STIP. However, to have a formal placeholder designating a "replacement project" for a given agency, rather than unprogrammed county share, may meet the special needs of many local and regional agencies.
- The Commission's STIP Guidelines call for STIP projects to be specifically defined and ordinarily do not allow for placeholders or reserves. Without further policy

clarification, this leaves the potential for AB 3090 replacement projects in some doubt.

- The Commission's AB 3090 Reimbursement Guidelines say, "The Commission will treat project reimbursements as the highest STIP priority among projects within a programmed fiscal year, both for allocation and for the case where projects must be reprogrammed to a later fiscal year because of funding shortages" (Section 7e). This means that when the Commission approves a STIP amendment for an AB 3090 reimbursement arrangement, the Commission may not subsequently delay the reimbursement of that project unless it also delays the programming of every other STIP project programmed for that year. Likewise, the Commission may not advance any other project programmed for that fiscal year without first advancing the reimbursement.
- Under the Guidelines, direct reimbursements are normally made as a lump sum. "However, for very high cost projects, Caltrans may specify in the agreement that reimbursement is to be paid quarterly on a schedule that corresponds to quarterly progress of construction, to avoid draining too large a sum from the state's accounts at one time" (Section 8h). The Guidelines also call for a draft of the reimbursement agreement to be made available to the Commission prior to approval of the AB 3090 reimbursement arrangement. Thus the Commission may require a certain reimbursement schedule before giving its approval to the agreement.
- Under the Guidelines, the agency carrying out the project for reimbursement is responsible for meeting all Federal requirements for all projects receiving Federal funds, including Federal environmental clearance (Section 6b).

Potential Advantages of AB 3090 Approvals:

- An AB 3090 arrangement (either replacement project or reimbursement) may permit a STIP project to be implemented sooner than it otherwise would be, with resulting public benefit.
- An AB 3090 arrangement (either replacement project or reimbursement) is a reward that may encourage a local agency to dedicate local funding that might not otherwise be available.

Potential Disadvantages of AB 3090 Approvals:

- In the absence of new Commission policy, an AB 3090 approval of either type would not guarantee or require either local funding or early delivery. With the approval of an AB 3090 replacement project, for example, the local agency might have a placeholder for future projects without delivering the originally programmed project early or even without delivering it at all. With an AB 3090 reimbursement approval, the local agency might secure a higher priority for its project without actually delivering it early.
- An AB 3090 reimbursement approval locks in programming priority for one project, making all other programming more inflexible, both for the region and for the

Commission. In the absence of new Commission policy, this priority would give every local agency the incentive to request an AB 3090 reimbursement arrangement for every local project in the STIP. This would be the case whether or not the approval would actually result in accelerating delivery of the project and even if the local agency had neither the means nor the intent to deliver the project early. A reimbursement approval would provide a local agency with certain advantages without any risk.

- Once approved for AB 3090 reimbursement, a project is guaranteed the highest priority and is protected from being reprogrammed in favor of another project, by either the regional agency or the Commission (whether or not the local agency is proceeding to deliver the project).
- If a later increase in funding allows some project allocations to be made earlier than previously programmed, the project has first priority for early funding (whether or not the local agency has accelerated delivery).
- If a later decrease in funding requires that projects be delayed, the project reimbursement is protected from rescheduling until and unless every other project programmed in that year is rescheduled.

- In the case of a project requiring State only funding or Public Transportation Account (PTA) funding, the priority issue for reimbursement approvals is particularly acute, since this funding is limited and a project would be given highest priority for a very limited funding source. AB 3090 reimbursement is not available under statute from Transportation Investment Fund revenue.
- AB 3090 reimbursement approvals and agreements result in extra state administrative costs. (AB 3090 replacement projects do not.)
- The delivery of a STIP project by a local agency with its own funds earlier than the program year does not necessarily mean that project delivery has been accelerated. For example, an AB 3090 arrangement of either type might be proposed for a project that could be and would be delivered early using local funds even without the AB 3090 arrangement. In this case, the purpose of an AB 3090 approval would not be to advance delivery but to "protect" local agency funding, by converting a STIP share to a placeholder reserve or even to a direct cash reimbursement obligation. Without an AB 3090 approval of either type, the locally delivered project would be deleted from the STIP and a credit would be made to the STIP county share. With an AB 3090 approval, the agency receives the programming placeholder or cash.
    - In a variation, the local agency could take a project that it has planned to do with local funds and have it programmed in the STIP primarily for the purpose of getting an AB 3090 approval and receiving a placeholder or cash in lieu of project programming.
    - An AB 3090 approval does not advance the delivery of a project unless it allows the use of local resources that could not or would not otherwise be made available for the STIP project. An example might be the "borrowing" of local measure funds or other funds normally restricted to other projects.

Recommended Policy:

- The Commission intends to encourage local agencies who wish to use local funds to advance the delivery of projects programmed in the STIP when State funds are not sufficient to support direct project allocations. In doing so, the Commission will consider the approval of either AB 3090 replacement projects or AB 3090 direct reimbursement arrangements, giving preference to the programming of AB 3090 replacement projects where feasible.
- Where a local agency proposes to use its own funds for early delivery of a project component programmed in the STIP for a future fiscal year, the Commission will consider approval of an AB 3090 <u>replacement project</u> under the following conditions:
  - The regional agency approves the arrangement.
  - The local agency has identified a local fund source for the project component, and there is a reasonable expectation that the AB 3090 approval will result in the acceleration of construction delivery of a STIP project.
  - The local agency commits to award a contract or otherwise begin delivery of the project component within 12 months of the Commission's approval, with the understanding that the arrangement may be cancelled if that condition is not met.
  - The STIP amendment approving the arrangement will replace the project component with an unidentified replacement project in the same fiscal year.
- Where a local agency proposes to use its own funds for early delivery of a project component programmed in the STIP for a future fiscal year, the Commission will consider approval of an AB 3090 <u>reimbursement</u> only when the following additional conditions are met:
  - The regional agency explicitly finds the project to be the region's highest priority among projects programmed for that fiscal year.
  - The project is federalized and will not require Public Transportation Account funding for reimbursement, unless the Commission determines that a State-only reimbursement would be consistent with the fund estimate.
  - The source of local funds to be used to deliver the project could not or would not be made available for an AB 3090 replacement project. The request for AB 3090 reimbursement approval should identify the source of local funds to be used, why the funds would not be available for the STIP project without an AB 3090 direct reimbursement arrangement, and what the funds would be available for if not used for the STIP project.
  - Before approving an AB 3090 reimbursement arrangement, the Commission will consider programming the reimbursement in a later fiscal year, consistent with the project's regional and state priority for funding and the projected availability of funds to support other projects. The Commission will not change the programming of the reimbursement after approval.

- The Commission will not approve AB 3090 reimbursement arrangements intended solely to protect a project from being reprogrammed or to protect a local agency's share of STIP funding.

- The Commission will also consider approval of an AB 3090 reimbursement arrangement for a project component programmed in the current fiscal year if there are not sufficient funds currently available to approve a direct allocation. In this case, the AB 3090 approval will schedule the reimbursement for the next fiscal year or a later year.

Other Issues:

- The Guidelines indicate that, "for very high cost projects," Caltrans may specify that reimbursement is to be paid quarterly to avoid draining too large a sum from the state's accounts at one time. What is or should be the threshold for "very high cost"?
- Are there specific incentives or penalty provisions that can be or should be incorporated into AB 3090 reimbursement agreements to encourage early delivery of projects with AB 3090 approvals?

Some Relevant STIP Data:

- Without policy constraints, every local agency would have an incentive to request an AB 3090 reimbursement approval for every local project. There are 838 local projects in the STIP for $1.711 billion. Of those, 142 projects for $143 million are entirely programmed in FY 02-03. The remaining 696 projects, with total programmed cost of $1.568 billion, have some or all programming beyond FY 02-03.
- Local projects that were respread during the 2002 STIP process are major candidates to request AB 3090 approval. They include:
    - 184 construction and/or right-of-way projects for $260 million originally proposed for FY 02-03 and programmed in a later year.
    - 122 construction and/or right-of-way projects for $159 million originally proposed for FY 03-04 and programmed in a later year.
    - 43 environmental and/or design only projects for $89 million, with first programming after FY 02-03.

<u>AB 3090 History Note</u>:

- Since the enactment of AB 3090, there have been a total of 6 AB 3090 project reimbursements for $41 million. In addition, one other project received an AB 3090 reimbursement approval that was subsequently cancelled by STIP amendment, deleting the programmed reimbursement in favor of regular project allocations.
- The project reimbursements were:
  - $17.0 million for the Route 120 Manteca Bypass (San Joaquin County), allocated August 1995.
  - $3.4 million for the Millbrae Avenue grade separation (San Mateo County), allocated September 1995).
  - $2.6 million for the Ralston Avenue grade separation (San Mateo County), allocate October 1995).
  - $1.2 million for a Route 10 soundwall in Upland (San Bernardino County), allocated July 1996.
  - $7.1 million for Route 30 right-of-way (San Bernardino County), allocated November 1996.
  - $9.7 million for the City of Commerce Route 5/Atlantic (Mixmaster) interchange (Los Angeles County), December 1996.
- The other AB 3090 reimbursement approval was:
  - $35.9 million for Route 680 widening (Alameda County), deleted by STIP amendment prior to reimbursement, October 1995.
- These figures do not include AB 3090 replacement projects, programmed as authorized under subdivision (a) of Government Code Section 14529.7. Under that provision, a local agency may advance a STIP project with its own funds and, with the concurrence of the region, the Department, and the Commission, have another project or projects of equivalent value programmed in its place in the STIP. AB 3090 replacement projects included:
  - $37.7 million for Route 14 in Los Angeles County. The replacement project was deleted in trade for other projects in the 1996 STIP.
  - $37.2 million for Route 405 in Los Angeles County. The replacement project was deleted in trade for other projects in the 1996 STIP.
  - $50.9 million for San Diego MTDB Mission Valley West. Funds were allocated in March 1997 for another light rail segment.
  - $0.55 million for the Whipple Avenue grade separation (San Mateo County). The funds were reprogrammed and allocated for another grade separation project in October 1998.