

**Transportation Enhancement Program Reform**

**Issue:** What specific reforms should the Commission consider and adopt to ensure that California uses all of its Federal Transportation Enhancement (TE) apportionments and uses them in a timely way, without coming so close as we have to letting the funds lapse?

**Recommendation:** Staff recommends that the Streets and Highways Committee delay action on the Transportation Enhancement Program reform until the August 2003 Commission meeting so staff can present the attached draft outline to the RTPA group at the June 2003 RTPA meeting.

**Background:** The Commission continues to grapple with the issue of Transportation Enhancement Activities (TEA) Program reform. The Commission approved an original program design in 1993, then redesigned the program in 1998 and now is considering redesigning the program yet again to coincide with the upcoming Federal transportation act reauthorization and the 2004 STIP cycle.

In late 2001, the Commission activated a Statewide TEA Advisory Committee to serve as a forum for TEA Program reform. The Commission asked the TEA Advisory Committee to return with a report by June 2002. The TEA Advisory Committee spent an extensive amount of time discussing the split between the state and regional program shares without reaching consensus. The TEA Advisory Committee gave its final report at the Commission's November 2002 meeting and recommended the following TEA Program reforms:

- Combine the three statewide programs into one program.
- A biennial programming cycle with ability to amend projects.
- Fair and transparent selection process.
- A 20% programmatic and \$5 million per application land acquisition cap.
- Delegation of allocation authority to Caltrans.

The Commission thanked the committee for its work and requested that Commission staff return with recommendations for future Commission action.

At the January 2003 Commission meeting Commission staff recommended that the separate state TEA Program in effect since 1998 be discontinued in favor of reintegrating the Federal TE apportionment into the STIP process. Staff also recommended that this change, together with several TEA Program specific recommendations made by the TEA Advisory Committee, be incorporated into the Commission's STIP Guidelines for the 2004 STIP.

The regional agencies asked that the Commission not act on staff's recommendation until the agencies had time to discuss and understand the impacts of the staff TE apportionment proposal. The Commission agreed to table the TE item until full consultation took place between Commission staff and the regional agencies.

Commission staff held several meetings with representatives of the regional agencies and other interested parties and per their request prepared the attached "Draft Outline Of Proposal For Programming Of Federal Transportation Enhancement Funds In The STIP And SHOPP". The attached draft outline has been discussed with a representative committee of the regional agencies but staff did not have the opportunity to discuss the draft with the entire regional agencies group and plans on doing so at the June RTPA meeting.

If the Commission were to approve the staff TE proposal, actual implementation would be accomplished through the STIP Guidelines update process at the start of the 2004 STIP cycle.

**Discussion:** The original (1993) TEA Program was not a good fit with the STIP because it never really integrated TEA funding into the STIP. The original program operated separately from the STIP, even though it was in some respects treated as part of the STIP. The project selection was separate. At first (when the STIP had county minimums rather than county shares), there was a statewide selection process, subject only to the North-South split. After SB 45, each region was assigned a separate TEA share, which could be used only for TEA projects. The thinking behind the TEA Program design was that California's TE apportionment would get programmed only if agencies were forced to program it. This didn't work because the separate TEA shares were inflexible and often small. Many agencies got TEA shares and were either unable or unwilling to find deliverable TEA projects to fund with them. Consequently, TEA shares and thus TE apportionments went unused for a long time.

The current (1998) TEA Program design is not all that different, at least for the regional shares, though delivery was somewhat improved when the Commission applied a modified AB 1012 timely use of funds rule to the program. The shares still are inflexible and are not getting used in a timely manner. Although some regions have excellent project delivery, many do not.

The thinking behind the staff proposal is that TEA is not inherently undesirable or hard to program. There are many agencies and areas in the state that could and would deliver TEA projects if given the chance and some incentive. We don't need to force TEA on those who can't or won't deliver.

In effect, what staff is proposing is to abolish the TEA Program and to program the state's considerable Federal TE apportionment through the STIP process, much as other categories of federal funds in the STIP are programmed now. Regions that want more TEA could program more TEA, just as regions that want more state highways can program more state highways, regions that want more transit can program more transit, regions that want more local road rehab can program more local road rehab, etc. And regions that don't want to program more TEA (at least smaller rural regions) wouldn't be required to.

Even with TE absorbed into the STIP, there would still be some extra incentive to program TE projects. To use California's TE apportionment, the Commission would need to make sure that enough TE-eligible projects are programmed in the right fiscal years. TE-eligible projects would likely get first priority for programming in the first year or two of the STIP, for example, while other new projects might be added only in the last years of the STIP. If the Commission doesn't receive enough TE-eligible project proposals to use the available TE apportionment, the Commission might have to set aside an unprogrammed reserve that could be used only for TE-eligible projects.

Staff's thinking behind the SHOPP is not to increase "the state's share", but to provide another means of flexibility for using the TE apportionment, the same flexibility that exists for other federal fund types. If regions choose not to program more TE-eligible projects, that would be one more mechanism for encouraging Caltrans to do TE-eligible work on State highways to make sure that California's TE apportionment gets used. A distinction is made between TE in the SHOPP and TE in the STIP. Any TE through the SHOPP would be limited to certain kinds of enhancements along State highways. SHOPP TE would not be used simply as an augmentation of the 25% STIP share. Staff's intent is to have the entire Federal TE apportionment go to the STIP and be divided by the SB-45 share formula 25% state share and 75% regional share.

**DRAFT OUTLINE OF PROPOSAL FOR PROGRAMMING OF  
FEDERAL TRANSPORTATION ENHANCEMENT FUNDS  
IN THE STIP AND SHOPP**

**Basic Proposal:**

- All Federal Transportation Enhancement (TE) apportionments, beginning with FFY 2003-04 (the first year under Federal reauthorization), will be programmed in the State Transportation Improvement Program (STIP) or the State Highway Operation and Protection Program (SHOPP). They will not be programmed under the separate Transportation Enhancement Activities (TEA) program that has been used for TE apportionments under the Federal Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). Remaining TEA-21 apportionments will continue to be allocated and administered under the separate TEA program.
- During the transition period prior to the adoption of the 2004 STIP, new TE programming may be amended into the 2002 STIP. Where a region has already programmed TE projects for 2003-04 under the procedures of the old program, these projects may be amended into the 2002 STIP prior to adoption of the 2004 STIP. The Commission's intent is that the programming, allocation, and expenditure of Federal TE apportionments not be delayed by the change in State programming method.
- The purpose of this change is
  - to promote the full, timely, and effective use of the State's Federal TE apportionment, making more TE funding available where and when there is the greatest need and demand for TE-eligible projects,
  - to minimize the fragmentation of the program and mandates on individual regional agencies,
  - to clarify the respective project selection roles of State and regional agencies, and
  - to maintain the administrative flexibility found in the prior program, including the use of TE program reserves and delegated authority for allocations.

**General Process:**

- To the extent possible, Federal TE funds will be treated just as other Federal apportionments are treated in the Fund Estimate and in programming the STIP and SHOPP. Generally, the Fund Estimate and programming are accomplished without regard to Federal funding programs. The programming process provides enough flexibility statewide for the Commission and Department to insure that all Federal funds are used without requiring that each region program each Federal funding source separately. The programming of TE apportionment in this way is based on the premise that there is sufficient need and demand for TE-eligible projects statewide.
- With the addition of TE apportionments, the total resources available for the STIP and SHOPP will be greater than would otherwise be the case. This will, in turn, increase the

amounts of interregional and county shares above what they would otherwise have been. In the RTIPs and ITIP, the regions and the Department will generally be free to propose as much or as little as they choose for TE-eligible projects, just as they have in the past proposed projects without regard to funding type. It will be the Commission's responsibility to insure that the final STIP includes enough projects to use the state's expected TE apportionments. No upper limit on TE-eligible projects is needed since Federal law permits other Federal fund types to be used for TE-eligible projects.

- To retain the flexibility of the current program, the Commission will permit RTIPs to designate a TE project reserve in the STIP without designating the particular TE projects, much like the existing reserves permitted for RSTP/CMAQ match. The Commission will also delegate allocation authority for TE-eligible local projects to the Department.
- Projects eligible for TE apportionments, like projects eligible for other Federal funds, may be programmed through the SHOPP or nominated for the STIP through either the ITIP or an RTIP. The STIP Guidelines, however, will lay out principles for the inclusion of TE projects in the SHOPP or ITIP, recognizing that for the SHOPP and ITIP, projects are selected primarily by the Department and do not come from county shares.

#### **TE in the SHOPP, ITIP and RTIP:**

The STIP Guidelines will lay out the following principles for inclusion of TE-eligible projects in the SHOPP, ITIP, and RTIP.

- TE projects in the SHOPP.
  - The Department may include in the SHOPP any TE-eligible project that is an enhancement directly related to another SHOPP or STIP project. Projects are eligible only if they are over and above any normally required project mitigation.
  - The Department may also include in the SHOPP a TE-eligible project for the support of a statewide program that is not related to a capital outlay project. This could include, for example, safety and educational activities for pedestrians and bicyclists, a scenic highway program, or archaeological planning and research.
  - The Department may not use the SHOPP for local grants or to support a call for local projects. The Department may, however, entertain proposals from local agencies for enhancements to Department SHOPP or STIP projects.
  - The Department may not use the SHOPP for stand-alone TE capital outlay projects. Such projects should be funded in the STIP, through either the ITIP or RTIP.
- TE projects in the ITIP.
  - The Department may include in the ITIP a project from any TE-eligible category that relates to the interregional surface transportation of people or goods or that is a capital outlay project of statewide benefit and interest.
  - In the case of pedestrian and bicycle facilities, the project should provide an alternative to travel on a State highway that is part of the interregional road system or provide access to a state or national park or to an interregional surface transportation facility.

- The Department may not propose TE-eligible grants to local agencies in the ITIP. However, the Department may propose TE-eligible grants for projects to be implemented by other State agencies or for scenic land acquisitions by land conservancies. [Do we need to define the Department process for this?]
- TE projects in the RTIP.
  - A region may include in its RTIP any TE-eligible project.
  - A region may also include in its RTIP a reserve for TE-eligible projects. Project allocations may be made from this reserve without amending the STIP to designate the particular project. This will permit regions to designate a set-aside for the regional TE program in the STIP, while selecting specific TE projects at a later date.
  - The Commission will delegate to the Department the authority to allocate funds for local agency TE projects, except where the allocation is for more than \$1.5 million.
- Timely use of funds and county shares for TE projects.
  - The Commission will not apply the AB 1012 timely use of funds rule to TE projects in the STIP. That rule continues to apply by statute to RSTP and CMAQ funds. It will also continue to apply to funds apportioned to regions under the prior TEA program.
  - TE projects in the STIP will be subject to the same timely use of funds rules that apply to all other STIP projects. Projects must be allocated within the year programmed or receive a one-time extension of up to 20 months. After allocation, the project must be awarded or commenced within 12 months, and the funds must be expended within 36 months, also with a one-time extension possible.
  - As with other STIP projects, programmed projects may not be reprogrammed after the beginning of the year of delivery. However, the use of TE reserves will permit a regional agency to change projects up to the time of allocation.
  - A TE reserve, like an existing STIP reserve for RSTP/CMAQ match, would be treated as a project for timely use of funds purposes. That means that any amount programmed in a TE reserve in a given fiscal year would have to be allocated for some TE project during that year, or the balance of the reserve would cease to be programmed and would lapse. The amount lapsed would return to the county share in the next county share period.
  - As with other STIP projects, allocations are made for the purpose of a specific project. Unexpended allocations will not be returned to the county share. County shares will be based on the amount allocated, not on actual expenditures. (This rule provides an incentive for estimating accurately, avoiding premature allocations, and providing partial funding from non-STIP sources.)
- TE matching.
  - Regions may include the cost of non-Federal match as part of any STIP TE project, including projects programmed through the regional TE reserve. It may still be of advantage to regional and local agencies to provide some non-STIP funding to avoid having unexpended allocations.

- Since the non-Federal TE match may be programmed in the STIP either directly or through the TE reserve, there will no longer be a separate TE match as part of the RSTP/CMAQ match reserve.
- How will the State insure that its Federal TE apportionments are being programmed, allocated, and expended?
  - To a large extent, the proposal is based on the premise that there is sufficient statewide need and demand for TE-eligible projects, though that need and demand may be uneven from county to county and from year to year.
  - The fund estimate will define the statewide availability of TE apportionment by fiscal year but will place no limit on front loading for TE-eligible projects. It is likely that the Commission will be able to program TE projects in the STIP's first year, even when non-TE projects will be programmable only in later years.
  - In applying its programming discretion, the Commission may favor counties that are programming TE-eligible projects. This may mean an advance of current county share.
  - In adopting the STIP, the Commission will examine the statewide amount of TE-eligible programming, including the year-by-year spread. If TE-eligible programming falls short of utilizing the anticipated TE apportionment, the Commission will leave the amount of the shortfall unprogrammed and available only for amendments of TE-eligible projects.
  - [For discussion.] As an option the following target could be used: The Commission will expect that a given percentage of the interregional share and a given percentage of the county shares of counties with a population over 1,000,000 will be programmed for TE-eligible projects. If an RTIP of one of these counties fails to include sufficient TE-eligible programming (including TE reserves), the Commission may reject the RTIP for the county. The given percentage will be based on the ratio of estimated Federal TE apportionments to programmable resources. [Problem: minimums have a way of becoming maximums.]
  - There is no maximum amount of TE-eligible programming that an RTIP may propose. There is no limit on front-loading TE-eligible projects in the STIP, and the Commission will respread TE project only in the unlikely event that this appears necessary to insure that all of California's TE apportionments will be obligated.