

Memorandum

To: Chairman and Commissioners

Date: April 25, 2002

From: Diane C. Eidam

BOOK ITEM 4.5
INFORMATION

Ref: Notice of Proposed Amendments to AB 3090 Guidelines

Issue: Should the Commission update or otherwise amend its AB 3090 Guidelines, which were last amended in 1993?

Recommendation:

Commission staff recommends that the Commission consider the Draft Amendments to the AB 3090 Guidelines attached to this memorandum, together with comments received at the May 9 meeting, and direct staff to prepare a draft for action at the June 13 meeting. The attached Draft Amendments update the current guidelines and are not intended to make any substantive changes except to recognize and accommodate the changes that have been made in the programming process since 1993, particularly the reforms of SB 45 (1997).

Background:

AB 3090 (1992) added subdivision (b) to Section 14529.7 of the Government Code, permitting a local agency to enter into an agreement with the regional agency, Caltrans, and the Commission to use local funds to develop and construct a STIP project earlier than the year of programming and, in return, to receive a reimbursement from STIP funds in the year the project was originally scheduled. The amount of the reimbursement is generally the amount actually expended, indexed for inflation, or the amount programmed, whichever is less.

The language of subdivision (a) of Section 14529.7 predates AB 3090 by a year. Added by AB 298 (1991), it permits a local agency, with the concurrence of the regional agency, Caltrans, and the Commission, to advance a previously programmed project with its own funds and to have another project programmed in the STIP in its place.

It has been several years since any agency has requested an AB 3090 approval. In the years since the 1996 STIP and the enactment of SB 45 (1997), programming capacity has exceeded delivery. There was no need to advance STIP projects with local funds as long as STIP capacity could support projects as early as they could be delivered. With the 2002 STIP process, however, new project proposals have exceeded capacity for the STIP's early years, and there is renewed interest in the potential use of AB 3090 to support early project delivery.

There have been a number of important changes in the programming process since AB 3090 was first enacted and since its provisions were last used. This suggests, at the very least, a need to clarify the guideline language to take those changes into account. Among the major programming changes:

- SB 45 replaced county minimums with fixed county shares. One of the original functions of AB 3090 was to preserve an entitlement to previously programmed funding should a local agency decide to construct a project with its own funds. Without an AB 3090 approval, a region could lose STIP funding if a local agency chose to use its own funds to advance a STIP project. SB 45's fixed county shares largely obviated this need, since the undertaking of a STIP project with local funds would, in any case, free up a like amount of STIP county share.
- When AB 3090 was enacted, county minimums were based on State expenditures on a project, not on the amount of the Commission allocation.
- When AB 3090 was enacted, project development costs for Caltrans projects were not programmed at all and project development costs for local projects were not programmed separately.
- When AB 3090 was enacted, there were few projects other than State highway projects in the STIP. The language of both the statutes and the current guidelines seem to assume that the projects advanced are on the State highway system.

DRAFT AMENDMENTS
California Transportation Commission
AB 3090 GUIDELINES
ADVANCING OF PROJECTS AND REIMBURSEMENT
RESOLUTION G-02-__
(Revises Resolution G-93-08)

1. AUTHORITY

- (a) The Commission must adopt Guidelines for an advanced local construction program for STIP projects, pursuant to subsection (b)(8) of Government Code Section 14529.7, enacted via AB 298 (Clute, 1991) and amended in AB 3090 (Katz, 1992).
- (b) Government Code Section 14529.7 itself is included by reference in these guidelines, and attached thereto.

2. PURPOSE AND ~~EFFECTIVE DATE~~ AMENDMENT

- (a) These guidelines lay out the process and requirements for local agencies to be reimbursed for using their funds to develop, purchase right-of-way, and advance the construction of a project in an adopted ~~state program~~ *State Transportation Improvement Program (STIP)*.
- ~~(b) These guidelines are effective January 1, 1993, or upon Commission adoption if that occurs later.~~
- ~~(c) Any work toward advancing projects in the state program that is already covered in a prior cooperative agreement between the local agency and Caltrans, undertaken between January 1, 1992 (the original effective date of amended Government Code Section 14529.7 under AB 298 of 1991) and the effective date of these guidelines, may be grandfathered under these guidelines, with approval by the Commission.~~
- ~~(d) Advanced local construction projects amended into the program prior to January 1, 1992, under Government Code Sections 14529.7 or 14529.8 or Streets and Highways Code Section 215.5 from before that date, remain subject to any existing local agency Caltrans cooperative agreement(s). Such projects may be subsequently amended under current statutes and these guidelines.~~
- ~~(e)~~(b) The Commission may amend these guidelines at any time, after allowing 60 days for review and comment on proposed amendments by Caltrans, regional transportation planning agencies, and representatives of local agencies.

3. GENERAL PROCESS

- (a) The general process for a local agency to advance a project and later get reimbursement has seven steps:
 - (1) the local agency seeks agreement with its regional transportation planning agency to advance funding for a project in the ~~state program~~ *STIP* and define later reimbursement with a substitute project(s) or cash;
 - (2) the local agency asks Caltrans to draw up a cooperative agreement covering project development work and funding, right-of-way and construction work and funding, and

reimbursement, for both the project being advanced and the payback project, and to prepare and submit a program amendment to the Commission;

- (3) the local agency and Caltrans agree on, approve, and sign the cooperative agreement;
- (4) the Commission approves the program amendment, changing the schedule and funding of the existing project in the program and adding an equivalent payback project(s) into the program in the original year of programming, or in a later year if programwide funding is short;
- (5) the local agency and Caltrans deliver and build the project in accordance with the cooperative agreement, and undertake work on any substitute project(s) as specified;
- (6) the local agency submits billing to Caltrans for reimbursement of completed work as provided in the cooperative agreement; and
- (7) Caltrans reimburses the local agency for project development work and seeks an allocation of funds from the Commission with which it reimburses the local agency for capital outlay, all within budget authority and within the terms of the cooperative agreement.

~~(b) Projects constructed under these provisions shall not be eligible for funding from the State-Local Transportation Partnership Program, as specified in subsection (b)(7) of Government Code Section 14529.7.~~

4. APPLICATION FOR PROJECT ADVANCEMENT

- (a) A local agency that considers advancing a project in the ~~state program~~ *STIP* should notify the Regional Transportation Planning Agency with jurisdiction over its area as soon as possible of its interest in advancing the project, even before any decisions are made by the local agency itself, Caltrans, or the Commission, to give the regional agency the maximum amount of lead time to arrange or amend the Regional TIP and air quality conformity findings as may be necessary to accommodate the advancement. The regional agency may but is not required to take any action as a result of this notification, pending Commission approval of a ~~program~~ *STIP* amendment.
- (b) A local agency must get agreement from the Regional Transportation Planning Agency covering its jurisdictional area to advance a project in the ~~state program~~ *STIP*. In particular, the regional agency must approve any substitute project(s) that may be amended into the ~~state program~~ *STIP* to replace the project being advanced with local agency funding.
- (c) A local or regional agency must act as sponsor of the advanced project, and funding for the project must come from an account controlled and administered by that agency.
- (d) A local agency submits a written request to Caltrans' district office, for Caltrans to draw up a cooperative agreement covering the project to be advanced and the payback project(s), and prepare a ~~program~~ *STIP* amendment for the Commission.

5. LOCAL AGENCY-CALTRANS COOPERATIVE AGREEMENT

- (a) A cooperative agreement between Caltrans and the local agency specifies agency responsibilities to carry out environmental and engineering work as necessary, purchase right-of-way, and build a transportation project from the ~~state program~~ *STIP*, under certain conditions and using certain standards. The cooperative agreement also specifies agency

funding responsibilities, and how and when the local agency presents billings to Caltrans and gets reimbursed for completed work.

- (b) The cooperative agreement should specify agency responsibilities, and delineate shared responsibilities, for carrying out and paying for preliminary engineering, environmental studies, design engineering, right-of-way activities, and construction engineering, covering contract administration, performance of work, and review and approval of work, as appropriate.
- (c) If a substitute project(s) is amended into the ~~program~~ **STIP** as reimbursement, instead of direct reimbursement with state funds, the cooperative agreement should specify the responsibilities of the local agency and Caltrans for carrying out and funding all project development work for both the project to be advanced and the payback project.
- (d) The cooperative agreement is subject to Commission approval of a ~~program~~ **STIP** amendment, to advance the original project and replace it with a payback project.
- (e) The local agency and Caltrans may work under a series of cooperative agreements, covering separate stages of work, or a master cooperative agreement with subsequent amendments. If that is done, the Commission will not consider amending the ~~program~~ **STIP** until a cooperative agreement or amendment is being drawn up covering work for which Commission allocation is necessary for reimbursement. Reimbursement must conform to the provisions of the cooperative agreements or amendments sequentially by date of execution.
- (f) The cooperative agreement may provide for the local agency to suspend work on advancing a project, and return the project to its original place in the ~~state-program~~ **STIP**, as long as Caltrans has not undertaken substantive work on a substitute project in the ~~state-program~~ **STIP**. If the local agency suspends work and returns the project to the ~~state-program~~ **STIP**, Caltrans will adjust its reimbursement to cover only such work that it can use in completing the project.

6. PROGRAM AMENDMENT

- (a) The local agency makes a request for ~~program~~ **STIP** amendment to the Caltrans district office. The local agency must submit to the Caltrans district office all the information necessary to complete the ~~program~~ **STIP** amendment within a reasonable timeframe (e.g., 90 days), prior to the date that Commission action is sought by the local agency. Transit project amendments must be submitted using the Uniform Application. Caltrans then prepares the request for ~~program~~ **STIP** amendment that is sent to the Commission. ~~Caltrans should identify, if a project is funded with passenger rail bond funds, the appropriate fiscal year for programming the replacement project, particularly if it is not the project's original program year.~~
- (b) The project to be advanced must be a major project from the current adopted ~~state-program~~ **STIP**, of any type or funding source.
- (c) The payback project may be a substitute project(s) of equivalent state and federal cost as permitted in subsection (a) of Government Code Section 14529.7 or a cash reimbursement project as defined in subsection (b) of Government Code Section 14529.7.
- (d) The payback project must be fundable from the same funding source(s) that were to be used on the project being advanced, unless the same funding source is not available. An alternative funding source must be identified by Caltrans and the Commission for the payback project.

- (e) The Commission will consider a combination of payback projects including both substitute project(s) and partial cash payback, or higher cost substitute project(s) with an appropriate local funding commitment to yield a fully-funded project.
- (f) Caltrans shall review the request to determine whether the project meets the requirements for reimbursement under the statutes and Commission policy, and whether it can accommodate the request to advance the project based on funding and staffing limitations and the proposed timeline and responsibilities of the various agencies.
- (g) If Caltrans and the local agency are able to proceed with project advancement, as specified in the cooperative agreement, Caltrans brings to the Commission a proposed ~~program~~ **STIP** amendment, specifying the project to be advanced and substitute project(s) or state fund payback to be amended into the ~~program~~ **STIP** in place of the original project.
- (h) An amendment brought to the Commission must indicate the project to be advanced, the year to which it would be advanced, the local agency funding the project, and its source of funds, and the proposed payback project, whether a substitute project(s) or state funding payback, and the source of project funding, and any other necessary information for displaying the project in the ~~state program~~ **STIP**.
- (i) Substitute projects being amended into the ~~state program~~ **STIP** must be supported by a project study report or equivalent, to define project scope and cost, as required in Government Code ~~Section 65086.5~~ **Sections 14526(b) and 14427(f)** and the Commission's guidelines for preparation of project study reports.
- (j) When an amendment to advance a project is presented, the Commission expects consensus to have been obtained among the local agency, the regional agency, and Caltrans. Any areas of disagreement must be clearly presented, and the Commission will require demonstration that the local agency can deliver the project on the advanced schedule, that project scope and agency responsibilities and funding shares are satisfactorily defined, and that advancement will not harm legitimate interests or overall funding levels of the region.

7. PROJECT DELIVERY

- (a) Project delivery should be carried out according to the terms of the cooperative agreement between the local agency and Caltrans.
- (b) The agency responsible for carrying out project work is also responsible for meeting all requirements of federal agencies, including but not limited to environmental and funding requirements, for all projects receiving federal funds.
- (c) Projects advanced by local agencies shall conform to all applicable state and federal standards, as required in subsection (b)(1) of Government Code Section 14529.7. If the project to be advanced is programmed with federal funds, the project must be prepared so that it will be able to receive federal funding reimbursement, and shall not result in an increase in state matching funds, as required in subsection (a) of Government Code Section 14529.7.
- (d) Caltrans includes funding in its budget for project development work on all STIP and SHOPP projects funded from the State Highway Account. This funding is generally available as reimbursement to a local agency that performs the work on Caltrans' behalf, if specified in the cooperative agreement.

- (e) Once the local agency and Caltrans proceed with project delivery under the cooperative agreement, state and federal funds to be allocated by the Commission for reimbursement may be treated as a lump sum, usable for right-of-way or construction (or other activities specified as eligible in the project as programmed) as needed, with mutual agreement by the parties to the cooperative agreement.
- ~~(f) Where the project to be advanced is replaced by substitute project(s), the local agency would normally be expected to bear the cost of project development for either the project to be advanced or the substitute project(s), as spelled out in the cooperative agreement.~~

8. COMMISSION ALLOCATION

- (a) The local agency may ask Caltrans to seek Commission allocation for reimbursement at the beginning of the fiscal year in which the advanced project was originally programmed, or any time after completion of the project that has been advanced, whichever comes earlier.
- (b) The Commission should not be expected to allocate funds for reimbursement before the beginning of the fiscal year in which the advanced project was originally programmed, but may make such an allocation earlier if it finds that there is sufficient funding available in the appropriate state account and other project delivery with a higher priority claim on that funding is not expected in a timely way. The Commission may also delay allocation if it finds that insufficient funding is available in the appropriate state account.
- (c) The local agency should expect a funding allocation to appear on the Commission agenda for approval within 60 days of a request to Caltrans for reimbursement.
- (d) Commission allocations are effective only after the Governor has signed the State Budget for the fiscal year.
- (e) The Commission will treat payback projects as the highest 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, with the exception that safety and urgent rehabilitation projects must have a higher priority than a payback project. This provision shall apply only to payback cash projects, not to substitute projects amended into the program.
- ~~(f) The Commission shall consider using short term loan authority from Government Code Sections 14560 et seq. (from SB 460 (Killea, 1991) and AB 981 (Katz, 1991)) whenever a shortfall of federal or state funds prevents allocation of a payback project within the fiscal year, so that allocation and reimbursement can be made in a timely way. [This authority applied only to 1990 STIP and SHOPP projects and has since been repealed.]~~

9. REIMBURSEMENT LIMITATIONS AND PROCESS

- (a) Reimbursement is limited as specified in subsections (b)(2)-(3)-(4) of Government Code Section 14529.7, in the ~~program~~ **STIP** amendment, and in the cooperative agreement.
- (b) In all cases, reimbursement shall conform to the terms of the cooperative agreement.
- (c) Reimbursement for projects with multi-agency shared funding will be split as defined in the cooperative agreement, or, if not specified, prorated based on each agency's share of funding for construction costs.

- (d) Caltrans shall calculate escalation factors for reimbursement, as applicable, using the annual construction cost index for California for the 12 months preceding the time of contract award and the 12 months preceding the time of Commission allocation of reimbursement funding. Where escalation is applicable, all capital outlay costs, including right-of-way and construction, shall be escalated using a single factor derived from the construction cost index for California.
- (e) A local agency will be reimbursed only for the project originally described in the ~~state program~~ **STIP**, and generally only to the total amount programmed *or allocated* for the project. Project scope may be modified during environmental clearance, or otherwise within Commission guidelines for the STIP, but Caltrans and the Commission must approve any change in scope, and expect the local agency to bear any cost differential. ~~Any savings in project cost may be available for use on other projects in the region which may be proposed by the Regional Transportation Planning Agency responsible for preparing the Regional Transportation Improvement Program (RTIP) in cooperation with Caltrans, as allowed under the Commission's Cost Savings Incentive Policy (CTC Resolution #G-93-1).~~
- (f) If *the* project cost *for a Caltrans project* must be increased due to factors discovered after construction has started, the local agency must bear the immediate cost increase but may seek an increase in reimbursement, if the project is eligible, using the process for supplemental funding for *Caltrans* projects in the ~~state program~~ **STIP**, specified in CTC Resolution #G-12. Under this process, Caltrans has authority to approve supplemental state funding for project cost increases up to certain limits; state funding for cost increases beyond these limits must be brought to the Commission for review and approval. Caltrans must identify ~~a source~~ *the county or interregional share* from which to take the supplemental funding, and any supplemental funding shall be added into the payback or substitute project in the ~~state program~~ **STIP**.
- (g) Project work undertaken and completed before execution of the cooperative agreement between the local agency and Caltrans cannot be reimbursed. Caltrans or the Commission may deny reimbursement for expenditures made before Commission approval of the ~~program~~ **STIP** amendment, even if made within the terms of the cooperative agreement, but normally would not be expected to do so.
- (h) Caltrans will reimburse for actual cost of preliminary engineering, environmental studies, and design engineering, as specified in the cooperative agreement, except that the local agency must pay for any project development costs that exceed ~~20% of total project construction cost, based on the estimated construction cost of the project as shown in the program or at approval of environmental clearance, whichever is greater~~ *the amount programmed in the STIP for project development*. Caltrans reimburses project development expenditures from within its budget, in accordance with subsection (b)(4) of Government Code Section 14529.7 and the cooperative agreement, with no Commission involvement except for *local* projects ~~from the TCI program or projects funded with rail bonds~~ for which project development work ~~must be~~ *is* identified in the STIP as an eligible part of the project and the Commission must make a funding allocation.
- (i) A local agency can normally expect reimbursement for capital outlay *or local assistance* expenditures as a lump sum payment in the year the project *component* was originally programmed. However, for very high cost projects, Caltrans may specify in the cooperative 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 account at one time.

- (j) If a local agency provides all or a portion of construction administration, Caltrans may reimburse for the actual cost of such construction administration, as specified in the cooperative agreement or consistent with normal practice wherein a local agency provides construction administration on a state project. Reimbursement for construction administration is made in the year that construction is completed, or the year the project was programmed, whichever is later. Reimbursement for construction administration is limited to ~~15% of project construction costs, unless agreed otherwise in advance in the cooperative agreement~~ **the amount programmed in the STIP for construction support.**
- (k) Interest or other debt service costs incurred by local agencies to finance advancement of a project are not reimbursable, per subsection (b)(2) of Government Code Section 14524.7.
- (l) If a project is still under construction at the time the Commission allocates reimbursement, the local agency can only be reimbursed for work completed to date, and must submit progress payments for any remaining reimbursement.
- (m) Funds reimbursed to a local agency are to be put back in the account or funding source used to pay for the project advancement, and may then be used for any legal purpose at the discretion of the local agency. Reimbursements to local agencies for projects advanced with local sales and use taxes must be used for the same purposes for which voters approved those sales and use taxes, as required by subsection (b)(6) of Government Code Section 14529.7.
- (n) Caltrans and the Commission shall provide assistance to a local agency in meeting these provisions but shall have no liability for loss of reimbursements due to failure to meet requirements of these guidelines or the cooperative agreement.

10. AGENCY RESPONSIBILITIES

- (a) The local agency is responsible for:
 - (1) Obtaining the support of the Regional Transportation Planning Agency for the project advancement and the payback project,
 - (2) Taking the proposed ~~program~~ **STIP** amendment to Caltrans and seeking its agreement,
 - (3) Executing the cooperative agreement with Caltrans,
 - (4) Meeting any requirements for project delivery and funding in the cooperative agreement, these guidelines, and the statutes, and
 - (5) Submitting billing(s) to Caltrans for reimbursement.
- (b) Caltrans is responsible for:
 - (1) Informing the local agency about the process, and assisting the local agency with its application,
 - (2) Determining whether the state can proceed with project advancement, after reviewing funding and staffing availability,
 - (3) Drawing up the cooperative agreement with the local agency covering the project to be advanced and the payback project,
 - (4) Preparing the proposed ~~program~~ **STIP** amendment and submitting it to the Commission,
 - (5) Meeting any requirements for process or project delivery in the cooperative agreement, these guidelines, and the statutes,

- (6) Processing the request for Commission allocation as necessary for reimbursement,
 - (7) Making timely reimbursement to the local agency as called for in the cooperative agreement, and
 - (8) Keeping a summary record of projects advanced and reimbursements made under this program, available to the Commission.
- (c) The Commission is responsible for:
- (1) Approving the ~~program~~ **STIP** amendment that allows a project to be advanced by a local agency and specifies the payback project(s) to replace it in the ~~state program~~ **STIP**,
 - (2) Allocating funds for reimbursement in the proper program year, or earlier by local agency request if surplus state funds are available, or later if state funds are not available at the program year, and
 - (3) Reporting to the Legislature in its Annual Report on progress and impact of this program, as required in subsection (b)(5) of Government Code Section 14529.7.

11. DEFINITIONS

- (a) Local agency means the governing body of any local jurisdiction, specifically including but not limited to a county, city, transportation sales tax authority, or transportation or transit district.
- (b) Caltrans means the state Department of Transportation, including its district offices.
- (c) Commission means the California Transportation Commission.
- (d) ~~Program (or state program)~~ **STIP** means the State Transportation Improvement Program **adopted by the Commission** (~~STIP~~) ~~or State Highway Operation and Protection Program (SHOPP)~~.
- (e) Project means any project programmed by the Commission in the ~~STIP or SHOPP~~, including right-of-way acquisitions, and in limited specified cases project development work or studies. Project also includes a cash payback reimbursement programmed in the ~~STIP or SHOPP~~.
- (f) Cooperative agreement means a cooperative agreement, project agreement, or fund transfer agreement or advance expenditure of local funds agreement between Caltrans and local agencies, covering project delivery and funding as specified in more detail in Section 5 of these guidelines.
- (g) Payback means reimbursement of local agency expenditures with state or federal funds or in the form of one or more substitute project(s) paid for by the state.
- (h) Budget authority means authorization from the state Legislature in the State Budget Act for the Commission to allocate and Caltrans to expend state and federal funds, for project development and capital outlay as appropriate, for programmed projects in sequence with priority by fiscal year of programming.

GOVERNMENT CODE SECTION 14529.7
As amended by Statutes of 1992, Chapter 1243 (AB 3090)

14529.7. (a) A local jurisdiction may, with the concurrence of the appropriate transportation planning agency, the commission, and the department, advance a project included in the state transportation improvement program to an earlier fiscal year through the use of its own funds. A project advanced in this manner shall be deliverable by the state, or by the local jurisdiction pursuant to agreement, in the earlier year proposed by the local jurisdiction.

If a project is advanced pursuant to this subdivision, the state transportation improvement program shall be revised at the time of adoption or by amendment to show the project in the earlier fiscal year.

With the concurrence of the appropriate transportation planning agency, the commission, and the department, one or more replacement state transportation projects shall be identified and included in the state transportation improvement program for the equivalent escalated dollar value and at the originally scheduled fiscal year of the advanced project. If the project to be advanced is programmed with federal funds, the replacement project or projects shall not result in an increase in state matching funds. A replacement project or projects shall have no lower priority for funding and delivery than did the advanced project, as originally scheduled.

(b) A local agency may enter into an agreement with the appropriate transportation planning agency, the department, and the commission to use its own funds to develop, purchase right-of-way for, and construct a transportation project within its jurisdiction if the project is one which is included in the adopted state transportation improvement program, funded by the Passenger Rail Bond Fund, as set forth in Section 2701.05 of the Street and Highways Code, or if approved by the voters, the Passenger Rail Bond Fund created by, respectively, Section 2702.05 or 2703.05 of the Street and Highways Code, the Clean Air and Transportation Improvement Fund created by Section 99610 of the Public Utilities Code, the State Highway Account, or the Transportation Planning and Development Account, or any combination thereof, pursuant to all of the following requirements:

(1) Projects constructed pursuant to this subdivision shall conform to all applicable state and federal design and construction standards.

(2) Pursuant to the agreement, and from funds allocated by the commission for the project in the year it was scheduled in the state transportation improvement program, subject to annual legislative appropriation, the department shall reimburse a local agency for the actual cost of constructing the project, including the acquisition of right-of-way, with local funds pursuant to this subdivision. Interest or other debt service costs incurred by local agencies to finance right-of-way acquisition or construction for the project are not reimbursable. Reimbursement made to a local agency pursuant to this subdivision shall be made from the funding source identified in the state transportation program. For purposes of Section 188 and 188.8 of the Streets and Highways Code, the project shall be considered as an expenditure in the year it was originally scheduled in the state transportation improvement program.

(3) The amount actually reimbursed to the local agency under paragraph (2) shall be the amount expended by the local agency for right-of-way and construction, escalated by the actual construction cost index between the time of construction award and the time of commission allocation of reimbursement funding, but not to exceed the escalated amount programmed for expenditure for the project in the state transportation improvement program in the originally scheduled year. If the expenditure of local funds does not result in the completion of an operable segment of a transportation project, payback shall be limited only to the actual amount expended by the local agency for right-of-way or partial construction, with no escalation factor.

(4) From funds appropriated to the department for project development work, the department shall reimburse the local agency for the actual cost of developing the project with local funds pursuant to this subdivision. Reimbursement of project development costs shall not exceed 20 percent of estimated construction costs. In no case shall this reimbursement exceed any lesser amount mutually agreed to by the department, commission, and local agency. Reimbursement shall occur at the earliest date the department has budget authority to do so, but not later than the year in which the department would have made those expenditures to deliver the project as originally scheduled in the state transportation improvement program.

(5) The commission shall prepare a report on the progress and impact of the local transportation construction program authorized by this subdivision and shall include the report as an element of the annual report to the Legislature required pursuant to Sections 14535 and 14536 of the Government Code.

(6) Reimbursements made to local agencies pursuant to this subdivision for expenditures of local voter approved sales and use tax revenues shall be used for the same purposes for which the imposition of the sales and use tax is authorized.

(7) A project which is constructed pursuant to this subdivision is ineligible for funding from the State-Local Transportation Partnership Program established by Chapter 16 (commencing with Section 2600) of Division 3 of the Streets and Highways Code.

(8) The commission, in consultation with the department and local transportation officials, shall develop and adopt guidelines to implement this subdivision.