

# Memorandum

Tab 22

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Subject: **PRESENTATION OF THE DRAFT SB 1 ACCOUNTABILITY AND TRANSPARENCY GUIDELINES**

## **SUMMARY:**

The SB 1 Accountability and Transparency Guidelines are modelled after the Proposition 1B Accountability Implementation Plan and describe the California Transportation Commission's (Commission) accountability structure. This structure is intended to communicate the Commission's expectations and specifically emphasize program and project accountability and allow for transparent and effective decisions and the timely delivery of transportation system improvements and resulting benefits.

The Commission received initial input from transportation stakeholders during the November 16, 2017 public workshop. A second workshop is scheduled for January 22, 2018 to receive additional input. Draft SB 1 Accountability and Transparency Guidelines shaped by this input, will be available by January 25, 2018. It is anticipated the final guidelines will be presented to the Commission for consideration at the March 2018 meeting.

## **BACKGROUND:**

The Road Repair and Accountability Act of 2017 (Senate Bill [SB] 1, Chapter 5, Statutes of 2017) provides the first significant, stable, and on-going increase in state transportation funding in more than two decades. The Legislature has provided additional funding to and increased the Commission's role in several existing programs, and created new programs for the Commission to oversee.

SB 1 creates new and augments existing programs including, but not limited to, the Active Transportation Program, the Local Partnership Program, the Local Streets and Roads Program, the Solutions for Congested Corridors Program, the State Highway Operation and Protection Program (SHOPP), the State Transportation Improvement Program, and the Trade Corridor Enhancement Program. SB 1 states that "it is the intent of the Legislature that the Department of Transportation and local governments are held accountable for the efficient investment of public funds to maintain the public highways, streets, and roads, and are accountable to the people through performance goals that are tracked and reported."

The Commission's responsibility for the accountability of SB 1 program funds focuses on the identification and reporting of expected and actual benefits of the projects along with the delivery of projects within their approved scope, cost, and schedule and reporting these findings to the Legislature and the public in a transparent and timely manner.

# **California Transportation Commission**

The Road Repair and Accountability Act of 2017

SB 1 Accountability and Transparency Guidelines

Draft

*January 26, 2018*

**California Transportation Commission**  
**The Road Repair and Accountability Act of 2017**  
**SB 1 Accountability and Transparency Guidelines**  
**Draft**

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**- DRAFT -**

## **California Transportation Commission**

### **The Road Repair and Accountability Act of 2017**

### **SB 1 Accountability and Transparency Guidelines**

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#### **BACKGROUND**

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SB 1 creates new and augments existing programs including, but not limited to, the Active Transportation Program, the Local Partnership Program, the Local Streets and Roads Program, the Solutions for Congested Corridors Program, the State Highway Operation and Protection Program, the State Transportation Improvement Program, and the Trade Corridor Enhancement Program.

**SB 1 states that “it is the intent of the Legislature that the Department of Transportation and local governments are held accountable for the efficient investment of public funds to maintain the public highways, streets, and roads, and are accountable to the people through performance goals that are tracked and reported.”**

The Commission's responsibility for the accountability of SB 1 program funds is focused on the identification and reporting of expected and actual benefits of the projects along with the delivery of projects within their approved scope, cost, and schedule, and reporting these findings to the Legislature and the public in a transparent and timely manner.

#### **APPLICABILITY**

With exception to the Local Streets and Roads Program, these Accountability and Transparency Guidelines (Guidelines) are applicable to all Senate Bill 1 programs as listed in Section IV. The Guidelines are intended to supplement the Commission's programmatic guidelines for each SB 1 Program. In the event of a conflict between the provisions outlined in these Guidelines and those provided in specific programmatic guidelines adopted by the Commission, the provisions of these Guidelines will govern. These Guidelines are effective immediately upon approval by the Commission and may be amended at any time subject to a Commission action at a duly noticed Commission meeting. While the Commission is authorized to program and allocate funding for SB 1 programs, the California Department of Transportation (Department) provides the administrative oversight for SB 1 Programs and ensures that the terms and conditions of the Commission's guidelines and subsequent programming, allocation, reporting, and other actions are followed.

## **PURPOSE**

SB 1 funded projects include but are not limited to highway, transit, active transportation projects, local streets and roads, congestion relief, trade corridor and other related projects, some of which are significantly complex, representing significant costs, constrained schedules, and are subject to many project delivery processes each with considerable impacts to timely project delivery. These Guidelines are intended to communicate the Commission's expectations and specifically emphasize program and project accountability. Specifically, as described in these Guidelines, the Commission intends to exercise programmatic oversight for the delivery of SB 1 projects with regard to benefits, scope, cost, and schedule consistent with the program objectives and executed agreements.

## **SB 1 PROGRAM ACCOUNTABILITY**

Modelled after certain aspects of the Proposition 1B Accountability Implementation Plan, the Commission's SB 1 Accountability and Transparency Guidelines describe the Commission's accountability structure that is intended to allow for transparent and effective decisions and the timely delivery of transportation system improvements and resulting benefits. The following describes the components of this accountability structure:

### **A. Front-End Accountability**

The Commission will require project Baseline Agreements (Attachment A) for the following programs:

- Active Transportation Program – only for projects with a total project cost of \$25 million or greater or a total programmed amount of \$10 million or greater.
- Local Partnership Program (Competitive) – only for projects with a total project cost of \$25 million or greater or a total programmed amount of \$10 million or greater.
- Solutions for Congested Corridors Program.
- State Highway Operation and Protection Program – only for projects with a total project cost of \$50 million or greater or a total programmed amount (in right-of-way and/or construction) of \$15 million or greater.
- Trade Corridor Enhancement Program.

Each Baseline Agreement shall be signed by a duly authorized officer of the Applicant, Implementing Agency, the Department's Director, and, the Commission's Executive Director.

The Baseline Agreements set forth the agreed upon expected benefits, project scope, schedule, and cost, and provides a benchmark for comparison to the current status of the project for reporting purposes. These Baseline Agreements will also identify the agency responsible for meeting the reporting requirements and, for locally implemented, identify the responsibilities relative to the type and location of the project. The Baseline Agreement is considered the front-end document that forms the foundation for the Commission's in-progress and follow-up accountability.

The Commission shall approve all (executed) Baseline Agreements at a regular Commission meeting within four months after a project has been adopted into one of the aforementioned programs except in the following instances:

- For projects that have not received environmental clearance, the Baseline Agreements are due three months after the filing a notice of exemption or filing a notice of determination pursuant to California Environmental Quality Act.
- For projects requesting an allocation at the May 2018 and June 2018 Commission Meetings, for a component other than environmental, the Baseline Agreement shall be approved by the Commission no later than the October 2018 Commission meeting.
- No Baseline Agreement will be required for State Highway Operation and Protection Emergency Response projects that are necessary to respond promptly and restore damages to the state highway system caused by floods, slides, earthquakes, fires, and other significant events

The Commission may delete a project for which no Baseline Agreement is executed. The Commission will not consider approval of a project allocation, except for the environmental component, without an approved Baseline Agreement.

For all SB 1 Program projects, the Commission requires that the Department enter into agreements (cooperative or funding) with implementing agencies that in pertinent part will include the accountability and transparency principles and best management practices outlined in these Guidelines, any specific requirements in the individual programmatic guidelines, and be consistent with executed Baseline Agreement. The Commission is not a signatory to cooperative or funding agreements described in this section.

## **B. In-Progress Accountability**

The following outlines the in-progress accountability steps the Commission intends to employ to assure that SB 1 funded projects are successfully delivered consistent with the respective program guidelines, Commission programming and allocation actions, and cooperative or funding agreements by and between SB 1 funding recipients and the Department.

### **1. Ongoing Program Monitoring and Review**

Implementing agencies are responsible for managing the scope, cost, and schedule of the project consistent with the adopted programs and executed agreements. Commission staff shall receive routine program and project progress reports from the Department. Commission staff may also schedule routine status meetings with implementing agencies, and will perform routine assessments of project progress as compared to the executed agreements. The purpose of this assessment is to identify possible issues of concern, establish an understanding of related impacts, and prepare agenda items for the Commission. Commission Staff anticipates placing projects that are unable to maintain delivery and cost commitments on a "watch list" and expects these projects be identified in the progress reports.

### **2. Program or Project Amendments**

The Commission will consider program or project amendments at its regular meetings. Program or project amendments requested by implementing agencies shall receive the approval of the same

entities that originally signed the agreements before presentation to the Commission and will be processed in accordance with the respective programmatic guidelines.

### 3. Allocation of Funds

The Commission will allocate funds only when the implementing agency requests an allocation that has been prepared in accordance with the respective programmatic guidelines. The Commission will consider allocation requests on its regular agenda.

## **C. Program Reporting**

The Implementing Agency, unless otherwise specified, will submit regular and timely project updates to the Department for project subjects to the Baseline Agreement requirement. The Department will prepare a report for each program identified in the Front-End Accountability Section and submit to the Commission. Commission staff will use the reports to identify issues and concerns that may be presented to the Commission for further action.

### 1. Progress Report

The first progress report will be presented to the Commission during the October 2018 meeting. Subsequent reports will be presented to the Commission every December, March, May and August, based on the state fiscal year. Beginning in July 2019, progress reports will become semi-annual and will be presented to the Commission during the March and August meetings.

The progress report shall be written in plain language and include information appropriate to assess the current state of the overall program and each project as compared to the previous report.

The overall program summary will identify the total programmed and un-programmed funds, total dollars allocated, number of projects allocated, number of completed projects, and a discussion of the actual benefits achieved with the completed projects.

For each project, the progress report will include the following:

- The current cost, schedule, scope and expected benefits as compared to the cost, schedule, scope and expected benefits approved under the Baseline Agreement or for projects that have not yet cleared environmental, as approved at the time the project was adopted into the respective program.
- A summary describing any changes to the scope, cost, schedule and benefits of the project and a corrective action plan if necessary, since the last report.
- Incurred expenditures to date for all project component costs, with the SB 1 funds being identified separately.
- Identification and discussion of any significant issues that may impact implementation of the project including financial constraints and commitments, and risks and impacts.
- Status of the Completion and Final Delivery Reports submittal for completed projects or completed project segments.



## 2. Annual Reports

The Commission will provide in its annual report to the Legislature a summary of its activities relative to the administration of the SB 1 Programs. This report may also discuss significant issues with these programs, and may recommend legislative proposals that could facilitate their implementation.

### **D. Follow-up Accountability**

The Implementing Agency, unless otherwise specified, will submit regular and timely Completion and Final Delivery Reports to the Department for all projects receiving funds in the programs identified in the Front-End Accountability Section. The Department will review and approve the reports prior to submitting to the Commission. Commission staff will use the reports to identify issues and concerns that may be presented to the Commission for further action.

#### 1. Completion Reports

Within six months of construction contract acceptance or the project becoming operable (open to the public), the Department shall provide a Completion Report to the Commission on the scope of the completed project, its estimated final cost, estimated duration, and project benefits as compared to those included in the executed project agreements. Additionally, the Completion Report shall describe the methodologies used to evaluate how the project benefits were evaluated as compared to the methodologies used in the executed project agreements. In the event the project benefits identified in the project completion report differ from those identified in the executed program agreements, the difference must be noted, quantified, and explained. Documentation used for the benefit evaluation shall be preserved and made available for review by the Department or the Commission, if requested. The Completion Report should not be delayed due to claims, plant establishment periods, or ongoing environmental mitigation monitoring.

For projects receiving SB 1 program funds for pre-construction components only, the Department shall provide the Completion Report to the Commission within six months of the conclusion of the pre-construction component. The Completion Report will include the scope of the project component, its final cost, and duration as compared to those included in the executed project agreements. Additionally, the Completion Report shall provide an updated schedule, a description of how the project will progress to actual construction, and a discussion on how the project will continue to provide the benefits described in the executed project agreements.

For projects delivered in segments, a Completion Report will be required for each segment and note that a summary Completion Report will be provided when the final project segment is complete. An audit may be done on one or all segments of a segmented project.

The Department shall ensure a Completion Report is approved prior to paying the final invoice for the respective SB 1 program funds.

#### 2. Final Delivery Reports

A Final Delivery Report will be provided at the conclusion of all remaining project activities beyond the acceptance of the construction contract to reflect final project expenditures, any changes that occurred after submittal of the Completion Report and an updated evaluation of the benefits if necessary. The Commission may include this information in its annual reports to the Legislature.

### 3. Audits of Project Expenditures and Outcomes

The Department shall audit a representative sample of projects from each of the respective SB 1 programs. The audits of project expenditures and benefits shall be performed in accordance with Generally Accepted Government Auditing Standards promulgated by the United States Government Accountability Office. These audits shall provide a finding on the following:

- Whether project costs incurred and reimbursed comply with the executed project agreements or approved amendments thereof; state and federal laws and regulations; contract provisions, and Commission guidelines.
- Whether project deliverables (outputs) and outcomes are reasonable in comparison with the project cost, scope, schedule and benefits described in executed project agreements or approved amendments thereof.

At a minimum, the following audits shall be performed. Additional audits, if deemed necessary, may be requested by the Commission during the implementation phases of the project.

#### a. Semi-final Audit

Within six months of the Completion Report of the project (or when the project is substantially completed and open to traffic), the Department shall provide the Commission with a semi-final audit report for projects in the SB 1 Programs.

#### b. Final Audit

Within six months of the date of Final Delivery Report, the Department shall provide the Commission with a final audit report for the project. This report shall be a supplement to the semi-final report and shall provide findings on total project expenditure and final project benefits. For purposes of these audits, project completion occurs after all project activities beyond the acceptance of the construction contract are completed.

#### c. Yearly Summary

By October 1 of each year, the Department shall provide the Commission with a report on the audited projects, summarizing their findings and status of any corrective action.

#### Attachments:

Attachment A: Project Baseline Agreement Template and attachments are under development and will be included in the proposed final guidelines.