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Advocacy Position Statement

Applicability of Federal Laws and Rules to Partially Federally Funded Transportation Projects

Statement of Purpose:

The American Public Works Association (APWA) seeks to inform elected officials, regulators, policy-makers and decision-makers and the public at-large of its stated position on encouraging state and local governments to utilize federal funds appropriated by Congress for public transportation projects and expediting implementation of partial federally funded transportation projects.

Statement of Position:

To encourage state and local governments to utilize federal funds appropriated for government transportation projects and to expedite and improve the cost efficiency of implementing partially federally funded transportation projects, state and local projects which receive or may receive less than \$5,000,000 or 25 percent, whichever is greater, of the total project funding from federal sources should be exempt from federal laws and regulations, provided such projects follow all applicable state and local laws and regulations, including laws and regulations applicable to protection of the environment and right-of-way acquisition. Furthermore, as a clarification of current practice, state or local projects do not become subject to federal laws and regulations (“federalized”) until such time as the Federal Highway Administration notifies the affected State Transportation Department or governmental agency that the project has been approved to receive federal funding.

Background and Rationale:

Reliance on federal laws and regulations, to protect the public on small projects and projects in which federal funds are the minority source, is no longer necessary and is overly burdensome. All states and most local governments have stringent laws and regulations, which protect its communities’ environment and its citizens’ property rights, as well as other public rights. State and local laws and regulations also guard against improper expenditure of public funds. These state and local laws and regulations serve

well to protect the same environmental and citizen rights on projects that federal laws and regulations were enacted to protect.

If a project contains “one dime” of federal funding, it currently is subject to extensive federal laws and regulations in addition to state and local laws which serve many of the same purposes. There is no distinction in applicability of federal laws and regulations based on size and hence complexity of the project; requirements are the same whether the project is valued at \$10,000 or \$100,000,000. These requirements add from six months to more than two years to the total duration of a project from the planning stage to completion of construction, thus adding unnecessary delay to the project and delaying beneficial use of the project by citizens. The delay also results in unnecessary cost increases due to cost inflation for rights-of-way acquisition and construction. These requirements also add up to 20 percent and more in design, rights-of-way acquisition, and construction costs, with no real cost benefit to the “protected” public.

Often, state and local governments must decide if federal funding will exceed the additional costs added by acceptance of the funding. The decision is made even more difficult, since rejection of federal funding can place state and local governments at odds with elected congressional officials. Many local governments currently forego well-intended federal funding opportunities, due to “red-tape”, “too many hoops”, and “numerous strings attached” to federal funds. Many states spend a great amount of extra effort to segregate federal funds to fewer projects to avoid “federalizing” projects.

Currently, there is no clear identification of when a project becomes “federalized” and subject to federal laws and regulations. Different interpretations by Federal Highway Administration (FHWA) and State Transportation Department (STD) personnel vary from “when federal funding is planned to be sought” to “when federal funding is accepted”. The wide variation in interpretation begs for a clear definition, to provide all involved with clear direction.

Sponsor

Transportation Committee