

Role of the Legislature, Executive Branch, and Other Agencies in Highway Construction Programing

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The programing of highway construction in this era of change and rapid growth involves far more than the services of the professional engineer who is involved in the day-to-day, month-to-month, and year-to-year work of planning, designing, and building highways.

A sound, farseeing program must rely upon the fundamentals of governmental understanding, the necessary legislative framework, and broad direction. Government includes Federal, state, and local. This paper will be oriented to programing as related to state highways in California.

The people of California in 1902, by constitutional amendment, delegated to the legislature certain powers with regard to highways. These powers are broad, simple, and inclusive, as follows:

1. To establish a system of state highways; and
2. To pass all laws necessary or proper for highway construction or maintenance.

Under this authority, the legislature has caused to be created the complicated governmental structure which enables the engineers, the contractors, and the workmen to plan and build the highways.

It is important to note that within the limits of broad policy and certain specific directives, the legislature has delegated much of its authority to the executive arm of the state government and to the California Highway Commission. Despite this delegation of authority, the legislature is still the key to and the directing force in the highway program. It has exercised, particularly in recent years, a positive role in highway planning.

It became sharply evident as World War II ended that the highways were woefully inadequate to meet the traffic demand and totally incapable of caring for the needs which were developing and which could be foreseen. An avalanche of people and motor vehicles was descending upon California.

Therefore, in 1946, the legislature initiated a deficiency study which developed a measure of what was required to correct the highway problem in California. The result was an act of the legislature (Collier-Burns) in 1947 which provided for an expanded program of street and highway improvement financed by increased highway-user taxes.

Because of necessary compromise, the 1947 legislation did not provide sufficient revenue to finance in a reasonable period all of the needed construction as revealed by the 1946 study. The inadequacy of the 1947 legislation was recognized and, on the basis of 1952 highway deficiency studies initiated by the legislature, user-taxes were again increased.

The present financing structure has met with general public acceptance. All indications are that it can support an adequate construction program that will, within a reasonable period of time, complete improvement of the entire present state highway master plan, including the 10½ billion dollar California Freeway and Expressway System.

This freeway and expressway system in its concept is a major accomplishment of the legislature and is a prime example of the legislature's contribution to, and initiation of, construction programing. It is the outgrowth of a study by the Division

of Highways, Department of Public Works, undertaken by direction of Senate Concurrent Resolution No. 26 of the 1957 legislature. The principal recommendations of this study were enacted into law (Senate Bill 480) in 1959, after numerous public hearings by a legislative interim committee.

This law created the 12,414-mile freeway and expressway system, which will eventually result in the linking of all cities of 5,000 or more population, and is expected to carry 59 percent of the total vehicle travel when completed.

The progressive action taken by the legislature in establishing a master plan of freeways and expressways has received nationwide recognition as a great achievement in the highway field. But it would be of little value had not it also laid the groundwork which makes it possible to carry out this program.

By statute, the legislature in 1939 established the freeway principle and authorized the Department of Public Works to construct any portion of the state highway system as a freeway, or to make any existing state highway a freeway. The law states "Freeway means a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right of easement or access."

In 1952, the legislature took another farsighted action by creating a "Highway Right-of-Way Acquisition Fund" for the purpose of protecting future highway rights-of-way from expensive developments. This fund totals \$30,000,000 and is intended to act as a revolving fund, the money being returned from state highway funds at such time as construction begins. By reducing the ultimate cost of rights-of-way, this fund has the effect of providing more highway improvements for the money available. As an example, it is estimated that the use of this fund has, to date, saved the state about \$215,000,000 which otherwise would have been needed to acquire improved instead of undeveloped properties.

Another assist to programing was given by the legislature in 1955 by enacting permissive legislation allowing the award of highway contracts after the first day of January preceding the beginning of the fiscal year (July 1) in which a project is budgeted. This enables the scheduling of contracts to take advantage of favorable weather conditions, and under certain circumstances may advance the completion of a project as much as a year.

Programing is dependent upon funds; and if the funds are uncertain, the programing is just as uncertain, if not more so. We must all look to the legislature for a firm financial foundation upon which we can base a sound highway construction program. California is fortunate in that the legislature has established a dependable source of financing for the improvement of highways, and programing can be based on estimates of funds for future years with reasonable assurance that these funds will be available at that time.

California state highways are financed by a family of taxes, consisting of taxes on motor fuels (both gasoline and diesel oil), annual registration fees applicable to all vehicles, driver's license fees, annual weight taxes on commercial vehicles graduated according to their empty weight, and a tax on the gross revenues of for-hire motor carriers. There are also, of course, Federal-aid funds that presently constitute a large portion of the construction budget in California. The funds from these sources are all used for highways and related purposes and are protected by an "anti-diversion" clause in the constitution which provides that "all moneys collected from any tax now or hereafter imposed by the state upon the manufacture, sale, distribution, or use of motor vehicle fuel for use in motor vehicles upon the public streets and highways over and above the costs of collection, and any refunds authorized by law, shall be used exclusively and directly for highway purposes."

For the purpose of controlling the distribution of construction funds, the legislature has divided the state into two parts, which are referred to as the northern county group (45 counties) and the southern county group (13 counties). The statutes require that the northern county group receive 45 percent of the total state highway construction funds available each year, and that the southern county group receive the remaining 55 percent. These percentages are based on consideration of the statewide transportation system approach, as well as the relative highway needs and vehicle registration.

In addition to the above north-south division of state highway construction funds, the legislature has included another statutory control referred to as the "Mayo Formula." This control has no effect on the division of funds between the northern and southern county groups. The "Mayo Formula" guarantees a specified minimum expenditure of construction funds in each county of the two sections of the state during specified periods. This guaranteed minimum expenditure is based only partially on the relative highway needs of the county and is actually the product of a compromise reached by the legislature.

To permit a certain amount of flexibility, the legislature made available a certain percentage of the total construction funds for budgeting by the California Highway Commission at its discretion. These funds have been referred to as "free money" and, with the exception of the north-south split, have no legislative control as to where on the state highway system they are to be expended.

Table 1 shows the percentages of "frozen" and "free" funds that were established by the legislature for the period since the Collier-Burns Act of 1947. The legislative controls shown in Table 1 will end on June 30, 1963. We are presently in the process of completing a cost estimate of the deficiencies on the entire state highway system. This information will be presented to the appropriate legislative committee for its deliberations on the establishment of future financial controls on the expenditure of highway construction funds.

TABLE 1

Period	Frozen	Free
July 1, 1947, to June 30, 1952	50 %	50 %
July 1, 1952, to June 30, 1955	60 %	40 %
July 1, 1955, to June 30, 1958	65 %	35 %
July 1, 1958, to June 30, 1963	65 %	35 %

It should be mentioned here that all Federal-aid highway funds available for the interstate, primary, urban, and secondary systems are subject to the same controls set up by the legislature for highway funds from other sources. Programing and budgeting must naturally still take into account Federal regulations and controls on the expenditure of Federal-aid funds.

The legislature has delegated to the California Highway Commission the authority and responsibility for carrying out its intentions in each annual budget. However, as with other major aspects of the state highway program, the legislature has laid down the necessary broad guide lines and made its general intent clear. Here is the most important section of the Streets and Highways Code in this regard: "It is hereby declared to be the policy of the legislature to provide for advance planning and continuity of fiscal policy in the construction and improvement of the state highway system, and in the administration of expenditures from the state highway fund. The commission is directed to follow such policy insofar as possible."

The legislature has thus made it quite clear to the California Highway Commission that it wants a highway program based on sound, long-range planning and, just as important, it wants continuity.

It is evident from the previous discussion that the legislature has a strong, indispensable role in highway construction programing. As is generally known, the Federal legislative branch has over the past few years played an increasingly important role in the highway field. The Federal-aid program is now a major part of the highway construction program in most states.

As stated previously, sound programing is dependent upon sound financing. This applies on the Federal level as much as on the state level. One of the most important roles that the Federal legislative branch could assume from the standpoint of planning and programing is to insure continued legislative action that would guarantee a stable

Federal-aid program for a number of years in the future. We are all aware of the havoc that was caused by the uncertainty of the status of the Federal-aid program a short while ago.

In order to hold spending within the limits of anticipated revenues and thereby keep the Federal Highway Trust Fund solvent, the Bureau of Public Roads has found it necessary to exercise strict control of obligations through "reimbursement planning." This is frequently referred to as "contract control." These controls tend to slow down highway construction programming to some degree; however, the Bureau has provided the states with some flexibility by allowing the award of approved contracts beyond the controls established with the understanding that the Federal reimbursement for these projects would be delayed. As of today, these Federal controls have not created any major problems in highway construction programming in California.

All states are confronted with highway program controls set up by at least two legislative branches — Federal and state. California has been fortunate in that the legislation of these two branches is compatible, at least for the present.

It is not difficult to visualize conflicting legislation that would make it difficult if not impossible to carry out a highway program. In these cases, it is the responsibility of the executive branch to advise the legislature of the conflict and to recommend corrective legislation.

The Department of Public Works has broad powers with relation to highways, set forth by law, including the following principal provisions:

1. The department shall have full possession and control of all state highways and all property and rights in property acquired for state highway purposes. The department is authorized and directed to lay out and construct all state highways between the termini designated by law and on the most direct and practicable locations as determined by the highway commission.
2. The department shall improve and maintain the state highways.
3. The department may do any act necessary, convenient or proper for the construction, improvement, maintenance or use of all highways which are under its jurisdiction, possession, or control.

Under these provisions the Director of Public Works lets contracts and acquires and conveys property on behalf of the state.

As an appointee of the Governor, the director carries out, within the provisions of law, the policy of the executive branch and reflects the thinking of the administration.

He is an important contact with the Governor, and with local jurisdictions and with civic leadership concerned with highway matters. He can interpret and perhaps influence the governmental climate, although, as we have seen, politics as such, does not enter into the carefully safeguarded area of highway planning, financing, and construction.

CALIFORNIA HIGHWAY COMMISSION

The California Highway Commission is a creature of the legislature to which have been delegated many powers.

It is a statutory body of seven members, including the Director of Public Works as chairman. The six others are appointed by the Governor, with consent of the Senate, for staggered four-year terms. The members usually come from different areas of the state; however, by law each member represents the state as a whole and not any particular area. Definite duties and definite responsibilities have been assigned to the commission.

The law prescribes seven principal functions of the commission as follows:

1. Adoption of routes.
2. Allocation of funds.
3. Declaration of routes as freeways.
4. Adoption of resolutions authorizing condemnation of rights-of-way.
5. Abandonment or relinquishment of rights-of-way.
6. Authorization for the Director of Public Works to execute deeds.
7. Approval of each county's system of primary county roads.

Some of these functions are technical, although highly necessary, grants of power. I would place the first three in the category of authority which affects programing. These matters also have great impact on the public and are of greatest import in the development of the highway system.

The various revenues apportioned for state highway purposes can be allocated for expenditure only by action of the highway commission. Staff work of the Division of Highways furnishes recommendations for these allocations, but they are recommendations only.

In practice the Division of Highways maintains an up-to-date planning program that is submitted annually to the commission for approval. This program is simply a time schedule listing specific projects and their estimated cost, and setting forth the year that construction is planned to begin, as well as the prior year or years over which the necessary rights-of-way are to be acquired. It is considered the backbone of the engineering phases of highway work, such as advance planning and design, and also acquisition of rights-of-way and construction. This planning program insures compliance with many of the Federal and state controls that have been established.

The Division of Highways operates on an annual (fiscal year) basis. The commission therefore adopts an annual highway budget based upon anticipated revenues for each fiscal year from July 1 through June 30 of the next. After adoption by the commission, this budget is submitted to the Governor for inclusion in the state's annual budget which is presented to the legislature.

In discussing the role of city and county governments in state highway construction programing, recognition must be given to the needs of city streets and county roads. In the case of freeways, this is theoretically taken care of in California by means of a freeway agreement executed between the state and the local governing body.

However, the legislature, through Senate Concurrent Resolution No. 62 (1959), requested the Department of Public Works to prepare a report which, among other things, would include an estimate of the deficiencies on every city street and county road in the entire state. This estimate was not only on present deficiencies but also included estimated deficiencies projected into the future as far as the year 1980. Although the report to the legislature was prepared by the Department of Public Works, the actual deficiency studies were made by the individual cities and counties with the guidance of an advisory committee, appointed by the legislature, and the technical assistance of the Division of Highways.

This report was submitted to the appropriate legislative committees last August 1 and will be the subject of several public hearings throughout the state.

Its main purpose was to provide the legislature with factual data that could be used as a basis for considering possible additional state financial assistance toward improvement of city streets and county roads. This study, however, combined with a review that is presently under way on the state highway system, will also result in a complete picture of the entire highway and local road and street system, and should be of considerable assistance to all levels of government in their transportation program.

The legislature has placed an important part of the freeway program in the hands of the city and county governments by requiring the execution of freeway agreements between the state and city councils or county boards of supervisors. These agreements govern the closing of streets or roads. The law specifies that "No city street or county highway shall be closed, either directly or indirectly, by the construction of a freeway except pursuant to such an agreement." As a matter of policy, the state, with some minor exceptions, does not even begin to acquire rights-of-way for a freeway project until a freeway agreement has been executed.

Accordingly, any freeway construction program is dependent not only on factors such as planning, design, and financing, but also on a mutual understanding between the local government and the state as expressed in the form of an executed freeway agreement. There are examples of freeway construction being delayed for several years due to the lack of such an agreement.

In the preparation of such a highway construction programing, it is necessary to recognize the need of coordination with the plans of many other agencies. The degree to which this coordination can be carried out depends upon many factors; however, it is

usually possible through some adjustment in the normal programing schedule to bring about the coordination that will result in an over-all benefit to the public.

An example would be a relocation of a deficient highway that is required by reservoir construction proposed by state or Federal agencies. In this case, the agency promoting the reservoir bears the cost of constructing the relocation to standards approximately equal to the existing highway. With some adjustment in the normal highway construction program, it is ordinarily possible to obtain additional state highway funds for the proposed relocation to supplement the amount that is the responsibility of the agency constructing the reservoir. This coordination will result in a highway relocation constructed to modern standards with a minimum expenditure of public funds and to the over-all advantage of the public.

Another example involves coordinated construction programing involving flood control projects, major local drainage and utility improvements, etc., that must be constructed considerably in advance of the highway project. By means of a cooperative agreement involving participation by the highway agency, it is possible to proceed with the needed local project considerably in advance of the future highway construction and at a considerable saving to the public.

Interested individuals may take a role in highway construction programing, other than through their elected representatives. In California, through active organizations, such as the chambers of commerce, individuals have been able to present definite and forceful recommendations on highway construction programing to both the Division of Highways and the California Highway Commission. These recommendations, through such an organization, represent the thinking of a broad cross-section of the state and are of considerable help in establishing a highway construction program.

Although this discussion may appear to segregate at least to some degree the role of the legislative and executive branches of government and the role of other agencies in highway construction programing, in actual practice they are closely interwoven and in the final analysis, inseparable.

Discussion

Livingston. — Those of us who live in the west and to some degree, those who come from the other parts of the country, have known for years that the California department and its public works and highway divisions have been in the vanguard of highway development. I believe they have been forced into it by the influx of people to that area.

It is appropriate, then, that Mr. Legarra has tried to tie together the various elements that necessitate cooperation during this kind of a program. His outline of the executive branch and the legislative branch is peculiar to California, but I am sure has significance to all of us.

W. Johnson. — I would like to ask a question about the advance right-of-way acquisition fund established in 1952. From what source were those funds derived, from ordinary highway user funds, or from some outside source?

Legarra. — I am not familiar with where it all came from, but it is my understanding that the funds are derived from highway-user sources.

W. Johnson. — In other words, they just set aside certain highway user funds to go into this \$30 million advance acquisition fund?

Legarra. — Actually, that is the case.

W. Johnson. — Otherwise they would have been available for highway construction?

Legarra. — That is right. There has been quite a bit of talk here recently about extending this highway right-of-way acquisition fund program, to make it larger than it is, and the point you have made has come up. You can see the off-setting advantages of putting it into highway right-of-way acquisition.

W. Johnson. — But originally there was \$30 million of construction that might have been started if the advance acquisition fund had not been created?

Legarra. — Essentially, yes.

Martin. — You spoke very little of the relationships in programing to the Governor, although you alluded to the question, to the local planning agency, the metropolitan planning agencies, and to the bureau staff. I wonder if you would comment on those relationships, briefly.

Legarra. — First of all, as I attempted to point out, the actual programing is done by the California Division of Highways and recommended to the California Highway Commission, and the commission is the only body by law that determines what the construction budget will be for the state highway program.

Now, as to the part that the cities and counties play in preparing this program, the answer is they play no direct part, but do make recommendations.

As far as the Bureau of Public Roads is concerned, I would say the same applies. So the full responsibility lies in the Division of Highways and the California Highway Commission.

Martin. — California has what is usually referred to as a "weak governor." I am not talking about the individual; I am talking about the position. Would you conceive that that same situation would exist in a state that has the strong-type governor?

Legarra. — In California, the budget is prepared by the California Highway Commission. That power has been given to them by the legislature. And this budget is turned over to the Governor, and it is included, in total, in the Governor's budget. I have never known of a case of any item being changed. Whether a strong-type Governor would change this is questionable.

Kimley. — I would like to ask a question about your statement that you have never experienced any loss of funds through advance acquisition of right-of-way. This seems to be a problem in North Carolina, where the Bureau of Public Roads has established a 7-year limitation.

In other words, my question has to do with the participation of the Bureau of Public Roads in the expenditures on the project, for right-of-way, preliminary engineering, etc.

Are you able to collect because California is building so fast that the limitation does not apply?

Legarra. — Actually, the right-of-way that is acquired by use of this highway right-of-way acquisition fund does not come under the Bureau regulation as to time limitation.

Kimley. — In other words, you do not get reimbursed for right-of-way acquired with those funds from the bureau?

Legarra. — I will put it this way. We can buy right-of-way from the highway acquisition fund ten years before we build the project, and it will still be eligible for Federal participation.

First of all, regular right-of-way funds are governed by this regulation of the Bureau, in regard to the 7-year period. There is no question about that.

However, in California the Bureau has agreed that the regulation does not apply to right-of-way acquired from the right-of-way acquisition fund.

Levin. — I just want to say the 7-year limitation applies only where Federal reimbursement is involved. They are not expecting any Federal reimbursement within the second period. They might thereafter; but within the 7-year period they are using their entire funds, and a special ruling has been made on this acquisition fund.

Legarra. — I think it should be clear that we are entitled to reimbursement.

Foster. — Ohio just got a new law that has been tested in the high court of Ohio, and it may provide impetus for the same thing California started some years ago. They are authorized to borrow from pension funds. They have a million dollars worth of

pension funds in Ohio. It is not under the control of the highway fund, of course. It is under the control of three or four state funds, social security, workmen's compensation, and one or two others. Under the law, the state highway department under proper agreements executed with these other state agencies can borrow up to 10 percent of this money.

In other words, as of now \$100 million can on proper agreement be made available for advance acquisition of right-of-way in Ohio. You can see that every state has tremendous amounts of these public welfare funds, and they are actually laying idle.

One other inducement, as I understand it, is that a small premium, a quarter of one percent, can be paid to the social security agencies for the use of this fund, over and above what they are now getting. So it provides an incentive for them to contract with the highway people for this money.

Buswell. — On California's advance right-of-way fund, I presume there must be a substantial inventory of projects that are already surveyed, where right-of-way limits have been established? Otherwise you would not know what right-of-way was required.

Legarra. — I might add that the right-of-way acquisition fund is already depleted. What actually happens is this: As a construction project comes into being that requires right-of-way that was acquired under this right-of-way highway acquisition fund, a proper amount of money is turned back in to the highway right-of-way acquisition fund. It is actually a revolving fund. So we can from time to time pick up money as construction projects go on.

Buswell. — It would be difficult for Montana to do that, because we just do not have a backlog of projects ready. You referred to the division of money between the northern and southern tiers of counties. Could you elaborate a little more on how you arrive at those percentages?

Legarra. — The legislature arrived at them. And they considered the relative deficiencies between the north and the south. As you can very well recognize, the north wanted more and the south wanted more, and there had to be an arrangement reached as to what the proper percentage was for the north and south. They went on the theory that the entire state highway network was a state transportation system, and consideration has been given to that, also. So some weight was placed on the matter of a system, and some weight was placed on the matter of deficiencies.

Buswell. — On the free and frozen funds, I understand that the highway commission can spend free fund money where it wants to?

Legarra. — Within that county group, yes.

Hall. — I wonder if you could comment on how city and state budgets and their programs can be coordinated.

Legarra. — First of all you would have to go back to the need of cooperation between the state and the cities in any freeway study.

You finally get to the point where you have a freeway located. You have to make a decision: Where will we put interchanges? Where will we put separation structures; which portion affects the transportation in the city itself, just on city streets? What are the effects of load from the freeway on to the city streets. During this freeway agreement stage is where all those determinations are made.

Now, as to the actual meshing of the improvements of the streets and the improvement of the state highways, naturally, no state highway would be improved with ramps unless the cities had an opportunity to improve some street that would be inadequate for the traffic that would be poured onto that street as soon as the freeway was opened. All I can say is that it just takes close coordination.

I do not know of any other answer, and it would have to be coordination on both sides, naturally. And certainly there is a flexibility in these freeway agreements. There is nothing firm about them. They can be changed by mutual agreement.

Bidell. — In what form do you present the legislature with your advance program, your request for approval for the necessary funds for the next five years, or whatever the

period is? Is it just a lump sum required per year, or do you go into much more detail in the presentation to the legislature?

Legarra. — I will divide it into two parts. One is the annual budget which the commission adopts. First of all, the Division of Highways recommends it to the commission. The commission adopts it, and it goes to the Governor. It is included in the Governor's budget to the legislature. And those are specific jobs. That is, they have the location between such-and-such a street and such-and-such a road, length, and cost. It is in quite complete detail. Second is the matter of programing (at the present time we are preparing one on a 7-year basis) and it is between the Division of Highways and the California Highway Commission and does not go to the legislature.

Bidell. — You mentioned before that you should have a knowledge of how much money is going to be coming in for the next seven years, in your particular case, so that you know where you are going insofar as your 7-year program is concerned. In what form do you present that, generally?

Legarra. — The legislature has set up definite monies for highway construction, or for the Department of Public Works, for highway purposes. And all we need to know is that this is a steady source of income to be used on highways. And then we can project that and use that for our planning program. We do not do any direct presentation to the legislature.

Granum. — Would you say that these legislative programs assist your programing procedure, that is, your selection of work to be done? Or would you say that it tends to handicap it to some extent?

Legarra. — First of all, insofar as the north-south split is concerned, it does not hurt us one bit, and it is perfectly all right. It is a legislative control that belongs in the legislature, and it does not harm the program.

Now, as far as the Mayo formula is concerned, at the present time it is out of balance because the relative deficiencies between the various counties has changed. There are counties that have just mushroomed, such as Santa Clara and Orange. Then there are other counties up in the mountains that have remained stable. The relative deficiencies between the two are out of balance. This means, for instance, that the legislature requires us to spend a certain amount of money in a mountain county. The money is not wasted. It is spent on needed deficiencies. But compared to the needs in the other counties, it does not measure up. So from that standpoint, there has to be a change made in the near future. The principle of the Mayo formula is all right. It is just that at present the percentages as set up are out of line.

Martin. — I would say that in some of the states, including Kentucky, legislative regulations such as you have outlined would be regarded as interjecting too much politics into the situation.

Livingston. — Actually, in trying to answer somewhat the problem you just posed, a well publicized program of the kind that they have in California, which the public acknowledges as being proper, will always find a vote-seeking legislature in difficulty if they try to change it.