Grade Separation Program:

An Unchanged Budget and Project Allocation Levels Established More Than 30 Years Ago May Discourage Local Agencies From Taking Advantage of the Program

September 2007 Report 2007-106

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September 13, 2007   2007-106

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the funding and approval process required for grade separation projects by state and local transportation agencies.

This report concludes that although the Public Utilities Commission's (Commission) priority list of grade separation projects for the last several years has contained more than 50 projects, the California Department of Transportation has been unable to allocate all of the Grade Separation Program funds because local agencies have often not taken the additional steps necessary to apply for the funds once their projects are included on the Commission's priority list. Part of the reason for this failure to apply for funds is that the cost of grade separation projects has increased more than tenfold over the past 30 years while the funds available from the Grade Separation Program have remained unchanged. Specifically, the average cost of a grade separation project has increased from $2.5 million in 1974 to a current average of just more than $26 million. Local agencies say they are experiencing difficulties securing the funding necessary to pay for their share of grade separation projects; thus, some are not nominating new projects to be included on the Commission's priority list and many are not applying for funds for the projects already on the priority list.

A report prepared by the Commission in March 2007 showed that $165 million is needed to provide funding for the same number of grade separation projects that $15 million provided in 1974. Additional funding will be available for grade separation projects from a bond measure approved by California voters in November 2006, which will provide a one-time amount of $250 million to improve railroad crossing safety. The bond measure makes $150 million of these funds available for allocation under the process established for the Grade Separation Program.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

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Summary

Results in Brief

According to data from the Federal Railroad Administration, 167 accidents occurred near at-grade crossings throughout California in 2006. An at-grade crossing, often referred to as a railway crossing, is an intersection of railway tracks and a roadway at the same elevation, or grade. One method used to address dangerous at-grade crossings is to eliminate them by separating the railway and roadway so they no longer intersect, usually via an overpass or bridge. Grade separation projects involving local roadways are the responsibility of the local agency that has jurisdiction over the roadway. The average cost of these projects is $26 million, according to the Public Utilities Commission (Commission), based on a current list of high-priority grade separation projects.

To help local agencies pay for these projects, the State makes some funding available through what is commonly referred to as the Grade Separation Program. As part of the process of determining which grade separation projects will receive funding from the Grade Separation Program, state law requires the Commission to establish a list by July 1 of each year prioritizing each eligible project nominated by local agencies. Further, state law gives the California Transportation Commission (CTC) the responsibility for allocating the annual Grade Separation Program appropriation of $15 million to the projects included on the Commission's priority list. CTC has delegated this responsibility to the California Department of Transportation (Caltrans).

Although the Commission's priority list of grade separation projects for the past several years has contained more than 50 projects, Caltrans has been unable to allocate all the Grade Separation Program funds because local agencies often have not taken the additional steps necessary to apply for the funds once their projects are included on the Commission's priority list. Part of the reason for this failure to apply for funds is that the cost of grade separation projects has increased more than tenfold over the past 30 years, while the funds available from the Grade Separation Program have remained unchanged. Specifically, based on data provided by the Commission, we found that the average cost of a grade separation project has increased from $2.5 million in 1974 to a current average of just more than $26 million. However, the annual funding of $15 million available for the Grade Separation Program has not changed since 1974. Local agencies say they are experiencing difficulties securing the funding necessary to pay for their share of grade separation projects. As a result, some are not nominating new projects to be included on the Commission's

Audit Highlights . . .

Our review of the Grade Separation Program found that:

- *Although the average cost of a grade separation project has increased from $2.5 million in 1974 to a current average of just more than $26 million, the annual funding of $15 million available for the Grade Separation Program has not changed since 1974.*
- *Local agencies say they are experiencing difficulties securing the funding necessary to pay for their share of grade separation projects; thus, some are not nominating new projects to be included on the Public Utilities Commission's (Commission) priority list and many are not applying for funds for the projects already on the priority list.*
- *A report prepared by the Commission in March 2007 showed that $165 million is needed to provide funding for the same number of grade separation projects that $15 million provided in 1974.*
- *Additional funding will be available for grade separation projects from a bond measure approved by California voters in November 2006, which will provide a one-time amount of $250 million to improve railroad crossing safety.*
- *The California Department of Transportation does not always comply with state regulations when allocating supplemental funds to projects for which the final costs exceed the preliminary cost estimates.*

priority list. Furthermore, many are not proceeding with projects that are already on the priority list, so they are not applying for funds for the projects.

A report prepared by the Commission in March 2007 showed that $165 million is needed to provide funding for the same number of grade separation projects that $15 million provided for in 1974. Although the report identified a need to increase the funding for the Grade Separation Program, according to a deputy director, the Commission has not performed an analysis to identify where it could obtain additional funding. The Grade Separation Program currently is funded through the State Highway Account, which also funds other transportation programs. Consequently, increasing the funding for this program would redirect funds from other transportation programs and projects unless another funding source is identified. Some of this additional funding will be available from a bond measure approved by California voters in November 2006, which will provide a one-time amount of $250 million to improve railroad crossing safety. The bond measure makes $150 million of these funds available for allocation under the process established for the Grade Separation Program. In addition to the funds made available from the bond measure, the State Transportation Improvement Program can provide funding to local agencies for various transportation projects including grade separation projects.

When applying for an allocation from the Grade Separation Program, local agencies generally submit a preliminary cost estimate—a rough estimate based on such things as the scope of work to be performed, data from previous projects, and experience—to Caltrans. They are reluctant to spend the money needed to develop a more accurate estimate of a project's costs until they receive an allocation. As a result, the final costs of eight of the nine grade separation projects we reviewed exceeded the preliminary cost estimates local agencies submitted to Caltrans in their applications by amounts ranging from $1.5 million to $19.6 million. However, when we compared the final costs for seven of these projects to the preconstruction estimates (two cost estimates were not available), the cost overruns were much less, between $80,000 and $3.7 million. The preconstruction estimate is an estimate of a project's cost based on the final design, using current construction and material costs.

Finally, we found that Caltrans does not always comply with state regulations when allocating supplemental funds to projects for which the final costs exceed the preliminary cost estimates. For example, four of the six applications we reviewed did not include one or more of the required certifications, and two were missing a statement explaining in detail why the original allocation was insufficient. Additionally, Caltrans' current regulations are inconsistent with statutes; thus, applicants may not be aware of changes in law and may either choose not to submit an application or submit inconsistent applications.

Recommendations

In light of local agencies' limited participation in the Grade Separation Program, the Legislature should reconsider its intent for the program and the extent to which it wishes to continue assisting local agencies with their grade separation projects. Among possible courses of action, the Legislature could:

- Discontinue the program after the proceeds from the bond measure approved in November 2006 have been allocated and require local agencies to compete with a broader range of projects for funding available to them through other programs such as the State Transportation Improvement Program.

- Continue the program and increase the annual budget of $15 million and allocation limits per project because it desires to continue providing a specific source of funding focused on grade separation projects.

To ensure that it administers the Grade Separation Program in compliance with state regulations, Caltrans should follow state regulations when making supplemental allocations. Further, to be consistent with statute, it should seek to revise current regulations to conform to recent amendments to statute.

Agency Comments

Caltrans agrees with our recommendation and will take steps to address it.

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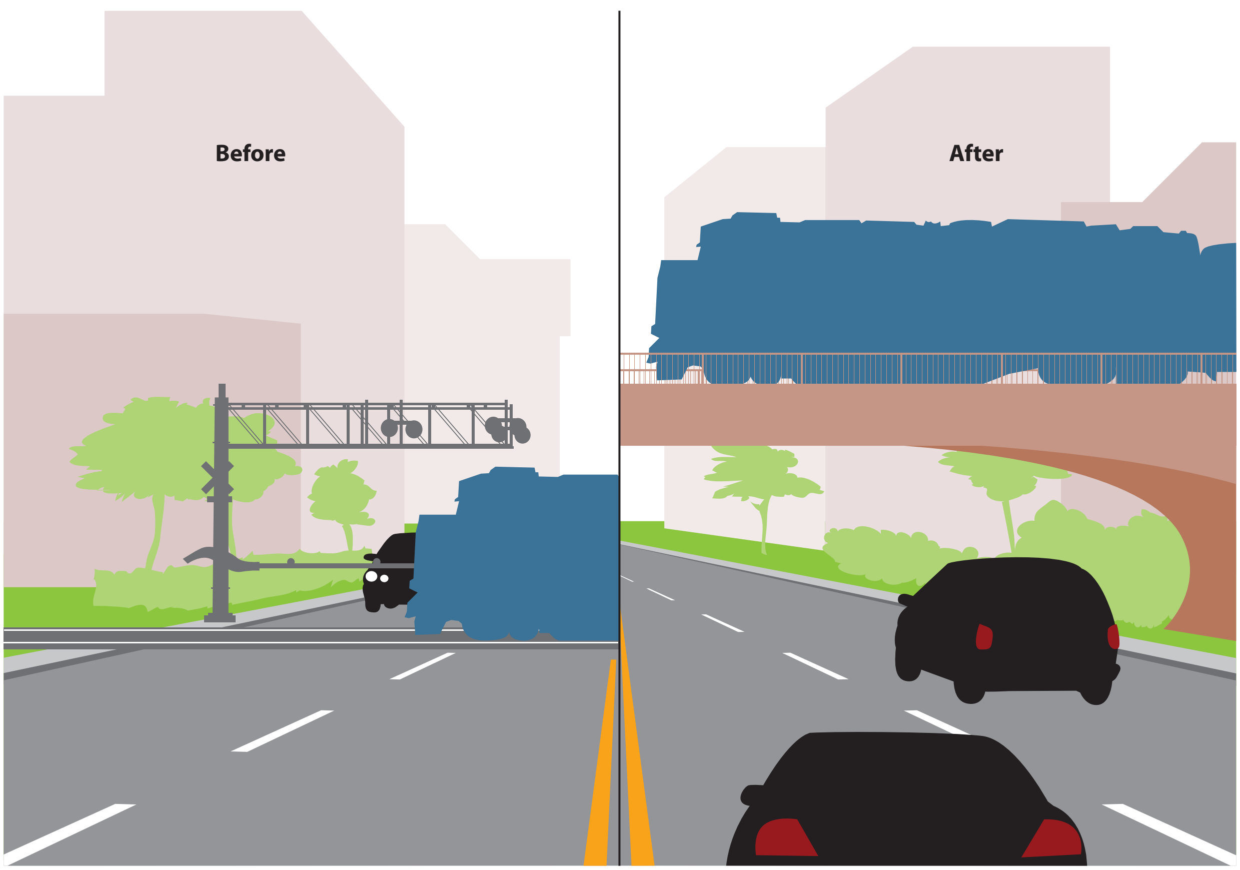
Introduction

Background

Data from the Public Utilities Commission (Commission) show that there are more than 7,700 at-grade crossings in California. An at-grade crossing is an intersection of railway tracks and a roadway at the same elevation, or grade, and often is referred to as a railway crossing. According to data from the Federal Railroad Administration, 167 accidents occurred near at-grade crossings throughout California during 2006. One method used to address this hazard is to eliminate dangerous at-grade crossings by separating the railway and roadway so they no longer intersect. As Figure 1 shows, grade separation involves having the railway or roadway pass over the other, typically by building a bridge structure. According to data provided by the Commission, there are currently more than 2,300 grade-separated crossings in California.

Figure 1
A Grade Separation Involves Placing Railroad Tracks and a Road on Separate Levels



Source: Illustrations prepared by the Bureau of State Audits based on the definition of grade separation.

Grade separation projects involving local roadways are the responsibility of the local agency that has jurisdiction over the roadway. The average cost of these projects is $26 million, according to the Commission, based on a current list of high-priority grade separation projects. To help local agencies pay for these projects, the State makes some funding available through what is commonly referred to as the Grade Separation Program. Specifically, the California Streets and Highways Code, Section 190, requires the California Department of Transportation (Caltrans) to include $15 million annually in its budget for this program. State law also requires that local agencies secure at least 10 percent of the cost of the project from the affected railroad companies in order to receive funds from the Grade Separation Program. The railroad company's contribution can be less if the local agency obtains federal funds to assist in paying for a project.

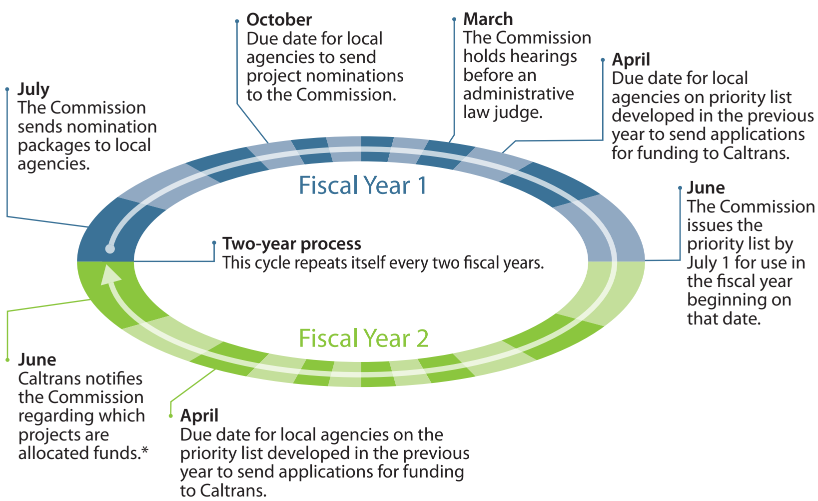
Although state law makes the funds for the Grade Separation Program available without regard to fiscal year, the Budget Act generally limits the availability of these funds to three fiscal years. If Caltrans does not allocate all funds to local agencies within three years, the funds revert to the State Highway Account (highway account)—the original source of funding for this program—and are no longer available for allocation.

Commission's Role

The Commission receives nominations for grade separation projects from local agencies and prioritizes them for possible funding. Local agencies, which include cities, counties, separation-of-grade districts, and public entities providing rail passenger transportation services, nominate crossings in need of grade separation or existing grade separations that require alteration or reconstruction. The Commission reviews the nominated projects to ensure that they are eligible for the Grade Separation Program. According to the Commission, projects exclusively involving light rail or pedestrian grade separation are not eligible for the program because state law defines "railroad" as a railroad corporation and "grade separation" as a structure that separates a vehicular roadway from railroad tracks.

State law requires the Commission to establish a list by July 1 of each year prioritizing each eligible project nominated by local agencies. As Figure 2 shows, the Commission uses a two-year process to establish the priority list. Specifically, it spends a year developing the priority list (Fiscal Year 1 in the figure). It then issues the new priority list by July 1, the beginning of the next fiscal year. It uses the priority list for that fiscal year (Fiscal Year 2 in the figure) and then, at the end of the year, revises the list by deleting the projects to which funds were allocated during the year. It then uses the revised list for the following fiscal year, at the same time that it is going through the process of developing a completely new list. In other words, the Commission uses the same priority list for two years, revising it at the beginning of the second year to eliminate projects that already have been funded. During the second year, the Commission begins the year-long process of creating a new list, which takes effect in the following year.

Figure 2
The Commission Uses a Two-Year Process to Establish Priority Lists of Grade Separation Projects



Source: Information provided by the Commission.

* Upon notification by Caltrans of which projects are allocated funds, the Commission removes them from the previous list and issues a new priority list by July 1 for the following fiscal year.

In developing the list, the Commission requires local agencies to submit a nomination package for grade separation projects by October. After reviewing all nomination packages, the Commission prioritizes projects that involve either the construction of a new grade separation or the alteration of an existing grade separation. It uses two formulas it developed through public hearings and with input from local agencies and Caltrans. These formulas take into account various factors, including vehicular and train volumes, accident history, and the amount of funding requested by the local agency. Projects may include alteration or reconstruction of existing grade separations, construction of new grade separations to eliminate existing or proposed grade crossings, or removal or relocation of highways or railroad tracks to eliminate existing grade crossings.

After it initially prioritizes the nominated projects, the Commission holds formal public hearings at which local agencies can provide testimony concerning their nominations. After the Commission staff revises the priority list based on the results of the hearing, the administrative law judge approves it and the Commission issues the new priority list to be used during the next two fiscal years.

Caltrans' Role

Caltrans allocates the Grade Separation Program funds to projects on the Commission's priority list. State law gives the California Transportation Commission (CTC) the responsibility of allocating the annual Grade Separation Program appropriation of $15 million to the projects included on the Commission's priority list. CTC has delegated this responsibility to Caltrans.

When local agencies are ready to begin construction on a project included on the Commission's priority list, state regulations require them to submit an application to Caltrans. The application must include satisfactory evidence that the Commission approved the project for construction, that sufficient local funds will be made available as the project progresses, that all necessary agreements with affected railroad companies have been executed, that all required environmental impact reports were approved, and that all other prerequisites to the awarding of the construction contract can be accomplished within two years after the allocation.

Depending on the type of project, state law limits allocations from the Grade Separation Program to either 50 percent or 80 percent of a project's estimated cost and imposes maximum allowable contributions of $5 million, $15 million, or $20 million. Projects involving the construction of grade separations at locations where there were previously no at-grade crossings and those involving the elimination of at-grade crossings that have been in existence for fewer than 10 years, are eligible to receive allocations no greater than 50 percent of the estimated costs. This limit increases to 80 percent for all other projects.

In addition to these limits, under state law each grade separation project generally can receive no more than $5 million. However, Caltrans can allocate more than $5 million to eligible projects under certain circumstances. For example, grade separation projects that have the highest priority are eligible for as much as $15 million. Projects that alleviate traffic and safety problems or that provide improved rail services can receive as much as $20 million regardless of their ranking on the priority list. Caltrans cannot allocate more than half of the Grade Separation Program funds available in a given fiscal year to these types of projects, however, and they must be funded over two to five years at a rate not greater than $5 million per year. Lastly, if the final cost of projects exceed the preliminary cost estimates the local agencies provided to Caltrans as part of their application for Grade Separation Program funds, state law allows Caltrans to augment the projects proportionately with supplemental allocations.

Funding Source for the Grade Separation Program

The Grade Separation Program is funded primarily from the highway account, for which the principal sources of funds are excise taxes on motor vehicle fuels, commercial vehicle weight fees, and federal highway trust funds. State law requires the highway account to provide funding for the administration of Caltrans; the State Highway Operations and Protection Program; and local assistance programs, such as the Grade Separation Program, required by state or federal laws. Any amount remaining in the highway account after funding the required programs is available for capital improvement projects under the State Transportation Improvement Program (STIP). However, according to CTC, the STIP has not received funds from the highway account since 2004. Finally, state law requires that the highway account be reimbursed for $5 million of the $15 million funding it provides the Grade Separation Program. It receives this reimbursement from motor vehicle fuel license taxes and use fuel taxes that otherwise would be distributed to cities and counties.

Recently Approved Bond Measure

California voters recently approved the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Bond Act), which provides $250 million to improve railroad crossing safety. The Bond Act makes these funds available to Caltrans, upon appropriation by the Legislature, for the completion of high-priority grade separation and railroad crossing safety improvements. Of the $250 million in Bond Act funds, $150 million are available for allocation using the process established for the Grade Separation Program. Other states have taken similar measures to provide funding for grade separation projects. For example, Ohio's Grade Separation Program is a 10-year, $200 million program to fund 30 projects that were selected using criteria such as safety, train frequency, traffic volume, and project costs.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) perform an audit of the funding and approval process required for state and local transportation agencies for grade separation projects. Specifically, the audit committee asked the bureau to assess the roles and responsibilities of the various agencies involved in the funding and approval of grade separation projects to determine if any duplication of effort or program exists. Further, the audit committee requested that the bureau determine whether the Grade Separation Program is being administered and operated in accordance with the appropriate statutes and regulations, and that it identify any obstacles that state and local agencies face in meeting the program's legislative goals.

We also were asked to identify the funding sources for the Grade Separation Program and to determine whether the program uses the sources available and whether funding levels are reasonable and consistent with other comparable programs. The audit committee asked that we identify any changes in statutes that would improve the program's administration or any alternative funding mechanisms that could facilitate meeting its legislative goals. In addition, we were asked to determine which local agencies have received state funding for grade separation projects and, to the extent possible, to review estimated and actual costs for the projects. We also were asked to review a sample of these projects to determine the reasons for any cost overruns, the efforts local agencies made in planning and funding the projects, best practices available to local agencies to improve projections and control costs, and whether all local agencies face similar issues with projecting and controlling costs.

To identify the roles and responsibilities of the various entities involved, we reviewed the laws and regulations related to the Grade Separation Program and interviewed appropriate state agency personnel. We also reviewed the policies and procedures of the state agencies involved to determine if there was a duplication of effort. We have described the roles of the two major state agencies—the Commission and Caltrans—responsible for administering the Grade Separation Program. We did not identify any areas of duplication. We also discussed with staff at both the Commission and Caltrans whether administration of the Grade Separation Program should be the responsibility of one agency rather than shared by both. According to Commission staff, the Commission is legally responsible for regulating activities involving railroad crossings in California, and thus it believes that it should be responsible for prioritizing the railroad grade separation projects. The Commission also indicated that, because Caltrans can be the lead agency for a project that requests an allocation from the Grade

Separation Program, it would not be appropriate for Caltrans to determine a project's priority. Additionally, the chief of Caltrans' Office of Rail Equipment and Track Construction indicated that the process for developing the priority list and the process for administering the allocations are very distinct, with little or no overlap, as provided for in statute. Thus, the chief did not see any significant advantages or disadvantages of having either one agency or two agencies administer the Grade Separation Program. Further, we identified similar state and federal programs and reviewed their requirements to determine if the Grade Separation Program duplicated these other programs.

To determine if the state agencies involved in administering the Grade Separation Program complied with the program's legal requirements, we compared their policies and procedures to the legal requirements. We also tested a sample of 15 projects on the Commission's priority list for fiscal years 2004–05 to 2006–07 to determine whether the Commission appropriately followed state laws, regulations, and its own policies when calculating the priority for these projects. We found that the Commission appropriately calculated the priorities for the projects we tested. Further, we analyzed the Commission's formulas for establishing a project's priority. We found that in 2001 the Commission modified the formulas after conducting workshops with interested parties. We also selected a sample of three applications for new projects and six supplemental applications that were approved or rejected by Caltrans to determine whether the reasons for such approvals and rejections were in accordance with the laws and regulations. We found that Caltrans complied with the laws and regulations in approving or rejecting applications for new projects.

To determine the obstacles that state agencies face in meeting program goals, we compared the number of projects included on the Commission's priority list during fiscal years 2002–03 to 2006–07 to the number of projects awarded allocations during the same time. We reviewed Caltrans' accounting records to determine whether it allocated all available Grade Separation Program funds. We also interviewed appropriate personnel at the Commission and Caltrans to determine what obstacles they face in administering the Grade Separation Program and in meeting program goals.

To identify local agencies' efforts in planning and funding projects and the obstacles they face in seeking and obtaining approval and funding for the Grade Separation Program, we surveyed a sample of 75 local agencies. Specifically, using data available from the Commission and Caltrans, we identified 422 local agencies that were responsible for the more than 10,000 at-grade and grade-separated crossings in California. We also identified 57 local agencies that nominated grade separation projects to the Commission during fiscal years 2000–01 to 2006–07 and we sent a survey to 48 of them. These 48 local agencies included nine that received an allocation from the Grade Separation Program and 12 that did not renominate a project in subsequent years. Finally, we selected 27 other local agencies to survey that did not nominate any projects during the seven years we reviewed. Of the 75 local agencies we surveyed, 57 responded. We analyzed the survey responses to determine whether all local agencies face similar obstacles in obtaining approval and funding for the Grade Separation Program.

To determine whether the local agencies are completing the grade separation projects within budget, we reviewed Caltrans' records for the 17 projects completed as indicated by its accounting records for fiscal years 2000–01 through 2006–07 and identified those projects that had cost overruns. We selected nine of the 17 completed projects to further analyze their cost overruns, ensuring coverage throughout the State and a range of cost overruns. We then visited or contacted staff at each local agency responsible for these nine projects to obtain an understanding of the reasons for the cost overruns and, if available, reviewed supporting documents. We analyzed their responses to determine whether local agencies throughout the State face similar issues with projecting and controlling costs.

Audit Results

Local Agencies Believe Allocations Are Not Sufficient to Allow Them to Take Advantage of the Grade Separation Program

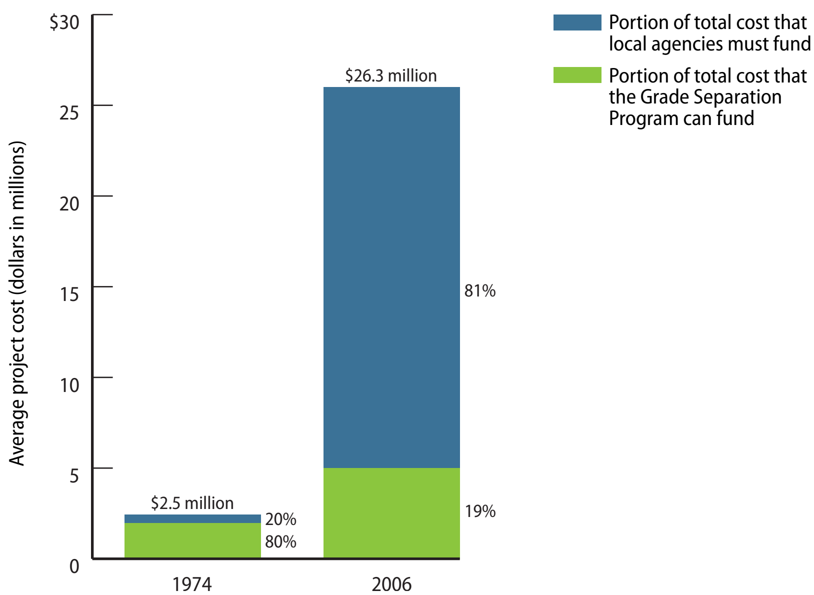
Once they have nominated a grade separation project to the Public Utilities Commission (Commission) and the project has been placed on the Commission's priority list, many local agencies we surveyed are not taking the additional steps to apply to the California Department of Transportation (Caltrans) for funding under the Grade Separation Program. Many of these agencies indicated that they are not applying for this funding because they are having difficulty securing the funds to cover their portion of the costs of grade separation projects. We found that the portion of project costs that local agencies are expected to pay has increased dramatically over the past 30 years. According to data provided by the Commission, the average cost of a grade separation project increased from $2.5 million in 1974 to more than $26 million currently, while the annual budget of $15 million for the Grade Separation Program has remained unchanged since 1974. A report prepared by the Commission showed that $165 million is needed to provide funding for the same number of grade separation projects as $15 million provided in 1974. However, some local agencies have been able to secure funding from other sources to pay for their projects without using funds from the Grade Separation Program. A recently approved bond measure will provide additional funding for grade separation projects.

Funding for the Grade Separation Program Has Not Kept Pace With Increased Construction Costs, So Some Local Agencies Choose Not to Nominate Potential Projects

Although the average cost of a grade separation project has increased considerably, the budget for the Grade Separation Program has not changed since 1974. In 1971 an amendment to state law increased the annual Grade Separation Program budget from $5 million to $10 million. Legislation that became operative in 1974 again increased the budget, this time to $15 million annually. This legislation also increased the amount of allocation a local agency was eligible to receive from no more than 50 percent to no more than 80 percent of the estimated costs of a project. At that time, according to our calculations based on Commission data, the average cost of a grade separation project was $2.5 million. Since 1974, however, this average cost has increased by more than tenfold, to more than $26 million in fiscal year 2006–07, while the budget for the Grade Separation Program has remained unchanged.

This disparity between project costs and available funding has greatly increased the portion that local agencies are expected to pay for a grade separation project. As Figure 3 shows, local agencies currently must pay about 81 percent of the project costs, either by using their own funds or by finding other funding sources. In 1974 local agencies generally were expected to pay only about 20 percent of the costs for a grade separation project receiving an allocation from the Grade Separation Program. In fact, a legislative committee's analysis of the 1974 legislation that ultimately increased the budget for the Grade Separation Program to $15 million and increased the allocation limit to 80 percent indicated that the bill's purpose was to reduce the cost to local agencies because many of them had been unable to meet their share of the cost at the previous levels.

Figure 3
Local Agencies Currently Are Required to Provide a Greater Proportion of Funding for Grade Separation Projects Than in the Past



Sources: Public Utilities Commission's February 2005 report and its 2006 priority list and California Streets and Highways Code, Section 2454.

Some local agencies we surveyed indicated that they do not even nominate projects to be considered for the Commission's priority list because they are unable to secure funds for their share of the costs. For example, an official with the city of Torrance estimates that one potential grade separation project the city would like to construct will cost roughly $25 million. According to the official, the city would have to secure $17.5 million in other funding, provided it receives a $5 million allocation from the Grade Separation Program and the 10 percent railroad contribution. The city has been unable to secure the other funding, so it has not nominated the project to be considered for the Commission's priority list. We found that 18 of the 57 local agencies (32 percent) that responded to our survey did not nominate or renominate all their potential grade separation projects during the past seven years because they were unable to obtain the funding needed to pay for their portion of the costs. Of these 18 local agencies, 13 also indicated that the $5 million limit per project was not a sufficient amount, considering the total cost of their projects.

In March 2007 the Commission prepared a report showing that $165 million is needed to provide funding for the same number of grade separation projects that $15 million provided in 1974. Additionally, this report recommended that the maximum allocation for a single project be increased from $5 million to $25 million. This increase in the maximum amount allowed for each project would mean that local agencies would need to secure a smaller portion of the funding for grade separation projects. Of the 41 local agencies that responded to our survey and indicated that they were aware of the Grade Separation Program and had crossings in need of separation, 35 (or 85 percent) indicated that they would nominate more projects if funding for the Grade Separation Program and the limit on the allocation per project were increased.

In March 2007 the Commission prepared a report showing that $165 million is needed to provide funding for the same number of grade separation projects that $15 million provided in 1974.

Although the report prepared by the Commission identified the need to increase the funding for the Grade Separation Program, according to a deputy director, the Commission has not done an analysis to identify a source of additional funding. As we stated in the Introduction, the funding for the Grade Separation Program currently comes from the State Highway Account (highway account), which also is required by law to provide funding for the administration of Caltrans, the State Highway Operations and Protection Program (SHOPP), the State Transportation Improvement Program (STIP), and local assistance programs required by state or federal laws. Therefore, increasing the funding for the Grade Separation Program would redirect funds from other transportation programs and projects unless another funding source were identified.

In 1999 the Commission sponsored legislation to increase the Grade Separation Program's annual budget from $15 million to $60 million. At that time the Commission pointed out that funding for the Grade Separation Program had remained at $15 million since 1974 and that increases in the cost of land acquisition and project construction had resulted in allocations to fewer projects over time. The analysis of the bill indicated that an increase in the annual appropriation for the Grade Separation Program would reduce the funding available to local transportation agencies and the State through the STIP by the same amount. Ultimately, the legislation did not make it through the legislative process. Seven years later, in 2006, Assembly Bill 1785 again sought to increase the Grade Separation Program's annual budget, this time to $70 million. However, as with the earlier bill, the bill analysis indicated that the increase in the program's allocation would reduce funds available for other transportation programs and projects such as the SHOPP and the STIP. This more recent bill also failed to make it through the legislative process.

Caltrans Has Received Few Applications for Funds Over the Past Five Years, and Some Grade Separation Program Funds Have Reverted to the Highway Account

Although the Commission's priority list has included 50 to 70 projects each year for the past five years, Caltrans has received applications from only 10 local agencies requesting funds for projects during that time.

As we discussed in the Introduction, after the Commission includes a project on its priority list, the local agency must submit an application to Caltrans before it can receive funding from the Grade Separation Program. As shown in Table 1, although the Commission's priority list has included 50 to 70 projects each year for the past five years, according to Caltrans, it has received applications from only 10 local agencies requesting funds for their projects during that time. Caltrans has awarded allocations to eight of these 10 local agencies and two are pending consideration. We found that many local agencies did not apply for an allocation, even though some of their projects ranked higher on the Commission's priority list than the ones for which agencies applied and received allocations. Specifically, projects that ranked as low as 25, 40, and 60 on the priority list have applied for and received Grade Separation Program funds. In fact, only one of the eight projects for which Caltrans awarded an allocation during the last five years was among the top 10 projects on the priority list.

Additionally, we found that 20 of the 57 local agencies that responded to our survey had nominated a project for inclusion on the priority list during the last seven years but did not take the additional step of submitting an application to Caltrans for program funding. As Table 2 on page 18 shows, 10 of these 20 local agencies indicated they could not raise the local funds needed for their portion of the project, and four of these 10 also noted that they could not reach an agreement with the railroad company to contribute to the project as required. Further, four of the 10, as well as six others, indicated that they did not apply because they did not believe the project would be funded, given their projects' low priority on the Commission's list.

Table 1
Very Few Local Agencies Applied for a Grade Separation Program Allocation During the Last Five Years

FISCAL YEAR	NUMBER OF PROJECTS ON THE PRIORITY LIST	NUMBER OF NEW APPLICATIONS CALTRANS RECEIVED	NUMBER OF NEW ALLOCATIONS AWARDED	NUMBER OF SUPPLEMENTAL APPLICATIONS CALTRANS RECEIVED	NUMBER OF SUPPLEMENTAL ALLOCATIONS AWARDED
2002–03	56	3	3	0	0
2003–04	53	0	0	5	5
2004–05	58	0	0	1	1
2005–06	58	5*	0	0	0
2006–07	70	2†	5‡	0	0

Sources: Data from Public Utilities Commission and Caltrans.

* Caltrans initially rejected all five applications submitted in fiscal year 2005–06 in general because they contained deficiencies related to railroad agreements. According to Caltrans, three of the local agencies requested additional time to resolve the deficiencies and did so. The remaining two local agencies resubmitted their applications in fiscal year 2006–07.

† This number reflects two new applications submitted by local agencies in fiscal year 2006–07, but does not include the two applications that local agencies resubmitted after Caltrans rejected them in fiscal year 2005–06. These two applications are already included in the count for that fiscal year.

‡ Caltrans awarded allocations to five of the seven local agencies that applied during fiscal years 2005–06 and 2006–07. The remaining two are pending consideration.

Because so few local agencies applied for funding during the last five years, Caltrans' records show that all local agencies that applied for funding, in fact, were awarded funding or are pending consideration, regardless of their ranking on the Commission's priority list. However, even though Caltrans awarded funding to all that applied, it has been unable to allocate the entire $15 million budgeted annually because it has received so few applications since fiscal year 2002–03. As we stated in the Introduction, the California Streets and Highways Code, Section 190, makes these funds available without regard to fiscal year, but the Budget Act generally limits the availability of these funds to three fiscal years. Thus, approximately $5.7 million has reverted to the highway account since fiscal year 2002–03. Further, as of July 2007 Caltrans still had approximately $9.3 million that it had not yet allocated to projects. If it is unable to allocate $4.3 million of these funds to eligible projects by June 30, 2008, and $5 million by June 30, 2009, these funds also will revert to the highway account.

Table 2
Local Agencies Identified Two Main Reasons for Not Applying to Caltrans for an Allocation

LOCAL AGENCY	DID NOT BELIEVE THE PROJECT WOULD BE FUNDED BECAUSE IT RECEIVED A VERY LOW PRIORITY ON THE COMMISSION'S PRIORITY LIST COMPARED TO OTHERS	DID NOT APPLY BECAUSE OF LACK OF LOCAL FUNDS	COULD NOT REACH AN AGREEMENT WITH THE RAILROAD COMPANY TO CONTRIBUTE 10 PERCENT OF THE PROJECT'S COST AS REQUIRED	OTHER*
City of Delano		X		
City of Elk Grove	X			
City of Encinitas		X		
City of Los Angeles	X	X	X	
City of Merced	X			
City of Newark	X	X	X	
City of Palmdale	X	X	X	X
City of Redding				X
City of Riverside		X	X	
City of San Mateo	X			
City of Santa Fe Springs		X		
City of South San Francisco				X
City of Stockton				X
City of Vista	X			
Greater Bakersfield Separation of Grade District		X		
Los Angeles County	X	X		
San Bernardino County	X			
San Joaquin County				X
San Mateo County Transportation Authority†		X		X
Tehama County	X			
Totals	**10**	**10**	**4**	**6**

Sources: Survey responses from 57 local agencies.

* Other reasons local agencies cited for nominating a project for the priority list but not ultimately applying to Caltrans for an allocation included the following: they were not aware of the need to submit an application to Caltrans after nominating the project to the Commission, the agreement with the railroad had not been initiated, or they were not ready to apply for funding because the project was still in an early phase or was taking longer than expected to develop.

† We originally sent the survey to the San Mateo County Transportation Authority. However, the survey was completed and returned by the Peninsula Corridor Joint Powers Board. These two entities operate as part of the San Mateo County Transit District and share the responsibilities for grade separation projects.

Some Local Agencies Are Not Aware of the Grade Separation Program, and Some Have Received Adequate Funds From Other Sources

Of the 57 local agencies that responded to our survey, 10 told us that they were not aware of the Grade Separation Program. Two of these 10 local agencies noted that they have a need for grade separation. However, we found that the Commission appears to appropriately inform local agencies of the existence of the Grade Separation Program. According to the Commission, as part of its process for establishing the priority list, it mails nomination request letters to all parties on its mailing list. The mailing list includes local agencies that have nominated a project previously, as well as all other public agencies known to have crossings under their jurisdiction. The mailing list also includes railroad corporations operating in California, light-rail transit agencies, the League of California Cities, and the California State Association of Counties. The Commission also publishes the letter on its Web site. Although these 10 local agencies indicated that they were unaware of the Grade Separation Program, we found that all 10 are included on the Commission's mailing list.

We also found that some local agencies constructed grade separation projects without using Grade Separation Program funds. State law requires that the Commission approve any railroad crossing construction. According to the Commission, during fiscal years 2005–06 and 2006–07 it approved 18 projects that were eligible for the Grade Separation Program. According to the Commission, of these 18 projects, only five were nominated to be included on the priority list for the Grade Separation Program. Further, eight of the 57 local agencies responding to our survey indicated that they had completed a grade separation project without Grade Separation Program funds. A project for one of these eight local agencies was not eligible for the Grade Separation Program because it involved grade separation for pedestrians only. Further, two of the eight agencies incorrectly believed their projects were ineligible because they were building a new grade-separated crossing where no at-grade crossing existed previously.

Eight of the 57 local agencies responding to our survey indicated that they had completed a grade separation project without Grade Separation Program funds.

Additional Sources of Funds Are Available for Local Grade Separation Projects

Although the Grade Separation Program's annual budget has not increased since 1974, other sources can provide funds for grade separation projects. In November 2006 California's voters approved the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Bond Act), which provides $250 million to improve railroad crossing safety. Of the $250 million, the Bond Act makes $150 million available, upon appropriation by the Legislature, for allocation under the process established for the Grade Separation

Provided that local agencies are able to secure their half of the funding, the $150 million in Bond Act proceeds available for allocation under the process established for the Grade Separation Program could help fund the eight highest-ranked projects on the Commission's fiscal year 2006–07 priority list.

Program. However, high-priority projects funded by the Bond Act can qualify to receive 50 percent of the total cost of a project, without the limits established under the Grade Separation Program. Even with an allocation of 50 percent of the project cost, some local agencies might be unable to secure the remaining funding. For example, one local agency, with a project estimated at $136 million, would have to secure $68 million in other funds. Nevertheless, provided that local agencies are able to secure the remaining 50 percent of the project cost from other sources, the $150 million could help fund the eight highest-ranked projects on the Commission's fiscal year 2006–07 priority list, which total about $300 million. The remaining 62 projects on the priority list have a total cost of more than $1.5 billion.

The Bond Act authorizes the California Transportation Commission (CTC), in consultation with Caltrans, the High-Speed Rail Authority, and the Commission, to allocate the remaining $100 million to high-priority railroad crossing improvements, including grade separation projects. CTC and Caltrans say they have not developed guidelines to determine how to fund projects under this part of the Bond Act. The fiscal year 2007–08 budget includes $123 million of the $250 million to carry out the purposes of the Bond Act, with the remainder to be appropriated in subsequent years. According to CTC, approximately $75 million of the budget is for projects that are part of the process for the Grade Separation Program, and the remaining amount is to be allocated in consultation with Caltrans, the High-Speed Rail Authority, and the Commission. The Commission and CTC indicated they will use the priority list already in place when allocating the $75 million budgeted for fiscal year 2007–08.

In addition to the Bond Act, the STIP can provide funding to local agencies for grade separation projects. The STIP is a multiyear capital improvement program consisting of transportation projects, including grade separation projects, adopted by the CTC. According to Caltrans, CTC has allocated $24 million from the STIP for a grade separation project for fiscal year 2006–07 and will be allocating an additional $87 million for four other local grade separation projects. To nominate projects for inclusion in the STIP, local agencies must work through their designated authority, such as a regional transportation planning agency, a county transportation commission, or a metropolitan planning organization, as appropriate. However, the designated authority ultimately decides which projects to submit to the CTC for possible funding. The CTC then conducts public hearings before selecting the projects to be funded under this program. The STIP provides funding for many different types of projects, so grade separation projects compete with other projects for funding. Therefore, some local agencies stated that they have been unsuccessful in obtaining the STIP funding for their grade separation projects.

The Final Costs of Grade Separation Projects Often Exceeded the Preliminary Cost Estimates

State regulations require local agencies to provide a project cost estimate (preliminary cost estimate) as part of the application they submit to Caltrans when applying for funding. We compared the preliminary cost estimates submitted by local agencies to the final costs for nine of the 17 grade separation projects that received final payments from Caltrans between fiscal years 2000–01 and 2006–07. As Table 3 on the following page shows, the final costs differed dramatically from the preliminary cost estimates for eight of the nine projects we reviewed, exceeding them by amounts ranging from $1.5 million to $19.6 million. However, when we compared the final costs for seven of these projects to the preconstruction cost estimates (one local agency was unable to provide these cost estimates for two projects), the cost overruns were much less, between $78,000 and $3.7 million. These overruns typically were due to unexpected conditions on the construction site, such as the discovery of objects that had been buried in the roadway a long time ago and needed to be moved.

When we discussed the reasons for the significant differences between the preliminary cost estimates and the final costs, most local agencies explained that the preliminary cost estimate is simply a rough estimate based on such things as the scope of work to be performed, data from previous projects, and experience. For example, one local agency told us that the preliminary cost estimate it prepared in 1995 and submitted to the Commission and to Caltrans was based on designs completed during the 1960s and updated using construction cost data from the 1990s. The local agencies also told us that the preconstruction cost estimate they prepare at a later date is much more accurate because they derive it from the project's final designs, using current construction and material costs. They indicated that it is easier to estimate costs that are otherwise hard to predict, such as right-of-way acquisition, after they have actual project designs. When we asked why they do not base the preliminary cost estimate on project designs, several local agencies indicated they are reluctant to spend the money needed to develop the project designs until they know they will receive Grade Separation Program funding and they do not invest in a design until funds are secured. In fact, 30 of the 57 local agencies that responded to our survey indicated that they had nominated a project for inclusion on the Commission's priority list since fiscal

When we asked why they do not base the preliminary cost estimate on project designs, several local agencies indicated they are reluctant to spend the money needed to develop the project designs until they know they will receive Grade Separation Program funding.

year 2000–01. Of these 30 local agencies, 20 noted that they had submitted rough cost estimates based on the scope of work to be performed rather than on actual designs for the project.

Table 3
Final Costs Generally Far Exceeded the Preliminary Estimates, but Preconstruction Cost Estimates Were More Accurate

LOCAL AGENCY	PRELIMINARY COST ESTIMATE	DATE OF PRELIMINARY COST ESTIMATE	PRECONSTRUCTION COST ESTIMATE	DATE OF PRECONSTRUCTION COST ESTIMATE	FINAL COST	DATE OF PROJECT COMPLETION	DIFFERENCE BETWEEN PRELIMINARY COST ESTIMATE AND FINAL COST	DIFFERENCE BETWEEN PRECONSTRUCTION COST ESTIMATE AND FINAL COST
City of Hayward*	$6,521,000	March 1995	$7,496,520	July 2000	$11,225,611	August 2003	$4,704,611	$3,729,091
City of Ontario†	8,156,400	April 1991	18,568,157	June 2001	18,646,273	March 2004	10,489,873	78,116
City of Riverside‡	10,513,000	December 1995	11,542,340	June 1998	12,079,435	May 1999	1,566,435	537,095
City of Stockton§	6,092,680	December 1997	11,638,284	June 1999	14,043,406	December 2003	7,950,726	2,405,122
Fresno County‖	4,537,000	April 1995			6,377,283	September 1997	1,840,283	
Fresno County‖	5,122,760	April 1995			6,643,434	November 2003	1,520,674	
Los Angeles County#	26,000,000	April 1995	42,430,000	May 1999	45,598,667	March 2003	19,598,667	3,168,667
Los Angeles County#	5,130,000	May 1995	14,788,957	April 1999	14,711,473	March 2003	9,581,473	(77,484)
San Joaquin County**	6,759,000	March 2001	7,344,700	July 2002	6,406,845	September 2003	(352,155)	(937,855)

Source: Grade separation project records obtained from Caltrans and local agencies.

* The agency explained that cost overruns arose because of the delay between the time the project was nominated and the time it was completed, that it encountered unexpected conditions on the construction site, and that it had to invest funds in a detour it did not expect to have to build.

† The agency explained that the preliminary and preconstruction cost estimates are significantly different because of design changes and increases in construction costs occurring during the period separating the two estimates.

‡ The agency explained that it submits the preliminary cost estimate to the Commission in order to be on the priority list as soon as possible, and that construction cost overruns are typical.

§ The agency explained that the project was urban and therefore right-of-way issues were hard to estimate until a final detailed design was completed and that an increase in material costs escalated prices.

‖ Although the agency was unable to locate the entire preconstruction cost estimate, it provided an estimate for the most significant portion of the project's costs—the contruction costs. For the first project, the preconstruction cost estimate dated April 1996 was $4,975,000, while the construction cost component of the final costs was $4,358,000. Thus, for this project, the construction cost component of the final costs was actually less than the preconstruction cost estimate by $617,000. For the second project, the preconstruction cost estimate dated June 2002 was $4,744,000, while the construction cost component of the final costs was $5,139,000. Thus, the construction cost component of the final costs exceeded the preconstruction cost estimate by $395,000.

\# The agency explained that the most expensive project encountered much greater right-of-way and utility relocation costs than expected, and that the other project experienced costly construction-related delays and received construction bids higher than had been estimated.

** The agency explained that, because the project was rural, it was easier to estimate its cost accurately compared to urban projects, which typically have larger overruns because of right-of-way acquisition.

Further, two local agencies we contacted also indicated that the preliminary cost estimates can differ significantly from the final costs because of the delay between the nomination of a project for inclusion on the Commission's priority list and the project's final completion. During this lengthy time period, there are usually design changes and increases in construction costs, which often exceed provisions built into preliminary cost estimates to allow for inflation as well as unforeseen expenses encountered during construction. As shown in Table 3, the time between the preliminary cost estimate and project completion ranged from 2.5 years to 13 years for the nine projects we reviewed.

Caltrans Does Not Always Follow Regulations When Allocating Supplemental Funds, and Some Regulations Are Inconsistent With Statutes

State law allows Caltrans to award supplemental funds to local agencies if a project's final cost exceeds the preliminary cost estimates the local agency provided to Caltrans. Local agencies provide the preliminary cost estimates as part of their application for Grade Separation Program funds. The Commission informs the local agencies of the requirements for requesting supplemental allocations when it invites them to nominate grade separation projects to be included on its priority list. We reviewed all six projects that received supplemental funds from Caltrans between fiscal years 2003–04 and 2006–07 to determine if Caltrans followed the requirements of state law and regulations when approving the requests for these supplemental funds. We found that Caltrans did not always follow state regulations when it awarded the supplemental allocations.

State regulations governing the Grade Separation Program specify the content of applications for supplemental allocations. For example, these regulations require that a local agency's governing body must certify that the project was completed, that railroad companies paid the share required by state law, and that the final cost has been determined and is set forth in the supplemental application. Further, the regulations also require local agencies to include in the application statements that explain in detail why the original allocation was insufficient and a final accounting of the project's cost. However, four of the six applications we reviewed did not include one or more of the required certifications. In addition, two of the six applications were missing a statement explaining in detail why the original allocation was insufficient. Finally, for two of the six applications, the local agencies did not submit a final accounting of the project's cost until after Caltrans awarded them the supplemental allocations. However, although

State regulations governing the Grade Separation Program specify the content of applications for supplemental allocations, including various local agency certifications. However, four of the six applications we reviewed did not include one or more of the required certifications.

Caltrans did not have the final costs for these two projects, it ultimately allocated the appropriate amounts to the local agencies as prescribed by state law.

The chief of Caltrans' Office of Rail Equipment and Track Construction noted that his office was not aware of the regulations for supplemental allocations. However, he stated that, because of the lack of new applications, the noncompliance with regulations did not prevent otherwise eligible projects from being funded through the Grade Separation Program. Although we agree that, because of the low number of applications received, Caltrans' noncompliance with regulations for supplemental allocations did not prevent other eligible local agencies from receiving Grade Separation Program funds, we believe it is important to administer the Grade Separation Program in compliance with state regulations.

Lastly, state regulations governing the Grade Separation Program specify the required application process and content of applications for the allocation of funds for grade separation projects. However, certain state regulations are inconsistent with statute because of recent amendments to statutes governing the Grade Separation Program. In 2005 the Legislature amended the California Streets and Highways Code, Section 2456, to allow local agencies two years to accomplish all matters prerequisite to the awarding of the construction contract. Current state regulations do not reflect this change and allow local agencies only one year. Additionally, the Legislature amended the California Streets and Highways Code, Section 2454, in 2006 to authorize CTC to allocate up to $15 million to the highest-priority grade separation project on the priority list established by the Commission. However, current state regulations limit an allocation for a single project to $5 million. When regulations do not conform to statutory law, applicants may not be aware of changes in law and may either choose not to submit an application or submit inconsistent applications.

Recommendations

In light of local agencies' limited participation in the Grade Separation Program, the Legislature should reconsider its intent for the program and consider the extent to which it wishes to continue assisting local agencies with their grade separation projects. Among possible courses of action, the Legislature could:

- Discontinue the program after the proceeds from the bond measure approved in November 2006 have been allocated and require local agencies to compete with a broader range of projects for funding available to them through other programs such as the STIP.

- Continue the program and increase the annual budget of $15 million and allocation limits per project because it desires to continue providing a specific source of funding focused on grade separation projects.

To ensure that it administers the Grade Separation Program in compliance with state regulations, Caltrans should follow state regulations when making supplemental allocations. Further, to be consistent with statute, it should seek to revise current regulations to conform to recent amendments to statute.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of the report.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

Date: September 13, 2007

Staff: Denise L. Vose, CPA, Audit Principal
Kris D. Patel
Simon Jaud, Ph.D.
Erik Stokes, MBA

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(Agency response provided as text only.)

Business, Transportation and Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814-2719

September 4, 2007

Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Attached is a response from the Department of Transportation (Department) to your draft audit report, *Grade Separation Program: An Unchanged Program Budget and Project Allocation Levels Established More Than Thirty Years Ago May Discourage Local Agencies From Taking Advantage of the Program* (#2007-106). Thank you for this opportunity to respond to the report.

We appreciate and agree with your conclusion that the limited financing available from the Grade Separation Program is a major obstacle to the participation of local agencies. As for the recommendation that the Department adhere to State regulations when making supplemental allocations, we are pleased that the Department has already developed a check list to verify that requests for supplemental allocations include all required documents. Furthermore, the Department is currently revising regulations to conform with recent amendments to statute. More specifics are provided in the attached Department response.

If you need additional information regarding this response, please do not hesitate to contact me, or Michael Tritz, Deputy Secretary for Audits and Performance Improvement at the Business, Transportation and Housing Agency, at (916) 324 7517.

Sincerely,

(Signed by: M. M. Berte for)

DALE E. BONNER
Secretary

Attachment

Department of Transportation
Office of the Director
1120 N Street
P. O. Box 942873
Sacramento, CA 94273-0001

August 30, 2007

Dale E. Bonner, Secretary
Business, Transportation and Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814

Dear Mr. Bonner:

I am pleased to provide our five-day response to the Bureau of State Audits' (BSA) draft report entitled, "Grade Separation Program: An Unchanged Program Budget and Project Allocation Levels Established More Than Thirty Years Ago May Discourage Local Agencies From Taking Advantage of the Program."

At the request of the Joint Legislative Audit Committee, the BSA conducted an audit of the funding and approval process required for State and local transportation agencies for grade separation projects.

The BSA concluded that funding for the Grade Separation Program has not kept pace with the increased cost of construction, causing some local agencies not to nominate potential projects. The average cost of a grade separation project has increased considerably and the budget for the Grade Separation Program has not changed since 1974. The BSA also found that the Department of Transportation (Caltrans) did not always follow regulations when allocating supplemental funds and that some regulations are inconsistent with statutes.

The BSA is recommending that the Legislature reconsider the intent of the program and the extent to which it wishes to continue assisting local agencies with their grade separation projects. The BSA is offering the following specific recommendation for Caltrans:

> "To ensure that it administers the Grade Separation Program in compliance with state regulations, Caltrans should follow state regulations when making supplemental allocations. Further, to be consistent with statute, it should seek to revise current regulations to conform to recent amendments to statute."

Caltrans Response:

Caltrans has developed a check list to verify that requests for supplemental allocations include all of the documentation required by the California Code of Regulations. In addition, Caltrans is in the process of revising the current regulations to conform to recent changes in statute. Caltrans anticipates that the regulation amendments will be scheduled in the Office of Administrative Law 2008 Rulemaking Calendar with the Notice of Proposed Rulemaking published prior to June 2008.

Dale E. Bonner
August 30, 2007
Page 2

Caltrans appreciates the opportunity to provide a response to the draft report. If you have any questions, or require further information, please contact Steve Cates, Chief, Office of Rail Equipment and Track Construction, at (916) 654-6920, or Gerald Long, External Audit Coordinator, at (916) 323-7122.

Sincerely,

(Signed by: Will Kempton)

WILL KEMPTON
Director

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press