

## **Short primer on the MPO process and its importance to the Federal aid highway and transit funding programs**

- Under Federal law, the Federal Highway Administration (FHWA) may only approve/fund *projects or portions of projects* in a metropolitan area if they are included in a metropolitan area Transportation Improvement Program (TIP) and the Statewide Transportation Improvement Program (STIP). These programs are updated on a two-year cycle with some amendments during the interim period.
- The TIP results from the Metropolitan Planning Organizations (MPOs) identifying projects through their transportation planning process. This process includes analyses of traffic, economic, social and other factors and a great deal of involvement by public officials and citizens, along with coordination with the State DOT.
- The TIP is incorporated without modification into the STIP, which the State develops for non-metropolitan areas, using the statewide planning process.
- Metropolitan Planning Funds (PL Funds) can only be used by the MPOs for transportation planning under federal law, and cannot be used for any other project or program.
- Lack of PL funds would will hinder and eventually halt the MPOs' essential work.
- No new TIP amendments can be approved which add or change projects in the existing TIP, since the areas will lack the MPO process required by Federal law.
- The lack of a TIP will stop all approvals of Federally funded highway and transit projects in metropolitan areas when the existing approved TIP and STIP expire.
- PL funds constitute .5% of certain Federal funding categories at a matching ratio of 80% Federal and 20% State. For FY 03, the Federal PL funds amounted to \$974,083. In NH, the State provides 10% of the match, and the MPOs provide 10%. This means that the State and MPO share is approximately \$121,760 each, since the Federal funds are 80% of the total funding (\$1,217,603).
- Each time the State requests and FHWA approves a project, the legally binding project agreement states that the State will comply with 23 USC, the regulations issued pursuant to that law, and the policies and procedures of the FHWA. Project agreements have been in place under Federal law at least since the '70's and probably before then.
- Based on conversation with FHWA attorneys, it appears that project approvals would stop on existing TIPs and STIPs. Under 23 CFR 1.36, the Administrator may withhold all approvals, when violations of Federal law and regulations occur. Withholding PL funds would be a knowing violation of the law, and the State DOT could not certify compliance under each project agreement.

- References: 23 USC Section 104(f)(3), 23 USC Section 135, 23 USC Section 134, 23 CFR 1.36

23 USC 104(f)(3), Metropolitan Planning Funds: The funds apportioned to any State under paragraph (2) of this subsection **shall** be made available by the State to the metropolitan planning organizations responsible for carrying out the provisions of section 134 of this title, except that States receiving the minimum apportionment under paragraph (2) may, in addition, subject to the approval of the Secretary, use the funds apportioned to finance transportation planning outside of urbanized areas.

This section makes it clear that the State cannot use the funds for construction; PL funds may only be used for transportation planning.

**23 USC 134, Metropolitan planning:** (a) General Requirements:

(1) Findings. --It is in the national interest to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and through urbanized areas, while minimizing transportation-related fuel consumption and air pollution.

(2) Development of plans and programs. --To accomplish the objective stated in paragraph (1), **metropolitan planning organizations** designated under subsection (b), in cooperation with the State and public transit operators, **shall** develop transportation plans and programs for urbanized areas of the State."

It would be a violation of this section if there ceased to be a metropolitan planning process carried out by the MPOs.

**23 USC 135, Statewide planning:**

(a) General Requirements. --

(2) Development of plans and programs. --Subject to section 134 of this title and sections 5303 through 5305 of title 49, each State shall develop transportation plans and programs for all areas of the State.

(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN. --In carrying out planning under this section, a State **shall** coordinate such planning with the transportation planning activities carried out under section 134 of this title and sections 5303 through 5305 of title 49 for metropolitan areas of the State and shall carry out its responsibilities for the development of the transportation portion of the State implementation plan to the extent required by the Clean Air Act.

This section makes it clear that the MPO planning process is an integral part of the State's STIP, so there would also be a violation of this section of the law.

**23 CFR 1.36**

If the Administrator determines that a State has violated or failed to comply with the Federal laws or the regulations in this part with respect to a project, he may withhold payment to the State of Federal funds on account of such project, withhold approval of further projects in the State, and take such other action that he deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the State to the satisfaction of the Administrator.

This section permits the Administrator to withhold approval of further projects within a State, which has violated a federal law *or* regulation.

Project approvals can only be made when it is clear that all Federal laws and regulations are in place and there is no violation.