

State of Utah
Administrative Rule Analysis
 Revised May 2023

NOTICE OF PROPOSED RULE		
TYPE OF FILING: New Rule		
Title No. - Rule No. - Section No.		
Rule or Section Number:	R940-11	Filing ID: Office Use Only

Agency Information

1. Department:	Transportation	
Agency:	Transportation, Program Development	
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Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:	R940-11. Guidelines for Partnering with Local Governments
3. Purpose of the new rule or reason for the change:	SB 185 requires the Transportation Commission to modify rule R940-11. Currently, rule R940-11 allows the Commission to consider "local matching dollars" as a potential financing option. The change required by SB 185 allows the commission to consider as a financing option "agreements regarding new revenue a county or municipality expects will be generated as a result of the construction of a state highway improvement project." This rule is being converted to a Transportation Commission rule because Section 72-2-123 requires the Commission, not the Department of Transportation, to make the rule. The other changes are for clarity and conformance with the rule writing manual.
4. Summary of the new rule or change:	This rule repeals 926-8 and reenacts it in the form of R940-11. This rule also substantially clarifies the language set forth in R926-8 by making grammatical corrections, replacing certain terms with more specific language, and reorganizing certain provisions to make them more readable. R940-11-9 specifies the notice period for the commission hearing a local government's request for partnering. This rule also expands certain requirements set forth in R926-8, including local government's responsibilities under the rule (R940-11-3-2) and the required terms in an interlocal partnership agreement between a local government and the Department of Transportation (R940-11-5-2).

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:	
A) State budget:	There is no anticipated cost or savings to the state budget, as this rule sets forth the procedural and clerical aspects of the Department partnering with local governments.
B) Local governments:	

There is no anticipated cost or savings to local governments, as this rule sets forth the procedural and clerical aspects of local governments partnering with the Department.

C) Small businesses ("small business" means a business employing 1-49 persons):

This rule will not have a fiscal impact on small businesses. This rule only affects the Department and local governments.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

This rule does not have a fiscal impact on non-small businesses nor will a service be required of them to implement the rule.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This rule does not have an impact on persons because it pertains only to local governments and their partnerships with the Department.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Bracerias, P.E., has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 63G-3	Section 72-1-303	Section 72-2-123

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables):

A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated	
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(from title page)	
Publisher	
Issue Date	
Issue or Version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; <i>if none, leave blank</i>):	
Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until:		Click or tap to enter a date.
B) A public hearing (optional) will be held:		
Date (mm/dd/yyyy):	Time (hh:mm AM/PM):	Place (physical address or URL):
To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.		

9. This rule change MAY become effective on:	Click or tap to enter a date.
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
Agency head or designee and title:	Carlos M. Braceras, P.E. Executive Director	Date:	Click or tap to enter a date.

R940~~R926~~. Transportation, Program Development.

R940-11~~R926-8~~. Guidelines for Partnering with Local Governments.

R940-11-1~~R926-8-1~~. Purpose and Authority.

The purpose of this rule is to increase the department's and commission's~~State's~~ ability to carry out improvements on s~~S~~tate highways by allowing local governments~~counties and municipalities~~ to provide local matching dollars or participate through other methods, such as providing right-of-way. This rule is required by Section 72-2-123(1) and is enacted under the authority of Title 63G, Chapter 3, Utah Administrative Rulemaking Act and Section 72-1-~~303~~~~204~~.

R940-11-2. Definitions.

- (1) "Commission" means the Transportation Commission created in Section 72-1-301.
- (2) "Department" means the Department of Transportation created in Section 72-1-201.
- (3) "Local government" means a municipality or county.

_____ (4) "Long-range transportation plan" means any one of the plans developed by the department and the state's Metropolitan Planning Organizations that forecast the state's transportation needs for the next 20-plus years and may also be known as a regional transportation plan.

R940-11-3[R926-8-2]. Process for Submitting and Accepting[Approving or Denying] Proposals–Department Recommendation–Notification.

(1)(a) If a local government is seeking to partner on[~~county or municipality wishes to participate in~~] a s[~~S~~]tate highway capacity project[~~improvement program~~], then the local government[~~it~~] shall notify the department and the commission[~~Transportation Commission~~], in writing, at the earliest available opportunity and provide the information listed in Subsection (2)[~~Paragraphs (a) through (e)~~].

(b) The local government[~~county or municipality~~] is encouraged to work with the department in formulating and developing the necessary information.

(2)(a) When making the notification described in Subsection (1)(a), the local government shall provide the following information:

_____ (i)[~~a~~] A written description of the state highway capacity project, including a cost estimate and any engineering or technical information that may have been prepared [~~Details of the specific improvement~~].

(ii)[~~b~~] A statement indicating whether the state highway capacity project[~~improvement~~] has already been programmed into the Statewide Transportation Improvement Program (STIP) or Transportation Improvement Program (TIP) and, if not, whether it is in the [~~L~~]-long-r[~~R~~]ange transportation p[~~P~~]lan and the phase of the [~~L~~]-long-r[~~R~~]ange transportation p[~~P~~]lan.

[~~(c) A textual description of the improvement, along with any engineering or technical information that may have been prepared.~~]

(iii)[~~d~~] A statement indicating whether any environmental or other federal clearances or permits will be necessary and, if so, the status of any federal applications.

(iv)[~~e~~] A description of how the local government plans to partner with the department on the state highway capacity project, including the[~~The type of local participation being proposed and the~~] source of any local matching funding[~~funding~~].

(v)[~~f~~] A written[~~textual~~] description of why the project is needed at this time and the benefit that the project[~~improvement~~] will bring to the s[~~S~~]tate highway system and the local government[~~county or municipality along with its costs~~].

(b) If the proposal includes local matching dollars described in Subsection (4)(d), then the local government shall also provide an economic impact analysis that includes the projected tax revenue impact that will likely occur as a result of the project being completed.

_____ (3)[~~2~~] The department and commission may[~~will~~] only accept a local government proposal[~~Proposals for participation with local matching dollars will be accepted only~~] if:

(a) environmental clearances are completed or highly probable;

(b) the proposal complies with this rule, is complete, and is feasible; and

_____ (c)[~~b~~](i) the project[~~improvement~~] is already programmed in the Statewide Transportation Improvement Program (STIP) or the Transportation Improvement Program (TIP); or

(ii[e]) the project[improvement] is part of the long-range transportation plan and the commission[Transportation Commission] determines that advancing the project will not defer other projects that are already prioritized and programmed in the Statewide Transportation Improvement Program (STIP) or Transportation Improvement Program (TIP).

(4[3])(a) The commission[Transportation Commission] may not consider local matching dollars unless the state provides an equal opportunity to raise local matching dollars for state highway capacity projects[improvements] within each county, as required by Subsection 72-1-304(3)(b).

(b[4]) Local matching dollars cannot be funded by federal funds, except with:

(i[a]) Federal transportation (highway) formula funds normally programmed by local entities, including funds programmed by a Metropolitan Planning Organization; or

(ii[b]) Federal discretionary funds with prior joint agreement by UDOT and the local government[entity]. ~~[Nevertheless, earmarks in transportation authorizing legislation cannot be used for local match.]~~

(c[5]) Private sources or contributions may be considered part of local matching dollars if they pass through the local government.

(d) Local matching dollars may include new revenue a local government expects will be generated as a result of the construction of the state highway capacity project.

(5[6]) The department shall:

(a) notify the commission at a public meeting of any partnering requests that meet the requirements of Subsection (3); ~~[Upon receiving a partnering proposal, the commission[Transportation Commission] will be notified in a forthcoming public meeting. The department shall]~~

(b) evaluate each[the] proposal and all accompanying information to verify whether the proposal[see whether it] complies with this rule, is complete, and is feasible;[-]

(c) [-The department shall also] calculate an independent cost estimate for the project; and

(d) [- (7) The department shall review the proposal and] make a recommendation to the commission[Transportation Commission] at a public meeting regarding each proposal that meets the requirements described in Subsection (3), including[- along with] the reasons for recommending denial or approval of the proposal based on[using] the criteria[listed] in this[these] rule[s for its review].

(8) At ~~[anytime]~~any time in this process, the department may contact the local government[county or municipality] for additional information and may incorporate amendments requested by the local government into the local government's proposal[county or municipality in its evaluation].

(9) The department shall provide at least 30 days written notice to[notify] the local government[county or municipality] of the date, time, and location of the commission[Transportation Commission] meeting at which the commission[that] will hear the request for partnering[proposal]. ~~[The department shall provide the county or municipality with at least 30 days written notice.]~~

R940-11-4[R926-8-3]. Factors Used to Consider Proposals.

(1) In deciding whether to approve a local government's~~[county's or municipality's]~~ request for partnering, the commission~~[Transportation Commission]~~ shall evaluate the proposal with the following factors in mind:

(a) whether the requested project~~[improvement]~~ is part of the Statewide Transportation Improvement Program (STIP), the Transportation Improvement Program (TIP), or the ~~[[L]ong-r[R]ange transportation p[P]lan~~ and, if part of the ~~[[L]ong-r[R]ange transportation p[P]lan~~, will not delay any of the projects already included in the STIP or TIP;

(b) the benefits of the project~~[improvement]~~ to the s~~[S]tate~~ highway system and the local government~~[county or municipality]~~;

(c) the costs of the project~~[improvement]~~;

(d) the level of local commitment, based on the amount or percentage of local matching funding~~[funding]~~ proposed;

(e) whether the proposed project~~[improvement]~~ was subject to a local or regional planning initiative;

(f) whether the project~~[improvement]~~ will alleviate significant existing or future congestion or hazards to the traveling public or provide other substantial improvements to the transportation system;

(g) whether the proposal has the potential to extend department resources to other needs;

(h) land use considerations;

(i) potential incremental revenue generation if the project is completed; and

~~_____~~ ~~[[H]]~~ whether the proposed project~~[improvement]~~ fulfills a need widely recognized by the public, elected officials, and transportation planners.

(2)(a) If a proposed project~~[improvement]~~ is to a surface street that approaches an interchange or ramp or for a new interchange or ramp and is being undertaken primarily for economic development, then the local government~~[county or municipality]~~ shall provide at least ~~[a fifty percent] [(50%)]~~ local match. ~~[The match can include private contributions that are administered through the local entity.]~~ [Economic development may include such things as employment growth, employment retention, retail sales, tourism growth, freight movements, tax base increase, and traveler or user cost savings as compared to construction costs.]

~~_____~~ (b) If a proposed project~~[improvement]~~ is to a surface street that approaches an interchange or ramp or for a new interchange or ramp and is being undertaken to relieve traffic congestion or to improve safety, the local match, if any, may be determined based on the benefit derived by the local entity.

R940-11-5~~[R926-8-4]~~. Record of Proposal and Interlocal Agreements.

(1) The department shall maintain a record of ~~[[e]]~~ each request for partnering~~[partnering proposal]~~. Except for individual records in the file that may be classified as private or protected, the contents of the file shall otherwise be public.

(2) If the commission~~[Transportation Commission]~~ agrees to the request for partnering~~[partnering proposal]~~, then the department shall develop an interlocal agreement with the local government~~[county or municipality]~~ that will set forth the proposal, the method of participation, the work that will be done, and projected timelines.

(3) An agreement described in Subsection (2) shall include[=]

(a) adequate security to the department of receiving the local matching funding proposed by the local government;

(b) a statement indicating that the agreement does not preclude the department from requiring other agreements related to the proposed project;

(c) a statement indicating that the agreement does not include the work terms for the project;

(d) any indemnification clause determined necessary by the department; and

(e) a statement that incorporates the proposal that was approved by the commission.

KEY: transportation, local governments, partnering, highways

Date of Enactment or Last Substantive Amendment: June 22, 2006

Notice of Continuation: June 10, 2020

Authorizing, and Implemented or Interpreted Law: 72-2-123