



May 17, 2018

To: Legislative and Communications Committee

From: Darrell Johnson, Chief Executive Officer

Subject: State Legislative Status Report

Overview

An update is provided on a bill related to the planning and operations of the network of toll roads in Orange County. An oppose position is recommended on a bill related to pension liabilities for joint powers authorities. Overviews are provided of two bills being supported pursuant to the 2017-2018 Orange County Transportation Authority State Legislative Platform. The first bill pertains to three-position bicycle racks on articulated buses, and the second one relates to the cost of electricity as a fuel for transit agencies preparing for zero-emission bus technology.

Recommendation

Adopt an OPPOSE position on AB 1912 (Rodriguez, D-Pomona), which would make member agencies of a joint powers authority jointly and severally liable for the retirement benefits provided by the joint powers authority.

Discussion

AB 382 (Chávez, R-Oceanside): County of Orange: Joint Exercise of Powers Agreements: Toll Roads

AB 382 (Chávez, R-Oceanside) seeks to clarify the responsibilities of the Transportation Corridor Agencies (TCA), as a joint powers authority (JPA), to be limited to the maintenance, financing, and operation of its toll road system as it exists in operation on January 1, 2018. To enforce this limitation, AB 382 would prevent the member agencies of the TCA from entering into a JPA to construct any additional bridge or major thoroughfare beyond the existing system. Furthermore, after January 1, 2018, TCA would be unable to incur bonded indebtedness unless it is to refund bonds issued prior to January 1, 2018 or to finance debt service spikes. In both situations, TCA would be required to

demonstrate that the issuance of bonds or other indebtedness meet various requirements in order to proceed.

The TCA was initially formed in 1986 as a local JPA to manage, finance, construct, and operate a toll road network proposed within Orange County. State legislation granted TCA the authority to issue bonds backed by future toll revenues and development impact fees. With this authority, the TCA began construction in the early 1990s of the proposed toll road network. This system provided not only a travel alternative for Orange County residents, but helped reduce congestion on the existing state highway and interstate system.

The one piece of the originally proposed network that has not been completed is the extension of the State Route 241 (SR-241) south. Subject to years of legal challenges from environmental groups, TCA eventually entered into a settlement agreement with those groups, which precluded the construction of the originally proposed alignment to connect to Interstate 5 (I-5). This led TCA to initiate an effort to explore alternative routes. In developing alternatives, TCA conducted a number of public forums within South Orange County to solicit public input on not only the SR-241 extension, but a host of transportation improvements to the existing highway system, local streets and roads, and transit system. Many of these ideas had already been thoroughly vetted by the Orange County Transportation Authority (OCTA) as the agency responsible for developing the Long-Range Transportation Plan for Orange County and the programming of related state and federal funds. Among the alternatives suggested by TCA is the addition of a managed-lanes facility within the center of I-5 to the county line and/or to proceed with an alternative SR-241 alignment that could create community impacts that were not anticipated in the initial proposed route. In many of these cases, it is not clear that the congestion levels or demand exist to justify those alternatives.

Through TCA's planning activities, reopening project decisions already made by OCTA and/or promising new improvements that are not currently planned, confusion was created for the public as to which agency is responsible for this function within the County, and what may take place in the future. It is also questionable whether existing statutory authority permits TCA the ability to undertake any of these activities. The City of San Clemente sponsored AB 382 to provide that clarity.

Nothing in AB 382 seeks to change TCA's role as it relates to the existing system of toll roads. This continues to be an important part of improving mobility within Orange County, and will continue to function as such if AB 382 is enacted. AB 382 also does not change TCA's role as it relates to the maintenance, operation, and financing of that system. Those roles will continue as they are currently structured.

AB 382, however, will provide clarity as it relates to the planning of future mobility improvements within South Orange County. OCTA currently has clear statutory responsibility over the planning and location of future capital development projects within the County. OCTA also is the entity responsible for implementing the local sales tax measure funding provided under Measure M2 and determining which projects on the federal-aid highway system are to be funded. By more clearly defining TCA's role in operating, maintaining, and financing its toll road system, AB 382 removes any ambiguity in the respective roles of OCTA and TCA as it relates to the long-term capital project development within Orange County. TCA will continue to be the operator of its existing toll road facility and OCTA will continue to be responsible for overall countywide planning and funding functions.

The text of AB 382 and a comprehensive analysis of the legislation are included as Attachment A.

AB 1912 (Rodriguez, D-Pomona): Public Employees' Retirement: Joint Powers Agreements: Liability

AB 1912 (Rodriguez, D-Pomona) specifies that if an agency to a JPA agreement participates in a public retirement system, all parties, both current and former to the JPA agreement, would be jointly and severally liable for all obligations to the retirement system. The bill would eliminate the ability for member agencies to the JPA to come to a different agreement, removing a member agency's ability to negotiate and contract related to these liabilities under existing JPA law. Under AB 1912, these new requirements apply retroactively and prospectively, and are placed on member agencies that later leave a JPA, maintained even when a JPA is disbanded.

AB 1912 includes several amendments specific to when a JPA contracts with the California Public Employees' Retirement System (CalPERS). This includes provisions that prevent CalPERS from contracting with a JPA for retirement benefits if the JPA agreement does not include a provision that makes all parties jointly and severally liable for the retirement benefits of the JPA. Any current agreement would have to be reopened to include these provisions. As a backstop, the CalPERS Board of Directors (Board) is to have a lien on not only the assets of the JPA, but also the member agencies of the JPA. AB 1912 also sets parameters for how the CalPERS Board may pursue civil litigation for enforcement for terminated JPA retirement obligations, and empowers the CalPERS Board to apportion the retirement liabilities among the parties to the JPA agreement if they cannot reach agreement to the apportionment themselves.

For OCTA, AB 1912 could lead to significant implications for not only its participation in JPAs, but also in its financing and bonding processes. Under existing law, when forming a JPA, member agencies currently have the authority to come to agreement about the pension liabilities related to that agency, which could include the ability to make member agencies jointly and severally liable for those obligations, or apportion the liability in another method. AB 1912 infringes upon these contracting authorities, and dictates how this shall be done, not only to future agreements, but also to existing and past agreements. This raises not only constitutional concerns, but also impacts an agency's current financial structure in a way that could not have been anticipated when the JPA was initially formed. This also removes the ability for parties to the JPA to determine how best to handle these liabilities based on financial ability, participation, governing structure, jurisdictional boundaries, or other factor. Further, AB 1912 is unclear as to whether this is truly "joint and several" liability, or if this liability is to be apportioned in some other manner. Because this is unclear, this could lead to confusion when forming these agreements about how this should be worded, and what type of liability is actually being agreed to.

Currently, OCTA is a member of at least two JPAs: Metrolink and the Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency (LOSSAN). These JPAs were formed out of the interest of the member agencies to address specific transportation demands that the member agencies could not address alone. These JPAs have allowed for improved transportation benefits throughout the region, providing a critical public service. While the employees working for LOSSAN are technically OCTA employees, and governed by the retirement structure provided by OCTA, there are potential significant consequences under the Metrolink JPA if AB 1912 is enacted. These new liabilities would have to be disclosed by OCTA in future bonding and financing agreements, potentially reducing the agency's bond rating and inhibiting OCTA's ability to achieve the most cost-effective agreements. This will directly impact OCTA's ability to deliver its services.

The added liabilities created by AB 1912 will likely deter agencies like OCTA from entering into new JPA agreements, removing a significant tool currently used to address larger, regional multi-jurisdictional issues. While the pension liabilities of an agency's employees are important to the well-being of any agency and its ability to attract and retain employees, this bill goes beyond that issue. Instead, further flexibility should be provided to members of JPAs to address the issue in any future agreements.

The text of AB 1912 and a comprehensive analysis of the legislation are included as Attachment B. An oppose position is consistent with the OCTA's 2017-18 State Legislative Platform principle to "oppose legislation and regulations adversely affecting OCTA's ability to efficiently and effectively deal with labor

relations, employee rights, benefits including pension benefits, Family Medical Leave Act, and working conditions, including health, safety, and ergonomic standards for the workplace.”

AB 3124 (Bloom, D-Santa Monica): Vehicles: Length Limitations: Buses: Bicycle Transportation Devices

AB 3124 (Bloom, D-Santa Monica), sponsored by the California Transit Association (CTA), would allow a transit operator to equip a 60-foot articulated bus with a three-position bicycle rack. Specifically, AB 3124 would provide operators with the flexibility to install a front-mounted bicycle rack that extends up to 40 inches from the front of the bus. It would also require public agencies to establish a route review committee prior to the use of three-position bicycle racks to ensure the safe operation of these articulated buses. The committee would be comprised of four members: one member of the public agency, one member who is a traffic engineer, one member appointed by the labor organization that represents the coach operators of the public agency, and one member of the law enforcement agency that has jurisdiction over the routes.

OCTA's bus system offers 65 routes and over 5,500 bus stops that provide service throughout Orange County and into neighboring counties. Approximately 5,000 riders per day use a bicycle to connect to bus service in the County. Many of these riders use the bicycle racks on both the 40-foot and 60-foot buses. However, under the authority provided by AB 2707 (Chapter 310, Statutes of 2014), only 40-foot buses are allowed to be equipped with three-position bicycle racks. AB 3124 would allow OCTA to expand on the contract approved by the OCTA Board on April 23, 2018, to install three-position bicycle racks on all standard 40-foot buses. In addition, it is important to note that under AB 3124, prior to being brought before a route review committee, the potential addition of the racks would also be reviewed by OCTA's internal Configuration Control Committee, which is composed of representatives from transit operations and maintenance, risk management, safety, and marketing. This committee is responsible for reviewing any adjustments to the fleet prior to any adjustments being pursued.

The 36 articulated buses operating in OCTA's bus system are currently equipped with two-position bicycle racks, resulting in a large number of pass-ups at bus stops. The higher-capacity racks on articulated buses will reduce the number of times a bicyclist will be left behind and will make the system more compatible for bicyclists. Furthermore, AB 3124 will promote active transportation use and improve first and last mile connections to transit. This will serve to reduce both greenhouse gas emissions and congestion on local streets and roads.

Consistent with the principle outlined in the OCTA 2017-18 State Legislative Platform to: "Support policies that encourage the safe interaction and operation of integrated multi-modal systems, including roadways, rail lines, bikeways, and pedestrian ways, and the users of those facilities," a SUPPORT position has been taken on AB 3124. A copy of the bill and letter of support have been included as Attachment C.

SB 1434 (Leyva, D-Chino): Transportation Electrification: Electricity Rate Design

SB 1434 (Leyva, D-Chino), sponsored by the CTA, would direct the California Public Utilities Commission (PUC) to initiate a ratemaking proceeding that addresses the cost of electricity as a fuel for transit agencies. The California Air Resources Board is currently undertaking a rulemaking that would require transit agencies statewide to convert their fleets to 100 percent zero-emission technology by 2040 through use of a purchase mandate. CTA, and its member agencies, including OCTA, have voiced concern about how the cost of electricity as a fuel far exceeds the cost of compressed natural gas and diesel. This presents a significant barrier to future deployment of zero-emission technology.

In powering its current fleet of over 500 buses with compressed natural gas, OCTA uses approximately 5.3 megawatts of energy. In order to charge a similarly sized fleet of zero-emission buses, it would require about 62 megawatts of energy. Increasing energy usage by a factor of nearly 12 times to provide normal weekday service would make charging buses cost-prohibitive during peak usage, causing logistical issues with the current operating schedule. These changes would create uncertainty surrounding the type of large-scale deployment of zero-emission technology necessary for OCTA to maintain its current level of service. SB 1434 would allow the development of an electricity rate structure that will allow for a successful statewide transition to zero-emission technologies.

SB 1434 simply directs the PUC to initiate a ratemaking proceeding in order to secure an electricity rate structure that supports widespread transit electrification. In order to avoid unintended consequences to ratepayers, the bill would allow for a rulemaking proceeding that brings relevant stakeholders together to deliberate on an appropriate rate structure rather than prescribing a specific rate structure in statute. OCTA staff believes that the approach pursued in SB 1434 is a fair way to balance the interests of all parties in the transition to zero-emission bus technology.

Consistent with the principle outlined in the OCTA 2017-2018 State Legislative Platform to: "Support efforts to establish an alternative electricity rate structure for transit agencies to mitigate costs associated with the operation of

zero-emission transit buses," a SUPPORT position has been taken on SB 1434. A copy of the bill and letter of support have been included as Attachment D.

Summary

An overview is provided on a bill related to the operation of toll roads in Orange County. An oppose position is recommended on a bill related to pension liabilities. An update is provided on two bills related to bicycle racks on articulated buses and the electricity rate structure for transit agencies.

Attachments

- A. AB 382 (Chávez, R-Oceanside) Bill Analysis with Bill Language
- B. AB 1912 (Rodriguez, D-Pomona) Bill Analysis with Bill Language
- C. Letter from Lisa A. Bartlett, Chairwoman, Orange County Transportation Authority, to Assembly Member Richard Bloom, dated May 4, 2018, in support of AB 3124, with Bill Language
- D. Letter from Lisa A. Bartlett, Chairwoman, Orange County Transportation Authority, to Senator Connie M. Levya, dated May 9, 2018, in support of SB 1434, with Bill Language
- E. Orange County Transportation Authority Legislative Matrix

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