



AGENDA

Legislative and Communications Committee Meeting

Committee Members

Laurie Davies, Chair
Lisa A. Bartlett, Vice Chairwoman
Barbara Delgleize
Michael Hennessey
Gene Hernandez
Tim Shaw
Gregory T. Winterbottom

Orange County Transportation Authority
Headquarters
550 South Main Street
Board Room – Conf. Room 07
Orange, California
Thursday, March 21, 2019 at 9:00 a.m.

Any person with a disability who requires a modification or accommodation in order to participate in this meeting should contact the OCTA Clerk of the Board, telephone (714) 560-5676, no less than two (2) business days prior to this meeting to enable OCTA to make reasonable arrangements to assure accessibility to this meeting.

Agenda descriptions are intended to give members of the public a general summary of items of business to be transacted or discussed. The posting of the recommended actions does not indicate what action will be taken. The Committee may take any action which it deems to be appropriate on the agenda item and is not limited in any way by the notice of the recommended action.

All documents relative to the items referenced in this agenda are available for public inspection at www.octa.net or through the Clerk of the Board's office at the OCTA Headquarters, 600 South Main Street, Orange, California.

Call to Order

Pledge of Allegiance

Director Hennessey

1. Public Comments

Special Calendar

2. Conference Call with State Legislative Advocate Moira Topp Moira Topp/Lance M. Larson

An update of legislative items in Sacramento will be provided.



Consent Calendar (Items 3 and 4)

All items on the Consent Calendar are to be approved in one motion unless a Committee Member or a member of the public requests separate action or discussion on a specific item.

3. Approval of Minutes

Approval of the minutes of the Legislative and Communications Committee meeting of February 21, 2019.

4. Agreement for Public Outreach for Rail Capital Projects

Calina North/Lance M. Larson

Overview

Consultant services are needed to support public communications and community outreach support for five rail capital projects, other rail projects as part of the Southern California Optimized Rail Expansion Program, and for additional Metrolink projects in Orange County. Proposals were received in accordance with the Orange County Transportation Authority's procurement procedures for professional and technical services. Board of Directors' approval is requested to select a firm to provide public outreach for the rail capital projects.

Recommendations

- A. Approve the selection of Katz & Associates, Inc., as the firm to provide public outreach for the rail capital projects.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-8-2074 between the Orange County Transportation Authority and Katz & Associates, Inc., in the amount of \$548,981, for a four-year initial term, through April 30, 2023, with one, one-year option term to provide public outreach for the rail capital projects.



Regular Calendar

5. State Legislative Status Report

Kristin Essner/Lance M. Larson

Overview

An amendment is proposed to the Orange County Transportation Authority's 2019-20 State Legislative Platform to sponsor legislation related to the Active Transportation Program. A support position is recommended on legislation related to sales tax revenues from online sales. An oppose position is recommended on a bill related to redirecting funds for complete streets purposes and a bill to reprioritize transportation funds if greenhouse gas emission reduction targets are not being met. An update is provided on the high-speed rail project and an overview is provided of a legislative hearing on the implementation of SB 1 (Chapter 5, Statutes of 2017).

Recommendations

- A. Amend the 2019-20 Orange County Transportation Authority State Legislative Platform to sponsor legislation to streamline the administration of the Active Transportation Program and increase regional oversight.
- B. Adopt a SUPPORT position on AB 147 (Burke, D-Inglewood), which would authorize the collection of sales and use taxes from online retailers pursuant to the U.S. Supreme Court's ruling in *South Dakota v. Wayfair, Inc.*
- C. Adopt an OPPOSE position on SB 127 (Wiener, D-San Francisco), which would direct highway funding to bike and pedestrian projects and reprioritize multiple transportation programs toward a complete streets approach.
- D. Adopt an OPPOSE position on SB 526 (Allen, D-Santa Monica), which would reprioritize transportation funding if a region is not on track to meet its regional greenhouse gas emission reduction targets.



6. Federal Legislative Status Report
Jaymal Patel/Lance M. Larson

Overview

A support position is recommended for a bill related to the streamlining of the Transportation Infrastructure Finance and Innovation Act program. An overview of the omnibus appropriations bill and the President's budget request is provided, as well as summaries of transportation-related hearings.

Recommendation

Adopt a SUPPORT position on S. 353 (Cornyn, R-TX), which would help streamline the Transportation Infrastructure Finance and Innovation Act program under the Department of Transportation.

Discussion Items

7. Chief Executive Officer's Report

8. Committee Members' Reports

9. Closed Session

There are no Closed Session items scheduled.

10. Adjournment

The next regularly scheduled meeting of this Committee will be held at **9:00 a.m. on Thursday, April 18, 2019**, at the Orange County Transportation Authority Headquarters, 550 South Main Street, Board Room - Conference Room 07, Orange, California.



Committee Members Present

Laurie Davies, Chair
Lisa A. Bartlett, Vice Chairwoman
Barbara Delgleize
Michael Hennessey
Gene Hernandez
Tim Shaw
Gregory T. Winterbottom

Staff Present

Darrell E. Johnson, Chief Executive Officer
Ken Phipps, Deputy Chief Executive Officer
Laurena Weinert, Clerk of the Board
Sara Meisenheimer, Deputy Clerk of the Board
James Donich, General Counsel
OCTA Staff and members of the General Public

Committee Members Absent

None

Call to Order

The February 21, 2019 regular meeting of the Legislative and Communications Committee was called to order by Committee Chair Davies at 9:00 a.m.

Pledge of Allegiance

Director Delgleize led in the Pledge of Allegiance.

1. Public Comments

No public comments were received.

Special Calendar

2. Sacramento Advocate Presentation

Moira Topp, Sacramento Advocate, reported on the following:

- The bill introduction phase and the deadline to introduce bills is tomorrow. About 2,300 bills were introduced and many bills are considered “spot” bills.
- There are not a lot of transportation themes; however, there are many bills related to housing and homelessness which connects to transportation.
- Bills that the Orange County Transportation Authority (OCTA) is engaged on including:
 - Toll reform activity and cleaning up the toll collection process.
 - Legislation to move OCTA collective bargaining claims under the Public Employee Relations Board.
- The Governor has not appointed a Transportation Agency Secretary or a California Department of Transportation (Caltrans) Director; however, he has selected his internal staff.



2. (Continued)

- Two main issues being discussed by both the Executive and Legislative branch:
 - South Dakota verses Wayfair, Inc., decision and understanding who gets taxed for online sales and what happens to the tax allocations.
 - Senate Bill 1 programs and having legislation adjust the programs to have equitable distribution.
- The Governor introduced his budget and proposed to continue with the Central Valley segment of High-Speed Rail.
- The President made an announcement to not provide California with the federal funds for the High-Speed Rail.

A discussion ensued regarding:

- California High-Speed Rail:
 - It would take a vote by the people to repurpose the monies and various ideas have been made to make High-Speed Rail more accommodating.
 - Reasons behind connecting the High-Speed Rail to only the Central Valley segment and what riders it is trying to serve. Updates will continue to be brought back to the Legislative and Communications Committee.
- Orange County has a new leadership team and there will continue to be an overlap between housing and transit in the future.
- Scaling back federal dollars on a project where the money has already been allocated could lead to an investigation, but it will take some time to figure out what could happen.
- Committee Vice Chairwoman Bartlett's meeting with the California State Association of Counties, the Governor's proposal to withhold transportation dollars if housing goals are not met, and the need to streamline projects to get through the process faster.

3. Committee Meeting 2019 Schedule

Committee Chair Davies presented this item and stated the Legislative and Communications Committee meetings will remain on the third Thursday of each month at 9:00 a.m.

Darrell E. Johnson, Chief Executive Officer (CEO), added that typically the Committee does not meet in December, but it is preferred to keep it on the calendar.

A motion was made by Director Hernandez, seconded by Committee Vice Chairwoman Bartlett, and declared passed by those present, to approve the 2019 Legislative and Communications meeting schedule.



4. Roles and Responsibilities of the Legislative and Communications Committee

Darrell E. Johnson, CEO, presented this item and there was only one word changed in the second to last bullet.

A motion was made by Director Hernandez, seconded by Director Hennessey, and declared passed by those present, to approve the Roles and Responsibilities of the Legislative and Communications Committee.

Consent Calendar (Item 5)

5. Approval of Minutes

A motion was made by Committee Vice Chairwoman Bartlett, seconded by Director Hennessey, and declared passed by those present to approve the minutes of the Legislative and Communications Committee meeting of January 17, 2019.

Director Hernandez abstained from the vote due to not serving on the Legislative and Communications Committee at that time.

Regular Calendar

6. State Legislative Status Report

Jaymal Patel, Associate Government Relations Representative, reported on the background of Assembly Bill (AB) 252 related to the National Environmental Policy Act (NEPA) assignment program, and AB 28 which provided the limited waiver of sovereign immunity set to expire on January 1, 2020.

A discussion ensued regarding:

- OCTA does not have to engage with the federal government on highway projects; subject to NEPA, because the federal government delegates this authority to the state.
- Clarification on the California Environmental Quality Act and NEPA and the idea of having direct federal highway administration oversight on highway projects verses delegating NEPA review to Caltrans.
- Attachment B of the Staff Report includes the bills that OCTA is monitoring.



6. (Continued)

A motion was made by Director Delgleize, seconded by Director Hernandez, declared passed by those present, to adopt a SUPPORT position on AB 252 (Daly, D-Anaheim) which would allow California to continue to perform federal environmental responsibilities for highway projects under the National Environmental Policy Act indefinitely.

7. Federal Legislative Status Report

Dustin Sifford, Senior Government Relations Representative, reported on the following:

- Update on the appropriations process.
- The President signed legislation to fund the remainder of the federal government through the fiscal year.
- Summary of the Long-term Transportation Funding Outlook report:
 - Revenues into the Highway Trust Fund (HTF) are about \$42 billion a year.
 - The Fixing America's Surface Transportation Act authorized about \$57 billion per year in federal transportation funding.
 - The most challenging transportation item Congress must deal with is the status of the HTF.
 - Staff will continue to monitor additional proposals and other items that Congress should consider related to infrastructure funds.
- Nicole R. Mason was nominated to serve as the Administrator of the Federal Highway Administration.
- The President emphasized the need to act on infrastructure and issued an Executive Order to encourage the use of project components manufactured within the United States (Buy America requirements).
- Referenced a hearing on infrastructure investments held by the House Transportation and Infrastructure Committee.

A discussion ensued regarding:

- Committee Vice Chairwoman Bartlett requested to keep the Legislative and Communications Committee posted on a potential federal gas tax increase.
- A summary of Mr. Johnson's, CEO, conversations with Congressman Rouda and Congressman Lowenthal while he was in Washington, D.C., and an upcoming tour of the Interstate 405 (I-405) Improvement Project with Congressman Rouda.
- Committee Vice Chairwoman Bartlett met with Congressman Rouda yesterday and stated he wants to get money for transportation funding and be helpful to OCTA.



7. (Continued)

- OCTA is in a good position to identify its needs since the Board-adopted the Long-Range Transportation Plan and the Next 10 Delivery Plan.

Following the discussion, no action was taken on this receive and file information item.

Discussion Items

8. Chief Executive Officer's Report

Darrell E. Johnson, CEO, reported on the following:

- This afternoon, OCTA will provide a tour and briefing of the I-405 Improvement Project for Congressman Rouda and on Friday, February 15th, a tour and briefing of OC Streetcar Project will be provided to Representative Correa.
- On Tuesday, February 12th, the new parking structure at the Orange Metrolink Station opened and Chairman Shaw and Directors Murphy, Hennessey, Hernandez, and Winterbottom all attended. Other attendees included former Directors Cavecche and Murray, Metrolink, Hill International, and Bomel Construction.
- The American Public Transportation Association released their annual report on transit agencies with the most vanpools trips and California has the top four agencies listed, along with OCTA ranking eighth in the nation.

9. Committee Members' Reports

Committee Vice Chairwoman Bartlett asked if OCTA is tracking the temporary license plates and the amount of additional revenues. Mr. Johnson, CEO, stated there is not enough data to see if there is a trend, but OCTA is monitoring it. People are getting more creative on where they place the paper plate to avoid paying the toll fees.

Director Delgleize asked if there is an update on scooters. Mr. Johnson, CEO, stated OCTA does not have any authority on the approval of the scooter guidelines and each city will need to take its own path forward.

10. Closed Session

There are no Closed Session items scheduled.



11. Adjournment

The meeting adjourned at 9:50 a.m.

The next regularly scheduled meeting of this Committee will be held at **9:00 a.m. on Thursday, March 21, 2019**, at the Orange County Transportation Authority Headquarters, 550 South Main Street, Board Room - Conference Room 07, Orange, California.


ATTEST

Laurie Davies
Committee Chair

Sahara Meisenheimer
Deputy Clerk of the Board



March 21, 2019

To: Legislative and Communications Committee 
From: Darrell E. Johnson, Chief Executive Officer
Subject: Agreement for Public Outreach for Rail Capital Projects

Overview

Consultant services are needed to support public communications and community outreach support for five rail capital projects, other rail projects as part of the Southern California Optimized Rail Expansion Program, and for additional Metrolink projects in Orange County. Proposals were received in accordance with the Orange County Transportation Authority's procurement procedures for professional and technical services. Board of Directors' approval is requested to select a firm to provide public outreach for the rail capital projects.

Recommendations

- A. Approve the selection of Katz & Associates, Inc., as the firm to provide public outreach for the rail capital projects.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-8-2074 between the Orange County Transportation Authority and Katz & Associates, Inc., in the amount of \$548,981, for a four-year initial term, through April 30, 2023, with one, one-year option term to provide public outreach for the rail capital projects.

Discussion

The Orange County Transportation Authority (OCTA) Board of Directors' (Board) approval of the Next 10 Delivery Plan advances Measure M2 projects and programs over a ten-year period (2017-2026). Measure M Project R, also referred to as the Metrolink Service Expansion Program (MSEP), is part of the Next 10 Plan, and will provide for sustained and expanded rail service, station improvements, and safety and operational improvements to railroad infrastructure.

There are five MSEP projects currently in various phases, as well as several Southern California Optimized Rail Expansion Program (SCORE) projects. The MSEP projects include, but are not limited to, the Anaheim Canyon Metrolink Station (design), Placentia Metrolink Station (design), Laguna Niguel to San Juan Capistrano Passing Siding (construction), and San Juan Creek Bridge Replacement (environmental) and Slope Stabilization (construction). The SCORE projects include the Orange County Maintenance Facility and six other rail projects that will include improvements such as signal respacing, adding new tracks, and station modifications.

Consultant services are needed to develop and execute public communications and outreach support for each project. An outreach consultant with experience in capital improvement projects to create and implement these programs helps assure OCTA delivers a high-quality public outreach program that is consistent with OCTA outreach in other modes and projects. Consultant services will aid OCTA's efforts to generate public awareness of the projects, identify key issues and stakeholders, and ensure the community is aware of the activities that will affect them. The projects are located in multiple cities, including, but not limited to, the cities of Anaheim, Irvine, Laguna Niguel, Lake Forest, Mission Viejo, Placentia, and San Juan Capistrano.

Procurement Approach

This procurement was handled in accordance with OCTA's Board-approved procedures for professional and technical services. Various factors were considered in the award for professional and technical services. Award is recommended to the firm offering the most comprehensive overall proposal considering such factors as prior experience with similar projects, staffing and project organization, work plan, as well as cost and price.

On December 10, 2018, Request for Proposals (RFP) 8-2074 was issued electronically on CAMM NET. The project was advertised in a newspaper of general circulation on December 10 and 18, 2018. A pre-proposal conference was conducted on December 18, 2018, with attendees representing five firms. Two addenda were issued to make available the pre-proposal conference registration sheets and presentation, as well as to respond to written questions and handle administrative issues related to the RFP.

On January 8, 2019, six proposals were received. An evaluation committee consisting of OCTA staff from Contracts Administration and Materials Management, External Affairs, Public Outreach, Capital Programs, Marketing and Customer Engagement, and M2 Program Management Office met to review all proposals received.

The proposals were evaluated based on the following evaluation criteria and weights:

- Qualifications of the Firm 20 percent
- Staffing and Project Organization 30 percent
- Work Plan 30 percent
- Cost and Price 20 percent

Several factors were considered in developing the evaluation criteria weights. Staffing and project organization and work plan were both weighted highest at 30 percent each to emphasize the importance of delivering a successful and effective public communications and outreach program. The project team had to demonstrate its ability to decipher technical information and communicate it in a manner that is easily understandable to the public, as well as developing effective communication strategies by building upon experience in similar outreach projects. The firm also had to demonstrate its ability to address the complexities of each improvement project's specifications, as well as the cities and other key stakeholders. The firm had to detail its strategic approach to meeting the project requirements by including personalized tactics for different stakeholders to problem-solve issues, develop project collateral, provide outreach events logistics and support, manage a stakeholder database, gather and document public feedback, and measure results. Qualifications of the firm was weighted at 20 percent as the firm had to demonstrate experience conducting outreach programs for rail improvements or similar projects. Cost was also weighted at 20 percent to ensure competitive hourly rates and that OCTA receives value for the services provided.

The evaluation committee utilized a best-value selection process for this RFP. The best-value determination is based on a 100-point scale. The RFP required proposing firms to submit a separate price proposal in a sealed package. In order to focus on the technical aspects of the proposals, the evaluation committee first evaluated the written proposals on technical merit based on the weighted criteria for qualifications of the firm, staffing and project organization, as well as work plan, which represented a maximum of 80 points of the total proposal score. Once a short-list of top-ranked firms within a competitive range was developed based on the technical scores of the proposals, the sealed price proposals were opened only for the short-listed firms. The pricing score represented a maximum of 20 points of the total proposal score.

On January 23, 2019, the evaluation committee reviewed the proposals based only on the technical evaluation criteria and short-listed the four most qualified firms listed below in alphabetical order:

Arellano Associates (Arellano)
Chino Hills, California

Barrios and Associates, LLC doing business as Communications LAB
(Comm LAB)
Orange, California

Katz & Associates, Inc. (Katz)
San Diego, California

Kleinfelder Construction Services, Inc. (Kleinfelder)
Laguna Hills, California

On January 31, 2019, the evaluation committee conducted interviews with the four short-listed firms. The interview consisted of a presentation to demonstrate the firms' understanding of OCTA's requirements. The firms' project managers, community liaisons, and key team members had an opportunity to present each team's qualifications and respond to the evaluation committee's questions. Questions were related to coordinating and communicating with key stakeholders, generating awareness for the underrepresented and diverse groups, managing availability and commitments to current assignments, and preparing an outreach plan for a track closure. In addition, each team was asked specific clarification questions related to its proposal.

After considering the responses to the questions asked during the interviews, the evaluation committee reviewed the preliminary rankings and made adjustments to individual technical scores. The sealed price proposals from the four short-listed firms were then opened and scored. As a result, the ranking of the third- and fourth-ranked firms changed. However, Katz remained the highest-ranked firm with the highest overall score.

Based on the evaluation of the written technical proposals, the information obtained from the interviews, and the price proposals, the evaluation committee recommends Katz for consideration of the award. The following is a brief summary of the proposal evaluation results.

Qualifications of the Firm

Katz has been providing strategic communication and public relation services since 1986. The firm has 40 employees and three offices located in the cities of Los Angeles, San Diego, and San Francisco. Katz demonstrated the most relevant and diverse rail experience to showcase its ability to tailor outreach based on the uniqueness of the affected areas. Katz provided public outreach

services for the San Diego Association of Governments (SANDAG) trolley renewal project, which involved upgrading infrastructure and station amenities. Katz also worked with SANDAG on the mid-coast trolley project to inform residents and businesses impacted by the relocation of existing utility infrastructure. The firm provided public outreach services to OCTA on the rail safety education and outreach program, as well as railroad crossing safety enhancements. In addition, Katz is currently providing public outreach services for the OC Streetcar project. Katz proposed to utilize a subcontractor to provide multicultural outreach services.

Arellano was established in 1994 and has 45 employees with a main office in the City of Chino Hills. The firm has worked with OCTA on multiple public outreach efforts, such as the Long-Range Transportation Plan, OC Streetcar, OC Bridges, and Laguna Niguel to San Juan Capistrano Passing Siding Project. The firm has also worked with the City of Anaheim during the design and construction phases of the Anaheim Regional Transportation Intermodal Center project, as well as with the Riverside County Transportation Commission providing Metrolink marketing services, public outreach support during the construction of the Perris Valley line, and railroad safety. Arellano proposed to utilize a subcontractor for branding and marketing services.

Kleinfelder is a wholly-owned subsidiary of Kleinfelder, Inc., and has been in business since 1986 with 72 employees. The firm is headquartered in the City of San Diego with offices throughout the United States, Canada, and Australia, as well as an office in the City of Laguna Hills. Kleinfelder has provided public communications and community outreach support for OCTA's rail capital projects, public relations and graphic design services for Orange County Public Works, and public outreach services for the San Bernardino County Transportation Authority (SBCTA) passenger rail project. The firm currently serves as the prime outreach consultant for the Interstate 405 (I-405) Improvement Project. Kleinfelder proposed to utilize four subcontractors for printing, translation, canvassing, and mailhouse services.

Comm LAB began as a sole proprietorship in 2005 and was incorporated in 2013. The firm has 11 employees with an office in the City of Orange. Comm LAB has worked with OCTA on various Interstate 5 (I-5) projects, such as the State Route 73 to El Toro Road Environmental Phase, Avenida Pico to San Juan Creek Road Construction and Final Design, and the I-5 Gateway Project. Comm LAB also provided outreach services to SBCTA on the Redlands Passenger Rail Project, as well as to the Transportation Corridor Agencies on the State Route 241 Extension and South Orange County Mobility Study. While the firm demonstrated experience with capital improvement projects, Comm LAB had less experience with rail-related projects than the other

firms. The firm proposed to utilize two subcontractors to provide direct mail and canvassing services.

Staffing and Project Organization

Katz proposed a project team with public outreach experience. The proposed project manager has ten years of experience related to long-term communication programs, community outreach, public meeting coordination, construction relations, and event planning. The firm proposed six community liaisons and two account coordinators to ensure availability of coverage for each of the rail improvement projects as some individuals are part of the OC Streetcar outreach team. The lead community liaison has over ten years of experience. The proposed graphic designer has 20 years of experience related to capital improvement projects. Additionally, the team included a bilingual community liaison, as well as a multicultural liaison with relationships with the African American, Asian, and Latino communities. During the interview, the project team members discussed their roles and approach for conducting outreach, and responded to the evaluation committee's questions.

Arellano proposed a project team with public outreach experience. The proposed project manager has 28 years of experience related to community infrastructure and public outreach programs. The firm proposed two community liaisons with 15 and eight years of experience, respectively. The proposed graphic designer has over ten years of experience, and the proposed account coordinator has seven years of experience. The project team includes bilingual team members. The project team members discussed their approach and strategies, as well as responded to the evaluation committee's questions during the interview.

Kleinfelder proposed a project team with public outreach experience. The proposed project manager has 18 years of experience in public relations, marketing, and outreach. The proposed community liaison has five years of experience, mainly as an account coordinator and outreach assistant with limited experience as a lead community liaison. The proposed graphic designer and account coordinator both have 15 years of experience. The proposed project team members also serve as the outreach team for the I-405 Improvement Project. During the interview, the firm discussed their approach and responded to the evaluation committee's questions regarding the ability of one team handling multiple projects.

Comm LAB proposed a project team with public outreach experience. The proposed project manager has 18 years of experience in strategic planning, community outreach, and media relations. The proposed community liaison has 25 years of experience, including developing grassroots outreach strategies and

translating technical information. The proposed graphic designer has two years of experience, and the proposed account coordinator, bilingual in Spanish, has over ten years of experience. The project team discussed its strategies and responded to the evaluation committee's questions during the interview.

Work Plan

Katz presented a work plan that addressed all the elements in the scope of work. The firm discussed its blend of traditional and innovative approach for each outreach activity and specified deliverables, as well as methods for tracking outreach efforts. The firm noted examples for the communications and outreach plan, such as creating a project-specific hashtag, conducting stakeholder interviews and surveying, collaborating with English as a Second Language (ESL) academies and developing ESL worksheets to engage diverse communities, holding pop-up events at transit hubs, and utilizing elevator and lobby digital notice boards. Katz discussed utilizing a software system, NationBuilder, for stakeholder and query database management and electronic notifications. The firm provided specific examples of potential issues and detailed proposed solutions, such as ensuring safety messages are prioritized, engaging multicultural communities, and mitigating public concerns about the projects. Katz also proposed enhancements, which include developing a dedicated mobile application (app) that provides real-time information, implementing advertisements using the Waze app, sending mass, multi-language automated text messages, and engaging Orange County youths with an art competition.

In its work plan, Arellano discussed its approach and tactics for the communication and outreach plan, such as public noticing and promotional plan for project awareness, targeted engagement with interested audiences, high-quality written and visual communications, and maximum distribution of information. Some traditional techniques include door hangers and flyers, signage, virtual meetings, and public events and community meetings. The firm also discussed developing a community database to engage stakeholders. Arellano proposed utilizing software systems, such as Smartsheet for project management and Billquick for project controls. Arellano proposed leveraging technology, such as electronic surveys on iPad kiosks, geosocial interactive maps, geofencing, and interactive flat screens.

Kleinfelder addressed each element of the scope of work in its work plan. The firm provided a general overview of each rail improvement project, which included maps and project insights. The firm indicated that it would keep the community and stakeholder database up-to-date by scrubbing the information quarterly. Kleinfelder listed potential challenges that may arise for each project,

such as the impacts of a new Placentia Metrolink Station, coordination with stakeholders on the Laguna Niguel/Mission Viejo Passing Siding, and informing recreational groups about the impacts of the San Juan Creek Railroad Bridge Replacement Project. However, the firm did not elaborate on specific solutions for the identified challenges. The firm proposed enhancements that include creating 3D/4D videos, renderings, and animations embedded on the project website, using Story Mapping and an interactive map to introduce the projects, and updating cyclists with the LaneSpotting app.

Comm LAB discussed the elements of its outreach plan with various strategies, such as open houses, neighborhood meetups, listening tours and story walks, a project hotline, and public surveys. The firm discussed using Smartsheet for project management and developing project-specific databases to facilitate communication with stakeholders. Comm LAB indicated that it will leverage its familiarity with Orange County residents, businesses, and organizations to anticipate and diffuse any potential issues. The firm noted that the proposed community liaison and account coordinator will obtain certification as Operation Lifesaver instructors, which will provide Comm LAB access to proven and cost-effective safety information to provide education and information materials.

Cost and Price

Price scores were based on a formula which assigned the highest score to the firm with the lowest weighted average hourly rate, and scored the other proposals' weighted average hourly rates based on their relation to the lowest weighted average hourly rate. Although Katz did not propose the lowest weighted average hourly rate, it was competitive among the proposing firms.

Procurement Summary

Based on the evaluation of the written proposals, the firms' qualifications, and the information obtained from the interviews, the evaluation committee recommends the selection of Katz as the top-ranked firm to provide public outreach for the rail capital projects.

Fiscal Impact

The rail capital projects were approved in OCTA's Fiscal Year 2018-19 Budget, External Affairs. These projects are funded by a combination of federal, state, and local Measure M2 funds.

Summary

Based on the information provided, staff recommends the Board of Directors authorize the Chief Executive Officer to negotiate and execute Agreement No. C-8-2074 between the Orange County Transportation Authority and Katz and Associates, Inc., in the amount of \$548,981, for a four-year initial term, with one, one-year option term, to develop and conduct a comprehensive public outreach program for the rail capital projects.

Attachments

- A. Review of Proposals, RFP 8-2074 Public Outreach for Rail Capital Projects
- B. Proposal Evaluation Criteria Matrix (Short-Listed Firms), RFP 8-2074 Public Outreach for Rail Capital Projects
- C. Contract History for the Past Two Years, RFP 8-2074 Public Outreach for Rail Capital Projects

Prepared by:



Calina North
Community Relations Officer,
External Affairs
(714) 560-5749

Approved by:



Lance M. Larson
Executive Director,
External Affairs
(714) 560-5908



Virginia Abadessa
Director, Contracts Administration
and Materials Management
(714) 560-5623

Review of Proposals
RFP 8-2074 Public Outreach for Rail Capital Projects
 Presented to Legislative and Communications Committee - March 21, 2019
 6 firms proposed, 4 firms were interviewed, 1 firm is being recommended

Overall Ranking	Proposal Score	Firm & Location	Sub-Contractors	Evaluation Committee Comments	Weighted Average Hourly Rate
1	81	Katz & Associates, Inc. San Diego, California	Tashiro Choi & Associates	Highest-ranked firm overall. Experience providing public outreach services to public agencies for rail-related projects. Currently providing outreach services for the OC Streetcar. Proposed project manager has ten years of experience and is not part of the OC Streetcar outreach team. Proposed six community liaisons and two account coordinators. Proposed bilingual and multicultural team members. Some of the team members are part of the OC Streetcar outreach team. Discussed approach for delivering outreach program. Noted specific ideas, potential issues and solutions, and enhancements. Presented approach and answered questions during the interview. Received positive responses from references. Proposed competitive hourly rates.	\$129
2	77	Arellano Associates Chino Hills, California	Klein & Klein	Second-ranked firm. Experience working with public agencies on rail-related projects. Proposed project manager has 28 years of experience. Proposed two community liaisons with 15 and eight years of experience, respectively. Proposed bilingual team members. Discussed approach and detailed tactics for outreach plan. Proposed enhancements. Presented approach and answered questions during the interview. Received positive responses from references. Proposed competitive hourly rates.	\$139
3	75	Kleinfeider Construction Services, Inc. Laguna Hills, California	RDS Printing Lazar & Associates The Walking Man The Addressers	Experience conducting public outreach for OCTA's rail capital projects. Currently providing outreach services for the I-405 Improvement Project. Proposed project manager has 18 years of experience and is currently the project manager for the I-405 Improvement Project. Proposed community liaison has five years of experience as an account coordinator and outreach assistant. Team members are part of the I-405 Improvement Project. Discussed outreach plan for each rail project and included maps and project insights. Noted potential issues and proposed enhancements. Presented approach and answered questions during the interview. Received positive responses from references. Proposed lowest hourly rates.	\$90
4	70	Barrios and Associates, LLC dba Communications LAB Orange, California	Bieber Communication The Walking Man	Experience providing public outreach services to public agencies for capital improvement projects. Proposed project manager has 18 years of experience. Proposed community liaison has 25 years of experience. Proposed account coordinator is bilingual. Discussed elements of the outreach plan and noted outreach tactics. Proposed enhancements. Presented approach and answered questions during the interview. Received positive responses from references. Proposed competitive hourly rates.	\$124

Evaluation Panel:
 Internal:
 Contracts Administration and Materials Management (1)
 External Affairs (1)
 Public Outreach (1)
 Capital Programs (1)
 Marketing and Customer Engagement (1)
 M2 Program Management Office (1)

Proposal Criteria

Qualifications of the Firm	20%
Staffing and Project Organization	30%
Work Plan	30%
Cost and Price	20%

Weight Factors

**PROPOSAL EVALUATION CRITERIA MATRIX (Short-Listed Firms)
RFP 8-2074 Public Outreach for Rail Capital Projects**

Katz & Associates, Inc.							Weights	Overall Score
Evaluator Number	1	2	3	4	5	6		
Qualifications of Firm	4.5	4.5	4.0	4.5	4.0	4.0	4	17.0
Staffing/Project Organization	4.0	4.0	4.0	4.5	4.0	4.0	6	24.5
Work Plan	4.0	4.5	4.0	4.5	4.0	4.0	6	25.0
Cost and Price	3.5	3.5	3.5	3.5	3.5	3.5	4	14.0
Overall Score	80.0	83.0	78.0	86.0	78.0	78.0		81

Arellano Associates							Weights	Overall Score
Evaluator Number	1	2	3	4	5	6		
Qualifications of Firm	4.0	4.5	4.0	4.5	4.5	4.0	4	17.0
Staffing/Project Organization	3.5	4.0	4.0	4.0	4.0	3.5	6	23.0
Work Plan	4.0	4.0	4.0	4.5	4.5	3.5	6	24.5
Cost and Price	3.2	3.2	3.2	3.2	3.2	3.2	4	12.8
Overall Score	73.8	78.8	76.8	81.8	81.8	70.8		77

Kleinfelder Construction Services, Inc.							Weights	Overall Score
Evaluator Number	1	2	3	4	5	6		
Qualifications of Firm	4.5	4.5	4.0	4.0	4.0	4.0	4	16.7
Staffing/Project Organization	3.0	3.0	3.0	3.0	3.0	3.0	6	18.0
Work Plan	3.5	3.5	3.0	3.5	3.5	3.5	6	20.5
Cost and Price	5.0	5.0	5.0	5.0	5.0	5.0	4	20.0
Overall Score	77.0	77.0	72.0	75.0	75.0	75.0		75

Barrios and Associates, LLC dba Communications LAB							Weights	Overall Score
Evaluator Number	1	2	3	4	5	6		
Qualifications of Firm	3.5	3.5	3.5	3.5	3.5	3.5	4	14.0
Staffing/Project Organization	3.5	3.5	3.5	3.5	3.5	3.5	6	21.0
Work Plan	3.0	3.5	3.5	3.5	3.5	3.5	6	20.5
Cost and Price	3.6	3.6	3.6	3.6	3.6	3.6	4	14.4
Overall Score	67.4	70.4	70.4	70.4	70.4	70.4		70

Range of scores for non-short-listed firms was 16 to 41.

CONTRACT HISTORY FOR THE PAST TWO YEARS
RFP 8-2074 Public Outreach for Rail Capital Projects

Prime and Subconsultants	Contract No.	Description	Contract Start Date	Contract End Date	Subconsultant Amount	Total Contract Amount
Arellano Associates						
Contract Type: Time-and-Expense	C-9-0250	Public Outreach for Grade Separation Projects	December 8, 2009	December 31, 2018	N/A	\$ 835,000
Subconsultants: James Klein & Associates Sara L. Catz Iron Duke Productions Civic Resource Group						
Contract Type: Time-and-Expense	C-3-1975	Interstate 5, Interstate 405 and State Route 55, Environmental Community Outreach	June 30, 2014	June 25, 2019	N/A	\$ 297,178
Subconsultants: Green Grass Communications CALTROP Communications						
Contract Type: Time-and-Expense	C-6-1027	Public Outreach for Transportation Planning Studies	May 23, 2016	June 30, 2019	N/A	\$ 120,000
Subconsultants: Next Day Flyers ARC Printing Sir Speedy Kirk Kushin Productions AIM Professional Services PALS for Health Excelsior Miniondas Voice of OC Eblast Typeform Poll Everywhere Wire2Air ARC Document Solutions, LLC Lazar Translating & Interpreting Meiroquest Orange County Register Shutterstock, Inc.						
Contract Type: Time-and-Expense	C-8-1591	Public Outreach for Transportation Planning Studies	June 27, 2018	June 30, 2020	N/A	\$ 120,000
Subconsultants: Reprodox/Digital Artisan ARC Printing Next Day Flyers Lazar Translating & Interpreting Constant Contact Entercom/Riverside Poll Everywhere Wire2Air ESRI Meiroquest Typeform emLINK International AIM Professional Services Parcel Quest Mailers Heaven ADIM Pams National Messenger						
					Sub Total \$	1,372,178

Prime and Subconsultants	Contract No.	Description	Contract Start Date	Contract End Date	Subconsultant Amount	Total Contract Amount
Barrios and Associates, LLC dba Communications LAB						
Contract Type: Time-and-Expense Subconsultants: Global Language Solutions, Inc. Bieber Communications	C-4-1767	Public Outreach for Interstate 5, State Route 73 to El Toro Road	January 23, 2015	December 31, 2019	N/A	\$ 299,370
Contract Type: Time-and-Expense Subconsultants: FSB Core Strategies Global Language Solutions, Inc.	C-5-3174	Public Outreach for State Route 57 PA/ED Phase	July 20, 2015	February 28, 2019	N/A	\$ 215,500
					Sub Total \$	514,870
Katz & Associates, Inc.						
Contract Type: Time-and-Expense Subconsultants: Gomez Research Inc. Lazar Translating & Interpreting Denise Wada Diego & Sun Printing, Inc. Mody Entrepreneurs Sir Speedy Printing Tashiro Choi & Associates Westbound Communications	C-6-1526	Public Outreach for OC Streetcar Project	June 2, 2017	May 31, 2021	N/A	\$ 1,151,712
Kleinfeider Construction Services, Inc.						
Contract Type: Time-and-Expense Subconsultants: Arrow GTP Comerstone Communications Creative Edge Project LLC Gensler Green Grass Communications Kleinfeider MBI Media Media Planning & Placement, Inc. Network Public Affairs Steven Alfano Photography Wilson, Sparling, & Associates, Inc. Altilia Juhas Design T&T Business Systems We The Creative	C-2-2053	Public Outreach for I-405 Improvement Project	June 20, 2013	June 30, 2019	N/A	\$ 3,578,400
Contract Type: Time-and-Expense Subconsultants: AESCO, Inc. Chaudhary & Associates FCG Consultants Kleinfeider VCS Environmental Padilla & Associates, Inc. SafeworkCM Synusa Engineering, Inc. ZT Consulting Group, Inc.	C-5-3673	Construction Management Services for Laguna Niguel/San Juan Passing Siding	May 8, 2017	December 31, 2020	N/A	\$ 3,268,658
Contract Type: Time-and-Expense Subconsultants: The Addressers Dean Hesketh Company, Inc. Lazar Translating & Interpreting RDS Printing & Graphics The Walking Man	C-6-1246	Public Outreach for Rail Capital Projects	September 28, 2016	August 31, 2018	N/A	\$ 119,000
					Sub Total \$	6,964,058



March 21, 2019

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: State Legislative Status Report

A handwritten signature in blue ink, appearing to be "DJ", is written over the "From:" line of the email header.

Overview

An amendment is proposed to the Orange County Transportation Authority's 2019-20 State Legislative Platform to sponsor legislation related to the Active Transportation Program. A support position is recommended on legislation related to sales tax revenues from online sales. An oppose position is recommended on a bill related to redirecting funds for complete streets purposes and a bill to reprioritize transportation funds if greenhouse gas emission reduction targets are not being met. An update is provided on the high-speed rail project and an overview is provided of a legislative hearing on the implementation of SB 1 (Chapter 5, Statutes of 2017).

Recommendation

- A. Amend the 2019-20 Orange County Transportation Authority State Legislative Platform to sponsor legislation to streamline the administration of the Active Transportation Program and increase regional oversight.
- B. Adopt a SUPPORT position on AB 147 (Burke, D-Inglewood), which would authorize the collection of sales and use taxes from online retailers pursuant to the United States Supreme Court's ruling in *South Dakota v. Wayfair, Inc.*
- C. Adopt an OPPOSE position on SB 127 (Wiener, D-San Francisco), which would direct highway funding to bike and pedestrian projects and reprioritize multiple transportation programs toward a complete streets approach.
- D. Adopt an OPPOSE position on SB 526 (Allen, D-Santa Monica), which would reprioritize transportation funding if a region is not on track to meet its regional greenhouse gas emission reduction targets.

Discussion

Proposed Sponsor Legislation: Active Transportation Program

The Active Transportation Program (ATP) is a consolidated funding program first formed under SB 99 (Chapter 359, Statutes of 2013) and AB 101 (Chapter 254, Statutes of 2013), which seeks to direct funding for bicycle and pedestrian improvements to encourage greater use of those alternative modes of transportation, increase safety related to those modes, reduce emissions, and improve public health. The approximately \$200 million in annual funding for the program is provided through a multitude of sources including the federal Transportation Alternatives Program, federal Highway Safety Improvement funds, the Bicycle Transportation Account, and SB 1 (Chapter 5, Statutes of 2017). While the vast majority of projects seeking funds under the ATP are sponsored by local cities, most of the program is currently subject to a competitive process administered by the California Transportation Commission (CTC) in coordination with the California Department of Transportation (Caltrans). Overall, 50 percent of the funding is allocated through a statewide competitive program via the CTC, ten percent is for a competitive program managed by the State for small urban and rural areas, and 40 percent is directed to metropolitan planning organizations (MPO) in ten large urban areas for a regional competitive program. For the regional funding directed to the Southern California Associated Governments (SCAG) region, existing statute further directs that SCAG consult with the county transportation commissions, including the Orange County Transportation Authority (OCTA), in project selection and consider geographic equity in distribution.

ATP funding is awarded in four-year cycles, with the statewide competitive program first being awarded, followed by the regional programs. It is vastly oversubscribed, with the most recent competitive program receiving 554 applications requesting an overall \$2.2 billion in funding. This increased competitiveness has led to an overly complex application process, where larger projects within disadvantaged communities tend to be favored. In order to craft applications that can compete well, many cities are forced to hire consultants which can be costly, which creates a disadvantage for smaller projects that cities may not have the resources to invest in developing the applications. This trend is demonstrated by the observed growth in size of the average project funding request from \$1.3 million in the first ATP cycle, to \$4 million in the most recent cycle. Local projects that are small, but which may offer many benefits, can be passed up in this process.

With the ATP's overly burdensome application process, and favoritism to larger projects within disadvantaged communities, Orange County has seen a decrease in applications submitted from 62 in the first cycle to 41 applications in

the most recent cycle. The projects funded have also increased in size, with 16 projects being funded in the first round for a total of \$13 million, and three projects being funded in the most recent round for the same amount of funds. The bulk of funds have also been mostly directed to the same two to three cities. Overall, Orange County has on average received five to six percent of the total funding available for ATP.

If the ATP were revised to become more of a regionally based program, OCTA could instead work with the cities to target investments to regional priorities, such as those included in countywide plans like OC Active. The administration of the program could also be reformed to streamline guideline development, reduce application complexity, and limit the subjectivity in scoring of applications. The Legislature has shown interest in potential reforms to the ATP. On March 1, 2019, the Legislative Analyst's Office released a report analyzing the ATP and recommended several reforms, including that the State competitive program should be focused on larger transformative projects that are difficult to fund at the regional level, and the regional programs should be granted more flexibility in implementation. In the coming months, it is also expected that the Inspector General will release a report on the ATP.

In order to inform these efforts and ensure that any changes to the ATP allow for a process that reduces the administrative burdens for local cities and provides for an increased regional role in the selection of projects, staff is recommending that the OCTA 2019-20 State Legislative Platform be amended to include a principle to sponsor legislation to streamline the administration of the Active Transportation Program and increase regional oversight. The Metropolitan Transportation Commission (MTC) is also pursuing similar legislation. OCTA will continue to work with MTC and other interested stakeholders as legislation is pursued.

AB 147 (Burke, D-Inglewood) Use Taxes: Collection: Retailer Engaged in Business in This State: Marketplace Facilitators

AB 147 was introduced in response to the United States Supreme Court's 2018 ruling in *South Dakota v. Wayfair, Inc. (Wayfair)*. The *Wayfair* case overturned previous case law that prevented states from collecting sales and use taxes from retailers without any kind of physical presence in the state or locality. Following the case, the California Department of Tax and Fee Administration (CDTFA) issued guidance to implement the *Wayfair* decision that is scheduled to go into effect on April 1, 2019. The CDTFA guidance would apply the threshold in the *Wayfair* case – a retailer conducting \$100,000 worth of sales or 200 transactions – to both sales and use taxes. For purposes of use taxes, the CDTFA guidance would require retailers to track their sales activity in each and

every taxing jurisdiction throughout California to determine if the retailer meets the *Wayfair* threshold for that particular jurisdiction

AB 147 would change the statutory definition of retailer pursuant to the *Wayfair* case in a way that is intended to improve upon the CDTFA guidance in two ways. First, AB 147 would replace the *Wayfair* threshold, \$100,000 in sales or 200 transactions, with a more straightforward threshold of \$500,000 in sales. Second, the bill would preempt the requirement in the CDTFA guidance that sellers track sales activity in each locality to determine if they meet the use tax threshold for that particular jurisdiction, avoiding potentially onerous compliance costs for retailers. Under AB 147, if a retailer conducts more than \$500,000 worth of business in California, that retailer must collect and remit both sales taxes and use taxes for each item sold in California.

The collection of these previously uncollected revenues would lead to additional funding capacity for OCTA through two funding streams. First, there would be an increase in the portion of Bradley-Burns sales tax revenues dedicated to transportation for the Local Transportation Fund. Second, there would also be an increase in use tax revenue collected through Measure M2. Since the bill is meant to inform the CDTFA guidance, AB 147 is an urgency bill, in hopes that it will be enacted before the April 1st implementation date for the CDTFA guidance.

A support position on AB 147 is consistent with OCTA's 2019-2020 State Legislative Platform principle to "Seek methods to ensure the equitable collection and distribution of sales tax revenue from out-of-state, online retailers (*South Dakota v. Wayfair, Inc.*)."

SB 127 (Wiener, D-San Francisco): Transportation Funding: Active Transportation: Complete Streets

SB 127 (Wiener, D-San Francisco) would amend the prioritization of funding uses for programs under the State Highway Account, which includes the State Transportation Improvement Program (STIP). Under current law, the priorities are listed in the following order: operation, maintenance, and rehabilitation; safety; capital improvements; and, finally, environmental purposes. SB 127 would make the top priority for state transportation funds accessibility, with a specific focus on the promotion of public health and the reduction of vehicle miles traveled (VMT). This section of the bill also downgrades the use of transportation funding for capital improvements, making them less important than environmental uses. In addition, the bill adds a mandate that the CTC give "high priority" to increasing bicyclist and pedestrian safety through active transportation projects.

SB 127 also diverts state highway funding to bike and pedestrian projects. Specifically, SB 127 requires that, starting immediately, three percent of State Highway Operation and Protection Program (SHOPP) funding go to bike and pedestrian projects. The bill also requires new or improved bicycle and pedestrian facilities on any SHOPP project within one-half mile of a major transit stop, public school, hospital, healthcare center, senior center, employment center, park, or grocery store. While there are two exemptions to this new requirement, the process of obtaining an exemption could delay the delivery of transportation projects. In addition, SB 127 adds concerning performance metrics to the CTC's SHOPP asset management plan, requiring an analysis of bike and pedestrian facilities and also prohibiting level of service as a performance metric on SHOPP projects in favor of VMT reduction.

OCTA staff is concerned that SB 127 would significantly change the statewide policy priorities for many state transportation programs. The promotion of accessibility to the most important use of funds from the State Highway Account is particularly concerning because it places it above both maintaining transportation infrastructure and ensuring the safety of the state's transportation system. OCTA staff is also concerned that the bill's broad, vaguely-defined mandate that the CTC give "high priority" to bike and pedestrian safety could be brought up as an objection to any and every CTC action, even in the administering of programs unrelated to the goals of the bill. In addition, the bill's SHOPP provisions would divert highway funds from their intended purpose, potentially delaying the delivery of highway projects in Orange County, and add unnecessary provisions to the SHOPP asset management plan.

The text of SB 127 and a comprehensive analysis of the legislation are included as Attachment B. An oppose position is consistent with OCTA's 2019-2020 State Legislative Platform principle to "Oppose efforts to link or reprioritize local and state transportation funding to programs not primarily intended to help the state meet its transportation needs."

SB 526 (Allen, D-Santa Monica) Regional Transportation Plans: Greenhouse Gas Emissions: State Mobility Action Plan for Healthy Communities

SB 526 (Allen, D-Santa Monica) builds on the author's previous legislation, SB 150 (Chapter 646, Statutes of 2017), which required the California Air Resources Board (ARB) to issue a report every four years assessing each MPO's progress to meeting its SB 375 (Chapter 728, Statutes of 2008) greenhouse gas (GHG) emission reduction goals, including a discussion of any challenges and best practices. To inform this effort, SB 526 would require MPOs to submit data to the ARB delineating how transportation funds have been spent in relation to SB 375, and whether these expenditures have led to an increase or decrease in VMT. Starting with the development of the report due in

September 2026, ARB is to make a determination if each MPO is on track to meet its 2035 GHG emission reduction target. If the ARB determines that it is not on track, the ARB is to notify the California Transportation Commission (CTC) of that determination. SB 526 would then require the CTC to assign a lower priority within the STIP guidelines for projects that increase VMT and GHG emissions for MPOs that are deemed by the ARB to not be on track to meeting their SB 375 GHG emission reduction targets.

SB 526 would significantly change the bottoms-up approach originally envisioned by SB 375, which allowed regional flexibility in the meeting of the regional greenhouse gas emission reduction targets, and shift the focus to project-by-project analysis and VMT reductions. OCTA currently receives approximately \$50 million each year in STIP funds, which are programmed every two years for a five-year program of projects. These funds are used for multi-modal improvements, often to help deliver projects funded by Measure M2. Existing STIP guidelines already emphasize investments in projects that help meet statewide environmental, goods movement, and safety goals, analyzed in combination with other statewide priorities, including mobility benefits, connectivity, and improved efficiencies.

SB 526 is also unclear on how the prioritization process for VMT and GHG reducing projects would function if an MPO is not on track to meet its GHG emission reduction goal. Under existing law, the CTC can only accept or reject a region's STIP submittal in its entirety. SB 526 creates the possibility that if a region does not prioritize VMT or GHG emission reduction projects in its STIP, the entire STIP submittal would be rejected. Further, it is also unclear what projects would be deemed to reduce VMT and over what timeframe. By solely focusing on VMT, and not looking at GHG emission reductions, projects beneficial to an SCS may be lower priority investments.

SB 375 already created a process where an MPO can do an alternative planning strategy if it cannot meet its GHG emission reduction targets. This process allows for an MPO to demonstrate what factors contribute to the inability to meet the GHG emission reduction targets, which may include the lack of compatible land use changes, funding limitations, project delivery constraints, and increased project costs. The SB 150 report should function in a way to allow MPOs to more clearly inform what issues, from the regional perspective, may be hindering the ability to meet GHG emission reduction targets.

The text of SB 526 and a comprehensive analysis of the legislation are included as Attachment C. An oppose position is consistent with OCTA's 2019-2020 State Legislative Platform principle to "Oppose efforts to link or reprioritize local and state transportation funding to programs not primarily intended to help the state meet its transportation needs."

California High-Speed Rail Project Update

Since voters approved Proposition 1A in 2008, the high-speed rail project has experienced significant cost increases that have resulted in an estimated \$50 billion funding gap to complete Phase I of the project, which would run from San Francisco to Anaheim. In the State of the State speech, Governor Gavin Newsom signaled a shift in California's approach to the project. Specifically, the Governor announced his intention to utilize the authorized funding to complete a segment of the project between Merced and Bakersfield, while also continuing work on the environmental reviews for the remainder of Phase I.

In response to the Governor's announcement, the Federal Railroad Administration (FRA) announced its intention to cancel a \$929 million federal grant appropriated in 2009. The letter from FRA detailing its reasoning behind the potential de-obligation of these funds is included as Attachment C. In the letter, the FRA argues that the California High-Speed Rail Authority (CHSRA) has failed to meet the terms of the cooperative agreement entered into with the FRA when the grant was executed. The FRA is also considering legal options to get back another \$2.5 billion federal grant the CHSRA has already spent on the project.

On March 4, 2019, the CHSRA responded to the FRA in a letter included as Attachment D. In this letter, the CHSRA explains how the agency is focused on meeting the conditions laid out in the federal grant agreement. Specifically, the letter discussed the progress made on the project, which includes 119 miles of construction, and the advancing of environmental permits. In addition, the letter notes that the CHSRA fulfilled its commitment to fully expend the other \$2.5 billion in federal funds discussed in connection with the FRA's letter.

It is expected that both the Legislature and Congress will continue to analyze and evaluate the project's next steps. Staff will provide additional updates as the situation continues to develop.

Informational Hearing on SB 1

On February 26, 2019, the Senate Transportation Committee held an informational hearing on SB 1 (Chapter 5, Statutes of 2017). This hearing focused on the benefits that SB 1 funding has provided for highways, transit, rail, active transportation, research, local streets and roads, and the economy as a whole. The witnesses included Chad Edison, Deputy Secretary of the California State Transportation Agency; OCTA Chief Executive Officer (CEO), Darrell E. Johnson; Jim Davis, Special Advisor to the Director of Caltrans; and Eraina Ortega, Inspector General. CEO Johnson shared how SB 1 has provided

immediate benefits to localities and regions by doubling local streets and roads funding for each city and county, stabilizing the STIP, augmenting transit funding, and providing a new revenue source for intercity and commuter rail. As evidenced by questions asked of CEO Johnson, a theme of the hearing was the need for more robust workforce development efforts to address future employment needs in the construction and equipment manufacturing sectors.

In addition, Deputy Secretary Edison spoke about the increase in funding for the Transit and Intercity Rail Capital Program and the State Rail Assistance Program, which has allowed for investments in operations and capital improvements for intercity and commuter rail service, as well as transit service improvements and electrification efforts. Special Advisor Davis mentioned how SB 1 has allowed the state to invest heavily in the maintenance and rehabilitation of the state highway system, which has been made possible through partnerships with local agencies. Finally, Inspector General Ortega provided an overview of the audits and reviews being conducted to ensure that entities that receive transportation funds from Caltrans are expending those funds appropriately.

Summary

A sponsor position is recommended on a bill related to active transportation. Positions are recommended on bills related to online sales tax revenues, the redirection of transportation funds for complete streets purposes and the reprioritization of funds based on greenhouse gas emission reduction goals. An update is provided on high-speed rail, and an overview is provided of a legislative hearing on SB 1 (Chapter 5, Statutes of 2017) funding.

Attachments

- A. AB 147 (Burke, D-Inglewood) Bill Analysis with Bill Language
- B. SB 127 (Wiener, D-San Francisco) Bill Analysis with Bill Language
- C. SB 526 (Allen, D-Santa Monica) Bill Analysis with Bill Language
- D. Letter from Ronald L. Batory, Administrator, Federal Railroad Administration, to Brian Kelly, dated February 19, 2019, Notice of Intent to Terminate Cooperative Agreement No. FR-HSR-0118-12-01-01
- E. Letter from Brian P. Kelly, Chief Executive Officer, California High-Speed Rail Authority, to Ms. Jamie Rennert, dated March 4, 2019, Notice of Intent to Terminate Cooperative Agreement No. FR-HSR-0118-12-01-01
- F. Orange County Transportation Authority Legislative Matrix

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BILL: AB 147 (Burke, D-Inglewood)

SUBJECT: AB 147 would amend the definition of retailer to require that sellers with no physical presence in the state to collect and remit sales and use taxes pursuant to the U.S. Supreme Court's ruling in *South Dakota v. Wayfair, Inc.*

STATUS: Pending Assembly Floor Consideration
Passed Assembly Appropriations Committee unanimously
Passed Assembly Revenue and Taxation Committee 11-0
Introduced December 14, 2019

SUMMARY AS OF FEBRUARY 27, 2019:

AB 147 (Burke, D-Inglewood) creates a new definition of retailer for the purposes of both sales taxes and use taxes. The bill explicitly brings the state's definition of retailer in line with the U.S. Supreme Court's ruling in *South Dakota v. Wayfair, Inc.* Under AB 147, a retailer selling more than \$500,000 worth of tangible personal property in California in the preceding or current calendar year would be required to collect and remit sales and use taxes, with previously uncollected revenues distributed according to existing law. This new definition of retailer becomes operative starting on October 1, 2019. AB 147 also contains language make its provisions severable should additional court cases affect the legal precedence of the *Wayfair* case.

EFFECTS ON ORANGE COUNTY:

AB 147 was introduced in response to the U.S. Supreme Court's 2018 ruling in *South Dakota v. Wayfair, Inc.* The *Wayfair* case overturned previous case law that prevented states from collecting sales and use taxes from retailers without any kind of physical presence in the state or locality. Following the case, the California Department of Tax and Fee Administration (CDTFA) issued guidance to implement the *Wayfair* decision that is scheduled to go into effect on April 1, 2019. The CDTFA guidance would apply the threshold in the *Wayfair* case – a retailer conducting \$100,000 worth of sales or 200 transactions – to both sales and use taxes. For purposes of use taxes, the CDTFA guidance would require retailers to track their sales activity in each and every taxing jurisdiction throughout California to determine if the retailer meets the *Wayfair* threshold for that particular jurisdiction. If the threshold is not met in a specific taxing district, the tax would not be collected.

AB 147 would change the statutory definition of retailer pursuant to the *Wayfair* case in a way that is intended to improve upon the CDTFA guidance in two ways. First, AB 147 would replace the *Wayfair* threshold – \$100,000 in sales or 200 transactions – with a more straightforward threshold of \$500,000 in sales. Second, the bill would preempt the requirement in the CDTFA guidance that sellers track sales activity in each locality to determine if they meet the use tax threshold for that particular jurisdiction, avoiding potentially onerous compliance costs for retailers. Under AB 147, the use tax threshold

would be \$500,000 in the state, the same one used for sales taxes. In short, if a retailer conducts more than \$500,000 worth of business in California, that retailer must collect and remit both sales taxes and use taxes for each item sold in California. Since the bill is meant to inform the CDTFA guidance, AB 147 is an urgency bill, in hopes that it will be enacted before the April 1st implementation date for the CDTFA guidance. Finally, the bill does not amend existing law on revenue distribution, so the collection of previously uncollected revenues would be distributed according to the procedures outlined in existing law.

Beginning on October 1, 2019, AB 147 would require that retailers conducting more than \$500,000 worth of sales in California in the preceding or current calendar year begin collecting and remitting both sales and use taxes, neither of which is currently being collected from such retailers. The remittance of these previously uncollected revenues would increase funding capacity for the Orange County Transportation Authority (OCTA). OCTA would realize the increased revenues stemming from the bill through two funding streams. First, there would be an increase in the portion of Bradley-Burns sales tax revenues dedicated to transportation, which is the Local Transportation Fund (LTF). The increase in LTF revenues would provide additional funding capacity for transit operations authorized by the Transportation Development Act, which have historically funded about 50 percent of OCTA's bus operations. Second, there would also be an increase in use tax revenue collected through OC Go, formerly known as Measure M2, from purchases made by Orange County residents. While exact revenue estimates are not available for either funding source, the increases should be noticeable, especially as e-commerce continues to grow. According to one estimate prepared using data from the U.S. Commerce Department, online sales have grown by nearly 250 percent since the recession in 2009, and most experts expect that online sales will only continue to play a more prominent role in our nation's economy.

AB 147 includes severability language allowing any provision of the bill not explicitly struck down by a court order to stand. This language is particularly important should there be additional legal challenges following the ruling of the *Wayfair* decision. In discussions in both Sacramento and Washington, D.C., there has been some concern expressed about different thresholds being adopted across each of the 50 states. There could be additional court rulings, either pertaining to California's implementation of the *Wayfair* case or another state's efforts, affecting the collection of online sales tax. The bill's severability language should minimize uncertainty created by any such rulings.

A support position on AB 147 is consistent with OCTA's 2019-2020 State Legislative Platform principle to "Seek methods to ensure the equitable collection and distribution of sales tax revenue from out-of-state, online retailers (*South Dakota v. Wayfair, Inc.*)."

OCTA POSITION:

Staff recommends: SUPPORT

AMENDED IN ASSEMBLY FEBRUARY 27, 2019

AMENDED IN ASSEMBLY FEBRUARY 14, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 147

Introduced by Assembly Member Burke
(Principal coauthor: Senator McGuire)

December 14, 2018

An act to amend Section 7262 of, to amend, repeal, and add Section 6203 of, to add Section 6203.1 to, and to add Chapter 1.7 (commencing with Section 6040) to Part 1 of Division 2 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 147, as amended, Burke. Use taxes: collection: retailer engaged in business in this state: marketplace facilitators.

Existing state sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state of, or on the storage, use, or other consumption in this state of, tangible personal property purchased from a retailer for storage, use, or other consumption in this state.

The Sales and Use Tax Law requires every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not otherwise exempt, at the time of making the sales or at the time the storage, use, or other consumption becomes taxable, to collect the tax from the purchaser, file a return, and remit the tax to the California Department of Tax and Fee Administration. That law defines a retailer engaged in business in

this state to mean any retailer that has substantial nexus with this state for purposes of the commerce clause of the United States Constitution and any retailer upon whom federal law permits this state to impose a use tax collection duty.

This bill would specify that, on and after April 1, 2019, a retailer engaged in business in this state includes any retailer that, in the preceding calendar year or the current calendar year, has a cumulative sales price from the sale of tangible personal property for delivery in this state that exceeds \$500,000. The bill would allow the department to grant relief to certain retailers engaged in business in this state for specified interest or penalties imposed on use tax liabilities due and payable for tax reporting periods beginning April 1, 2019 and ending December 31, 2022.

The Sales and Use Tax Law specifically includes as a retailer engaged in business in this state, among others, (1) any retailer that is a member of a commonly controlled group and is a member of a combined reporting group that includes another member of the retailer's commonly controlled group that, pursuant to an agreement with or in cooperation with the retailer, performs services in this state in connection with tangible personal property to be sold by the retailer and (2) any retailer entering into agreements under which persons in this state, for a commission or other consideration, directly or indirectly refer potential purchasers of tangible personal property to the retailer, whether by an internet-based link or an internet website, or otherwise, provided that the retailer meets specified total cumulative sales thresholds including that the retailer has, during the preceding 12 months, total cumulative sales in this state of tangible personal property in excess of \$1,000,000.

This bill would eliminate, on April 1, 2019, the specific inclusion of those retailers as a retailer engaged in business in this state.

The Sales and Use Tax Law requires every person desiring to engage in or conduct business as a seller within this state to file with the department an application for a permit for each place of business and requires every retailer selling tangible personal property for storage, use, or other consumption in this State to register with the department.

This bill, on and after October 1, 2019, would provide that a marketplace facilitator, as defined, is considered the seller and retailer for each sale facilitated through its marketplace, as defined, for purposes of determining whether that marketplace facilitator is required to register with the department under the Sales and Use Tax Law. The bill would provide that any marketplace facilitator that is registered or required to

register with the department under the Sales and Use Tax law and who facilitates a retail sale of tangible personal property by a marketplace seller, as defined, is the retailer selling or making the sale of the tangible personal property sold through its marketplace for purposes of paying any sales taxes and collecting any use taxes. The bill, for purposes of determining whether a marketplace facilitator has a cumulative sales price from the sale of tangible personal property for delivery in this state that would make it a retailer engaged in business in this state, would require the marketplace facilitator to include all sales made on its own behalf and sales facilitated on behalf of marketplace sellers. The bill would provide a marketplace facilitator relief from liability for the tax on a retail sale in specified circumstances.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and other existing laws authorize districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which generally conforms to the Sales and Use Tax Law.

In conformity with the Sales and Use Tax Law, existing local use tax ordinances adopted pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law require a retailer engaged in business in this state for purposes of the Sales and Use Tax Law to also collect a use tax adopted pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law. In modified conformity with the Sales and Use Tax Law, existing use district tax ordinances adopted in accordance with the Transactions and Use Tax Law generally require a retailer to collect a use tax adopted pursuant to the Transactions and Use Tax Law only if the retailer is engaged in business in that district.

The changes made to the Sales and Use Tax Law by this bill, by conformity, would be automatically incorporated into local use taxes ordinances adopted pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law. This bill would require districts that impose district use taxes in accordance with the Transactions and Use Tax Law to include a provision, to be operative on April 1, 2019, that provides that a retailer engaged in business in the district includes any retailer that, in the preceding calendar year or the current calendar year, has a total cumulative sales price from the sale of tangible personal property for delivery in the state that exceeds \$500,000, thereby requiring those retailers to collect those district use taxes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) On June 21, 2018, in *South Dakota v. Wayfair, Inc.*,
4 (2018) 585 U.S. ____ (hereafter *Wayfair*), the United States
5 Supreme Court upheld SDCL Chapter 10-64, the South Dakota
6 law that requires remote sellers that do not have a physical presence
7 in that state to collect sales tax on all sales into South Dakota based
8 on the seller’s level of economic activity in the state.

9 (b) SDCL Chapter 10-64-2 provides, in part, that remote sellers
10 with no physical presence in South Dakota are required to collect
11 and remit sales tax and follow all procedures of the law, as if they
12 have a presence in the state, if they meet one of two criteria in the
13 previous calendar year or the current calendar year: (1) the remote
14 seller’s gross revenue from the sale of tangible personal property,
15 any products transferred electronically, or services delivered into
16 South Dakota exceeds \$100,000; or (2) the remote seller has sold
17 tangible personal property, any products transferred electronically,
18 or services for delivery into South Dakota in 200 or more separate
19 transactions.

20 (c) *Wayfair* overturned longstanding United States Supreme
21 Court precedent, established in *Quill Corp. v. North Dakota*, (1992)
22 504 U.S. 298, which precluded states from imposing an obligation
23 to collect sales or use tax on a seller unless the seller had a physical
24 presence in the state.

25 (d) Current California law has a “long-arm” provision that
26 imposes a duty to collect use tax on any retailer that has substantial
27 nexus with this state for the purposes of the commerce clause of
28 the United States Constitution and any retailer upon whom federal
29 law permits this state to impose a use tax collection duty.

30 (e) In *Wayfair*, the Court found that South Dakota did not violate
31 the commerce clause of the United States Constitution by imposing
32 a sales tax collection duty on sellers whose economic activity in
33 the state satisfies the sales thresholds in SDCL Chapter 10-64-2.

1 (f) It is the intent of the Legislature by enacting this act to
2 modernize California law consistent with the holding of Wayfair,
3 which allows this state to impose a use tax collection duty on
4 retailers who have specified levels of economic activity in this
5 state, even though they do not have a physical presence in this
6 state. It is also the intent of the Legislature to ensure that small
7 businesses are not unduly burdened by the expansion of the duty
8 to collect use tax.

9 (g) The provisions of this act are intended to protect small
10 businesses by modifying existing law to: (1) increase the level of
11 economic activity a retailer must have in California for the state
12 to impose a use tax collection obligation on the retailer; (2) define
13 the term “retailer” to include marketplace facilitators and require
14 marketplace facilitators that meet the higher economic activity
15 threshold to collect and remit the use tax on behalf of their
16 marketplace sellers; and (3) alleviate the burden of tracking
17 economic activity in each individual district that imposes a district
18 tax.

19 SEC. 2. Chapter 1.7 (commencing with Section 6040) is added
20 to Part 1 of Division 2 of the Revenue and Taxation Code, to read:

21

22 CHAPTER 1.7. MARKETPLACE FACILITATOR ACT

23

24 Article 1. General Provisions and Definitions

25

26 6040. This chapter shall be known as and referred to as the
27 Marketplace Facilitator Act.

28 6041. For purposes of this part, the following definitions shall
29 apply:

30 (a) “Marketplace” means a physical or electronic place,
31 including, but not limited to, a store, booth, internet website,
32 catalog, television or radio broadcast, or a dedicated sales software
33 application, where a marketplace seller sells or offers for sale
34 tangible personal property for delivery in this state regardless of
35 whether the tangible personal property, marketplace seller, or
36 marketplace has a physical presence in this state.

37 (b) “Marketplace facilitator” means a person who contracts with
38 marketplace sellers to facilitate for consideration, regardless of
39 whether deducted as fees from the transaction, the sale of the

1 marketplace seller’s products through a marketplace operated by
2 the person, and who engages in both of the following:

3 (1) Directly or indirectly, through one or more related persons,
4 in any of the following:

5 (A) Transmitting or otherwise communicating the offer or
6 acceptance between the buyer and seller.

7 (B) Owning or operating the infrastructure, electronic or
8 physical, or technology that brings buyers and sellers together.

9 (C) Providing a virtual currency that buyers are allowed or
10 required to use to purchase products from the seller.

11 (D) Software development or research and development
12 activities related to any of the activities described in paragraph
13 (2), if such activities are directly related to a marketplace operated
14 by the person or a related person.

15 (2) In any of the following activities with respect to the
16 marketplace seller’s products:

17 (A) Payment processing services.

18 (B) Fulfillment or storage services.

19 (C) Listing products for sale.

20 (D) Setting prices.

21 (E) Branding sales as those of the marketplace facilitator.

22 (F) Order taking.

23 (G) Advertising or promotion.

24 (H) Providing customer service or accepting or assisting with
25 returns or exchanges.

26 (c) “Marketplace seller” means a person who has an agreement
27 with a marketplace facilitator and makes retail sales of tangible
28 personal property through a marketplace owned, operated, or
29 controlled by a marketplace facilitator, even if such person would
30 not have been required to hold a seller’s permit or permits, or
31 required to collect the tax imposed pursuant to Chapter 3
32 (commencing with Section 6201), had the sale not been made
33 through such marketplace.

34

35 Article 2. Registration and Collection

36

37 6042. A marketplace facilitator shall be considered the seller
38 and retailer for each sale facilitated through its marketplace for
39 purposes of determining whether the marketplace facilitator is
40 required to register with the department under Chapter 2

1 (commencing with Section 6051) or Chapter 3 (commencing with
2 Section 6201), in addition to each sale for which the marketplace
3 facilitator is the seller or retailer or both under Chapter 1
4 (commencing with Section 6001).

5 6043. A marketplace facilitator that is registered with the
6 department or required to register with the department under
7 Chapter 2 (commencing with Section 6051) or Chapter 3
8 (commencing with Section 6201) and that facilitates a retail sale
9 of tangible personal property by a marketplace seller is the retailer
10 selling or making the sale of the tangible personal property sold
11 through its marketplace for purposes of this part.

12 6044. For purposes of determining the cumulative sales price
13 from the sale of tangible personal property for delivery in this state
14 pursuant to Section 6203:

15 (a) A marketplace facilitator shall include all sales of tangible
16 personal property for delivery in this state, including sales made
17 on its own behalf and sales facilitated on behalf of marketplace
18 sellers.

19 (b) A marketplace seller shall include all sales of tangible
20 personal property for delivery in this state, including sales made
21 on its own behalf and sales facilitated through any marketplace
22 facilitator's marketplace.

23 6044.5. (a) If the department determines that a marketplace
24 facilitator was the retailer selling or making a sale of tangible
25 personal property for purposes of this part and that a marketplace
26 seller reported and paid tax to the department with regard to that
27 sale, then the tax shall be credited against the marketplace
28 facilitator's liability with regard to that sale and the remainder may
29 be refunded to the marketplace seller.

30 (b) Section 6204 and Chapter 7 (commencing with Section
31 6901), including Section 6901.5, apply to refunds under this
32 section.

33 6045. A marketplace seller shall register with the department
34 under Chapter 2 (commencing with Section 6051) or Chapter 3
35 (commencing with Section 6201), as required, for retail sales made
36 on its own behalf and not facilitated through a registered
37 marketplace facilitator.

Article 3. Marketplace Facilitator Relief

1
 2
 3 6046. If the marketplace facilitator demonstrates to the
 4 satisfaction of the department that the marketplace facilitator has
 5 made a reasonable effort to obtain accurate information from an
 6 unrelated marketplace seller about a retail sale and that the failure
 7 to remit the correct amount of tax imposed under this part was due
 8 to incorrect information provided to the marketplace facilitator by
 9 the unrelated marketplace seller, then the marketplace facilitator
 10 shall be relieved of liability for the tax for that retail sale. This
 11 section does not apply with regard to a retail sale for which the
 12 marketplace facilitator is the retailer selling or making the sale of
 13 the tangible personal property on its own behalf or if the
 14 marketplace facilitator and marketplace seller are related. Where
 15 a marketplace facilitator is relieved of liability for the tax on a
 16 retail sale under this section, the marketplace seller is the retailer
 17 for that retail sale.

18 6047. (a) A marketplace facilitator shall be relieved of the tax
 19 on retail sales facilitated through its marketplace as provided in
 20 subdivision (c) if the marketplace facilitator demonstrates to the
 21 satisfaction of the department all of the following:

22 (1) The retail sales were facilitated for a marketplace seller prior
 23 to January 1, 2023, through a marketplace of the marketplace
 24 facilitator.

25 (2) The marketplace facilitator is not the marketplace seller.

26 (3) The marketplace facilitator and the marketplace seller are
 27 not related.

28 (4) The failure to collect sales and use tax was due to a good
 29 faith error other than an error in sourcing the sale pursuant to the
 30 Transactions and Use Tax ~~Law~~ Law (Part 1.6 (commencing with
 31 Section 7251)).

32 (b) To the extent that a marketplace facilitator is relieved of
 33 liability for collection of sales and use tax under this section, the
 34 marketplace seller for whom the marketplace facilitator has
 35 facilitated the retail sale is also relieved of liability, unless the
 36 marketplace seller is the retailer for those retail sales pursuant to
 37 Section 6046. The department may determine the manner in which
 38 a marketplace facilitator or marketplace seller shall claim the
 39 liability relief provided in this section.

1 (c) The liability relief provided under this section shall not
2 exceed the following percentage of the total sales and use tax due
3 on sales facilitated by a marketplace facilitator for marketplace
4 sellers, which sales shall not include sales by the marketplace
5 facilitator or persons related to the marketplace facilitators:

6 (1) For sales facilitated during the fourth quarter of 2019 or
7 during the 2020 calendar year, 7 percent.

8 (2) For sales facilitated during the 2021 calendar year, 5 percent.

9 (3) For sales facilitated during the 2022 calendar year, 3 percent.

10 (d) Nothing in this section shall be construed to relieve any
11 person of liability for collecting but failing to remit to the
12 department sales and use tax.

13 ~~6048. A class action may not be brought against a marketplace
14 facilitator on behalf of purchasers arising from or in any way
15 related to an overpayment of sales or use tax collected before
16 January 1, 2023, by the marketplace facilitator, regardless of
17 whether such action is characterized as a tax refund claim. Nothing
18 in this section shall affect a purchaser's right to seek a refund from
19 the department pursuant to Article 1 (commencing with Section
20 6901) of Chapter 7.~~

21
22 Article 4. Operative Date

23
24 6049.5. (a) This chapter shall become operative on October
25 1, 2019.

26 (b) The provisions of this chapter are severable. If any provision
27 of this chapter or its application is held invalid, that invalidity shall
28 not affect other provisions or applications that can be given effect
29 without the invalid provision or application.

30 SEC. 3. Section 6203 of the Revenue and Taxation Code, as
31 added by Section 3 of Chapter 313 of the Statutes of 2011, is
32 amended to read:

33 6203. (a) Except as provided by Sections 6292 and 6293, every
34 retailer engaged in business in this state and making sales of
35 tangible personal property for storage, use, or other consumption
36 in this state, not exempted under Chapter 3.5 (commencing with
37 Section 6271) or Chapter 4 (commencing with Section 6351),
38 shall, at the time of making the sales or, if the storage, use, or other
39 consumption of the tangible personal property is not then taxable
40 hereunder, at the time the storage, use, or other consumption

1 becomes taxable, collect the tax from the purchaser and give to
2 the purchaser a receipt therefor in the manner and form prescribed
3 by the department.

4 (b) As respects leases constituting sales of tangible personal
5 property, the tax shall be collected from the lessee at the time
6 amounts are paid by the lessee under the lease.

7 (c) “Retailer engaged in business in this state” as used in this
8 section and Section 6202 means any retailer that has substantial
9 nexus with this state for purposes of the commerce clause of the
10 United States Constitution and any retailer upon whom federal
11 law permits this state to impose a use tax collection duty. “Retailer
12 engaged in business in this state” specifically includes, but is not
13 limited to, any of the following:

14 (1) Any retailer maintaining, occupying, or using, permanently
15 or temporarily, directly or indirectly, or through a subsidiary, or
16 agent, by whatever name called, an office, place of distribution,
17 sales or sample room or place, warehouse or storage place, or other
18 place of business.

19 (2) Any retailer having any representative, agent, salesperson,
20 canvasser, independent contractor, or solicitor operating in this
21 state under the authority of the retailer or its subsidiary for the
22 purpose of selling, delivering, installing, assembling, or the taking
23 of orders for any tangible personal property.

24 (3) As respects a lease, any retailer deriving rentals from a lease
25 of tangible personal property situated in this state.

26 (4) Any retailer that, in the preceding calendar year or the current
27 calendar year, has a cumulative sales price from the sale of tangible
28 personal property for delivery in this state that exceeds five hundred
29 thousand dollars (\$500,000).

30 (d) Except as provided in this subdivision, a retailer is not a
31 “retailer engaged in business in this state” under paragraph (2) of
32 subdivision (c) if that retailer’s sole physical presence in this state
33 is to engage in convention and trade show activities as described
34 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the
35 retailer, including any of ~~his or her~~ *the retailer’s* representatives,
36 agents, salespersons, canvassers, independent contractors, or
37 solicitors, does not engage in those convention and trade show
38 activities for more than 15 days, in whole or in part, in this state
39 during any 12-month period and did not derive more than one
40 hundred thousand dollars (\$100,000) of net income from those

1 activities in this state during the prior calendar year.
2 Notwithstanding the preceding sentence, a retailer engaging in
3 convention and trade show activities, as described in Section
4 513(d)(3)(A) of the Internal Revenue Code, is a “retailer engaged
5 in business in this state,” and is liable for collection of the
6 applicable use tax, with respect to any sale of tangible personal
7 property occurring at the convention and trade show activities and
8 with respect to any sale of tangible personal property made
9 pursuant to an order taken at or during those convention and trade
10 show activities.

11 (e) Any limitations created by this section upon the definition
12 of “retailer engaged in business in this state” shall only apply for
13 purposes of tax liability under this code. Nothing in this section is
14 intended to affect or limit, in any way, civil liability or jurisdiction
15 under Section 410.10 of the Code of Civil Procedure.

16 (f) (1) The amendments made to this section by the act adding
17 this subdivision shall become operative on April 1, 2019.

18 (2) If Chapter 1.7 (commencing with Section 6040) or the
19 amendments made to this section by the act adding this subdivision
20 is held in a final decision of a court of competent jurisdiction to
21 violate the substantial nexus standard of the commerce clause of
22 the United States Constitution, this section shall become
23 inoperative and shall be repealed on the date of that final decision.

24 SEC. 4. Section 6203 is added to the Revenue and Taxation
25 Code, to read:

26 6203. (a) Except as provided by Sections 6292 and 6293, every
27 retailer engaged in business in this state and making sales of
28 tangible personal property for storage, use, or other consumption
29 in this state, not exempted under Chapter 3.5 (commencing with
30 Section 6271) or Chapter 4 (commencing with Section 6351),
31 shall, at the time of making the sales or, if the storage, use, or other
32 consumption of the tangible personal property is not then taxable
33 hereunder, at the time the storage, use, or other consumption
34 becomes taxable, collect the tax from the purchaser and give to
35 the purchaser a receipt therefor in the manner and form prescribed
36 by the department.

37 (b) As respects leases constituting sales of tangible personal
38 property, the tax shall be collected from the lessee at the time
39 amounts are paid by the lessee under the lease.

1 (c) “Retailer engaged in business in this state” as used in this
2 section and Section 6202 means any retailer that has substantial
3 nexus with this state for purposes of the commerce clause of the
4 United States Constitution and any retailer upon whom federal
5 law permits this state to impose a use tax collection duty. “Retailer
6 engaged in business in this state” specifically includes, but is not
7 limited to, any of the following:

8 (1) Any retailer maintaining, occupying, or using, permanently
9 or temporarily, directly or indirectly, or through a subsidiary, or
10 agent, by whatever name called, an office, place of distribution,
11 sales or sample room or place, warehouse or storage place, or other
12 place of business.

13 (2) Any retailer having any representative, agent, salesperson,
14 canvasser, independent contractor, or solicitor operating in this
15 state under the authority of the retailer or its subsidiary for the
16 purpose of selling, delivering, installing, assembling, or the taking
17 of orders for any tangible personal property.

18 (3) As respects a lease, any retailer deriving rentals from a lease
19 of tangible personal property situated in this state.

20 (4) Any retailer that is a member of a commonly controlled
21 group, as defined in Section 25105, and is a member of a combined
22 reporting group, as defined in paragraph (3) of subdivision (b) of
23 Section 25106.5 of Title 18 of the California Code of Regulations,
24 that includes another member of the retailer’s commonly controlled
25 group that, pursuant to an agreement with or in cooperation with
26 the retailer, performs services in this state in connection with
27 tangible personal property to be sold by the retailer, including, but
28 not limited to, design and development of tangible personal
29 property sold by the retailer, or the solicitation of sales of tangible
30 personal property on behalf of the retailer.

31 (5) (A) Any retailer entering into an agreement or agreements
32 under which a person or persons in this state, for a commission or
33 other consideration, directly or indirectly refer potential purchasers
34 of tangible personal property to the retailer, whether by an
35 internet-based link or an internet website, or otherwise, provided
36 that both of the following conditions are met:

37 (i) The total cumulative sales price from all of the retailer’s
38 sales, within the preceding 12 months, of tangible personal property
39 to purchasers in this state that are referred pursuant to all of those

1 agreements with a person or persons in this state, is in excess of
2 ten thousand dollars (\$10,000).

3 (ii) The retailer, within the preceding 12 months, has total
4 cumulative sales of tangible personal property to purchasers in
5 this state in excess of one million dollars (\$1,000,000).

6 (B) An agreement under which a retailer purchases
7 advertisements from a person or persons in this state, to be
8 delivered on television, radio, in print, on the internet, or by any
9 other medium, is not an agreement described in subparagraph (A),
10 unless the advertisement revenue paid to the person or persons in
11 this state consists of commissions or other consideration that is
12 based upon sales of tangible personal property.

13 (C) Notwithstanding subparagraph (B), an agreement under
14 which a retailer engages a person in this state to place an
15 advertisement on an internet website operated by that person, or
16 operated by another person in this state, is not an agreement
17 described in subparagraph (A), unless the person entering the
18 agreement with the retailer also directly or indirectly solicits
19 potential customers in this state through use of flyers, newsletters,
20 telephone calls, electronic mail, blogs, microblogs, social
21 networking sites, or other means of direct or indirect solicitation
22 specifically targeted at potential customers in this state.

23 (D) For purposes of this paragraph, “retailer” includes an entity
24 affiliated with a retailer within the meaning of Section 1504 of the
25 Internal Revenue Code.

26 (E) This paragraph shall not apply if the retailer can demonstrate
27 that the person in this state with whom the retailer has an agreement
28 did not engage in referrals in the state on behalf of the retailer that
29 would satisfy the requirements of the commerce clause of the
30 United States Constitution.

31 (d) Except as provided in this subdivision, a retailer is not a
32 “retailer engaged in business in this state” under paragraph (2) of
33 subdivision (c) if that retailer’s sole physical presence in this state
34 is to engage in convention and trade show activities as described
35 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the
36 retailer, including any of the retailer’s representatives, agents,
37 salespersons, canvassers, independent contractors, or solicitors,
38 does not engage in those convention and trade show activities for
39 more than 15 days, in whole or in part, in this state during any
40 12-month period and did not derive more than one hundred

1 thousand dollars (\$100,000) of net income from those activities
2 in this state during the prior calendar year. Notwithstanding the
3 preceding sentence, a retailer engaging in convention and trade
4 show activities, as described in Section 513(d)(3)(A) of the Internal
5 Revenue Code, is a “retailer engaged in business in this state,” and
6 is liable for collection of the applicable use tax, with respect to
7 any sale of tangible personal property occurring at the convention
8 and trade show activities and with respect to any sale of tangible
9 personal property made pursuant to an order taken at or during
10 those convention and trade show activities.

11 (e) Any limitations created by this section upon the definition
12 of “retailer engaged in business in this state” shall only apply for
13 purposes of tax liability under this code. Nothing in this section is
14 intended to affect or limit, in any way, civil liability or jurisdiction
15 under Section 410.10 of the Code of Civil Procedure.

16 (f) If Chapter 1.7 (commencing with Section 6040) or the
17 amendments to Section 6203, as added by Section 3 of Chapter
18 313 of the Statutes of 2011, made by the act adding this section is
19 held in a final decision of a court of competent jurisdiction to
20 violate the substantial nexus standard of the commerce clause of
21 the United States Constitution, this section shall become operative
22 on the date of that final decision.

23 SEC. 5. Section 6203.1 is added to the Revenue and Taxation
24 Code, to read:

25 6203.1. (a) The department, in its discretion, may relieve a
26 retailer engaged in business in this state that meets the requirements
27 of subdivision (b) of the following:

28 (1) The penalties provided by Sections 6484, 6511, and 6591.

29 (2) All or any part of the interest imposed on the person by this
30 part.

31 (b) This section shall apply to any retailer engaged in business
32 in this state that meets all of the following conditions:

33 (1) The retailer registered under Article 2 (commencing with
34 Section 6225) on or after April 1, 2019, as a retailer engaged in
35 business pursuant to paragraph (4) of subdivision (c) of Section
36 6203.

37 (2) The total cumulative sales price from the retailer’s sales,
38 within the preceding 12 months, of tangible personal property for
39 delivery in this state does not exceed one million dollars
40 (\$1,000,000).

1 (3) The retailer was not previously registered, or required to be
2 registered, with the department under Chapter 2 (commencing
3 with Section 6051) or Chapter 3 (commencing with Section 6201).

4 (4) The retailer’s failure to collect and remit use tax was due to
5 a good faith error and occurred notwithstanding the exercise of
6 ordinary care and the absence of willful neglect.

7 (5) The retailer is not a marketplace facilitator as defined in
8 Section 6041.

9 (6) Any other factors as deemed necessary by the department.

10 (c) The department may grant relief only for interest or penalties
11 imposed on use tax liabilities due and payable for tax reporting
12 periods beginning April 1, 2019, and ending December 31, 2022.

13 SEC. 6. Section 7262 of the Revenue and Taxation Code is
14 amended to read:

15 7262. The use tax portion of any transactions and use tax
16 ordinance adopted under this part shall impose a complementary
17 tax upon the storage, use, or other consumption in the district of
18 tangible personal property purchased from any retailer for storage,
19 use, or other consumption in the district. The tax shall be at a rate
20 of one-eighth of 1 percent, or a multiple thereof, of the sales price
21 of the property whose storage, use, or other consumption is subject
22 to the tax, and the ordinance shall include provisions in substance
23 as follows:

24 (a) Provisions identical to those contained in Part 1
25 (commencing with Section 6001), insofar as they relate to use
26 taxes and are not inconsistent with this part, except that the name
27 of the district as the taxing agency shall be substituted for that of
28 the state. The name of the district shall be substituted for the word
29 “state” in the phrase “retailer engaged in business in this state” in
30 Section 6203 and in the definition of that phrase.

31 The following additional provisions shall be included:

32 (1) “A retailer engaged in business in the district” shall also
33 include any retailer that, in the preceding calendar year or the
34 current calendar year, has a total cumulative sales price from the
35 sale of tangible personal property for delivery in the state that
36 exceeds five hundred thousand dollars (\$500,000).

37 (2) Except as provided in paragraph (3), a retailer engaged in
38 business in the district shall not be required to collect use tax from
39 the purchaser of tangible personal property, unless the retailer
40 ships or delivers the property into the district or participates within

1 the district in making the sale of the property, including, but not
2 limited to, soliciting or receiving the order, either directly or
3 indirectly, at a place of business of the retailer in the district or
4 through any representative, agent, canvasser, solicitor, subsidiary,
5 or person in the district under the authority of the retailer.

6 (3) “A retailer engaged in business in the district” shall also
7 include any retailer of any of the following: vehicles subject to
8 registration pursuant to Chapter 1 (commencing with Section 4000)
9 of Division 3 of the Vehicle Code, aircraft licensed in compliance
10 with Section 21411 of the Public Utilities Code, or undocumented
11 vessels registered under Division 3.5 (commencing with Section
12 9840) of the Vehicle Code. That retailer shall be required to collect
13 use tax from any purchaser who registers or licenses the vehicle,
14 vessel, or aircraft at an address in the district.

15 (b) A provision that all amendments to the provisions of Part 1
16 (commencing with Section 6001) relating to the use tax and not
17 inconsistent with this part shall automatically become a part of the
18 ordinance. However, no amendment shall operate so as to affect
19 the rate of tax imposed by the district’s board.

20 (c) A provision that the amount subject to tax shall not include
21 the amount of any sales tax or use tax imposed by the State of
22 California or by any city, city and county, or county pursuant to
23 the Bradley-Burns Uniform Local Sales and Use Tax Law (Part
24 1.5 (commencing with Section 7200)) or the amount of any
25 state-administered transactions or use tax.

26 (d) A provision that any person subject to a use tax under an
27 ordinance adopted pursuant to this part shall be entitled to credit
28 against that tax or any transactions tax, or to reimbursement for a
29 transactions tax, paid to a district or retailer in a district imposing
30 a transactions and use tax pursuant to this part.

31 (e) A provision that, in addition to the exemptions provided in
32 Sections 6366 and 6366.1, the storage, use, or other consumption
33 of tangible personal property, other than fuel or petroleum products,
34 purchased by operators of aircraft, and used or consumed by the
35 operators directly and exclusively in the use of the aircraft as
36 common carriers of persons or property for hire or compensation
37 under a certificate of public convenience and necessity issued
38 pursuant to the laws of this state, the United States, or any foreign
39 government, is exempt from the use tax.

1 (f) A provision that the storage, use, or other consumption in
2 the district of tangible personal property is exempt from the tax if
3 the purchaser is obligated to purchase the property for a fixed price
4 pursuant to a contract entered into prior to the operative date of
5 the ordinance. The possession of, or the exercise of any right or
6 power over, tangible personal property under a lease which is a
7 continuing purchase of the property is exempt from tax for any
8 period of time for which the lessee is obligated to lease the property
9 for an amount fixed by a lease entered into prior to the operative
10 date of the ordinance. For purposes of this subdivision, the storage,
11 use, or other consumption of, or possession of, or exercise of any
12 right or power over, tangible personal property shall be deemed
13 not to be obligated pursuant to a contract or lease for any period
14 of time for which any party to the contract or lease has the
15 unconditional right to terminate the contract or lease upon notice,
16 whether or not the right is exercised.

17 (g) Any provision in an ordinance that is required to be included
18 pursuant to paragraph (1) of subdivision (a) shall become operative
19 on April 1, 2019.

20 SEC. 7. (a) The Administrative Procedure Act (Chapter 3.5
21 (commencing with Section 11340) of Part 1 of Division 3 of Title
22 2 of the Government Code) shall not apply to any guidelines,
23 criterion, bulletin, manual, instruction, order, standard of general
24 application, or other rule, which is a regulation as defined in
25 Section 11342.600 of the Government Code, established or issued
26 by the California Department of Tax and Fee Administration to
27 implement, interpret, or make specific the amendments made to
28 Sections 6203 and 7262 of the Revenue and Taxation Code by this
29 act.

30 (b) Implementation of Chapter 1.7 (commencing with Section
31 6040) of Part 1 of Division 2 of the Revenue and Taxation Code
32 and Section 6203.1 of the Revenue and Taxation Code, as both
33 proposed to be added by this act, for the 2018–19 and 2019–20
34 fiscal years, is deemed an emergency and necessary for the
35 immediate preservation of the public peace, health, and safety, or
36 general welfare and, therefore, the California Department of Tax
37 and Fee Administration is hereby authorized to adopt emergency
38 regulations to implement those provisions during the 2018–19 and
39 2019–20 fiscal years, in accordance with the rulemaking provisions
40 of the Administrative Procedure Act (Chapter 3.5 (commencing

1 with Section 11340) of Part 1 of Division 3 of Title 2 of the
2 Government Code).

3 SEC. 8. The amendments made to Sections 6203 and 7262 of
4 the Revenue and Taxation Code by this act shall not have any
5 retroactive effect.

6 SEC. 9. It is the intent of the Legislature that any additional
7 General Fund revenues derived from state use taxes collected as
8 a result of the amendments made to Section 6203 of the Revenue
9 and Taxation Code by this act, after reservation of appropriate
10 amounts for purposes of Section 8 of Article XVI of the California
11 Constitution (Proposition 98) and any other constitutional
12 provisions, be allocated for wildfire disaster relief, including relief
13 to those communities affected by the Paradise Fire and other recent
14 wildfires, and be used to combat childhood poverty and establish
15 safe and clean shelters for all children.

16 SEC. 10. This act is an urgency statute necessary for the
17 immediate preservation of the public peace, health, or safety within
18 the meaning of Article IV of the California Constitution and shall
19 go into immediate effect. The facts constituting the necessity are:

20 In order to ensure that small businesses are not unduly burdened
21 by the default expansion of the duty to collect use tax under state
22 law due to the application of the holding in *South Dakota v.*
23 *Wayfair, Inc.*, (2018) 585 U.S. ___ and to ensure that the state and
24 local governments timely receive tax revenues that have been
25 previously undercollected to enable them to fund crucial programs
26 and services, it is necessary for this act to take effect immediately.

BILL: SB 127 (Wiener, D-San Francisco)

SUBJECT: SB 127 would realign statutory priorities governing the administration of multiple state transportation programs, divert state highway funding to bicycle and pedestrian projects, and prohibit the use of traditional performance metrics on highway projects.

STATUS: Introduced January 10, 2019

SUMMARY AS OF JANUARY 10, 2019:

SB 127 (Wiener, D-San Francisco) would realign the policy priorities for multiple state transportation programs. The bill would amend the prioritization of funding uses for programs under the State Highway Account, which includes the State Transportation Improvement Program (STIP). Under current law, the priorities are listed in the following order: operation, maintenance, and rehabilitation; safety; capital improvements; and, finally, environmental purposes. SB 127 would make the top priority for state transportation funds accessibility, with a specific focus on the promotion of public health and the reduction of vehicle miles traveled (VMT). This section of the bill would also downgrade the use of transportation funding for capital improvements, making it a lower priority than environmental enhancement and mitigation. In addition, the bill would add a broad mandate that the California Transportation Commission (CTC) give “high priority” to increasing bicyclist and pedestrian safety through active transportation projects

SB 127 would also divert state highway funding to bike and pedestrian projects. The bill would require new or improved bicycle and pedestrian facilities on any State Highway Operation and Protection Program (SHOPP) projects within one-half mile of a major transit stop, public school, hospital, healthcare center, senior center, employment center, park, or grocery store. For these projects, the Department of Transportation (Caltrans) would also be required to establish project development teams to provide public input during the planning process. There would be two exemptions to this new requirement on covered SHOPP projects. The first exemption would be for projects on parts of the state highway system that are “closed by law” to nonmotorized users. The second exemption would be after a public hearing and data-based finding that the costs of the project outweigh the project’s benefits. If Caltrans cannot prove that it has met these new requirements, the bill would require that three percent of funding SHOPP funding go to bicycle and pedestrian facilities until January 1, 2021.

SB 127 would also add new performance metrics to the CTC’s SHOPP asset management plan pertaining to bicycle and pedestrian facilities. The bill would require that the asset management plan consider the condition of bicycle and pedestrian facilities, the accessibility for bicyclists and pedestrians, and the use of VMT as a performance measure. The bill would also explicitly prohibit the use of the traditional performance metric used on transportation projects, level of service (LOS), for these purposes.

EFFECTS ON ORANGE COUNTY:

SB 127 would make significant changes to the statewide policy priorities for all transportation funds coming from the State Highway Account. The promotion of accessibility to the most important use of state transportation funds is particularly concerning because it places a policy priority that has not traditionally been a consideration above both maintaining transportation infrastructure and ensuring the safety of the state's transportation system. This type of arbitrary categorical reprioritization would completely change the way state transportation funding is administered, without any type of project-specific finding or justification that this new, non-traditional policy priority outweighs the need to maintain safe and reliable transportation infrastructure.

The provisions that reprioritize the use of state transportation funding would also add language prioritizing accessibility projects that reduce VMT and safety projects that do not increase VMT. Since accessibility and safety would be the highest and third highest funding priorities, respectively, this language places a very high priority on VMT reduction, even for projects using STIP or Public Transportation Account funds. Such a change could complicate OCTA's ability to efficiently combine various funding sources deliver projects for the benefit of Orange County. Another concern with the prioritization language is placing a higher importance on environmental uses over transportation capacity improvements, making capital improvements the least prioritized use of transportation funding.

SB 127 would also institute a concerning new mandate on the CTC, specifically requiring that the CTC give high priority to increasing safety on and implementing bicycle and pedestrian facilities. The bill language is vague about what steps the CTC must take to achieve this mandate. In addition, this language would not be added to a specific funding program or CTC action. Instead, the language would be added to a code section outlining the organization of statewide transportation agencies. As drafted, OCTA staff is concerned this broad mandate could be brought up as an objection to any and every CTC action, even in the administering of programs unrelated to the goals of SB 127.

SB 127 would also add significant burdens to the delivery of SHOPP projects. The bill would require that, starting on January 1, 2021, certain SHOPP projects have new or improved bike and pedestrian facilities. This new requirement is concerning because the provisions would apply to SHOPP projects within one-half mile of many common social institutions. This expansive definition would encompass almost any major highway project in Orange County. The exemption for portions of state highways "closed by law" to bicyclist and pedestrians is made problematic by the bill's public input process. Under current law, both Caltrans and localities are granted discretion, in statute, to prohibit or restrict bicyclists and pedestrians from using the state highway system. As a matter of practice, Caltrans usually exercises its discretion to restrict bike and pedestrian access on state highway projects, as is the case in Orange County, except for a portion of State Route 1. SB 127 would give the project development team the opportunity to argue against the exercising of the statutory discretion, creating yet another potential obstacle

to the timely delivery of transportation project delivery. The second exemption would require a public hearing and data-based finding. Such a public outreach process creates the potential for project delays, and this onerous exemption process is much more burdensome than current law, creating a time-consuming, expensive process for projects in which bike and pedestrian facilities would be clearly inappropriate using objective safety criteria.

The bill would divert SHOPP funding capacity available to operate and maintain the state highway system. Specifically, SB 127 would require that, starting immediately, three percent of SHOPP funding go to bike and pedestrian projects. The three percent set-aside would end if Caltrans can demonstrate that the bill's new requirements pertaining to bike and pedestrian facilities on SHOPP projects are met. The set-aside would potentially divert existing highway dollars away from potential SHOPP projects in Orange County in favor of bicycle and pedestrian projects without any kind of justification or finding that the bicycle or pedestrian facility provides a safety or operational benefit – or any benefit to the project area – comparable to SHOPP projects delivered under existing law.

Finally, SB 127 would add bicycle and pedestrian performance metrics to the CTC's SHOPP asset management plan. The asset management plan guides the SHOPP project selection process, ensuring that SHOPP projects meet applicable state and federal requirements. The bill would add language explicitly directing the CTC, in statute, to examine bicycle and pedestrian facilities in order to carry out a program intended to fund the operation and maintenance of the state highway system. This change is particularly inappropriate since existing law only requires that CTC develop a plan, without any other kind of policy priorities listed in statute. In addition, the new performance metrics would prohibit the use of the most frequently used transportation service metric, LOS, in favor of VMT reduction on SHOPP projects, limiting the discretion of Caltrans in evaluating projects.

An oppose position on SB 127 is consistent with OCTA's 2019-2020 State Legislative Platform principle to "Oppose efforts to link or reprioritize local and state transportation funding to programs not primarily intended to help the state meet its transportation needs."

OCTA POSITION:

Staff recommends: OPPOSE

Introduced by Senator WienerJanuary 10, 2019

An act to amend Sections 14526.4, 14526.5, and 14526.6 of, and to add Sections 14007.3 and 14526.8 to, the Government Code, and to amend Section 167 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 127, as introduced, Wiener. Transportation funding: active transportation: complete streets.

(1) Existing law establishes the Active Transportation Program in the Department of Transportation for the purpose of encouraging increased use of active modes of transportation, such as biking and walking, and declares the intent of the Legislature that the program achieve specific goals, including, among other things, increasing the proportion of trips accomplished by biking and walking and the safety and mobility for nonmotorized users.

This bill would establish a Division of Active Transportation within the department and require that an undersecretary of the Transportation Agency be assigned to give attention to active transportation program matters to guide progress toward meeting the department's active transportation program goals and objectives. The bill would require the California Transportation Commission to give high priority to increasing safety for pedestrians and bicyclists and to the implementation of bicycle and pedestrian facilities.

(2) Existing law provides that the Department of Transportation has full possession and control over the highways of the state and is responsible for preparing the State Highway Operation and Protection Program for the expenditure of transportation funds for major capital

improvements that are necessary to preserve and protect the state highway system.

Existing law also creates the California Transportation Commission, with specified powers and duties relative to the programming of transportation capital improvement projects and the allocation of state transportation funds for state transportation improvement projects. Existing law requires the department, in consultation with the commission, to prepare an asset management plan to guide selection of projects for the State Highway Operation and Protection Program consistent with any applicable state and federal requirements. Existing law requires the commission, in connection with the asset management plan, to adopt targets and performance measures reflecting state transportation goals and objectives.

This bill would require the asset management plan to prescribe a process for community input and complete streets implementation to prioritize safety and accessibility for pedestrians, bicyclists, and transit users on all State Highway Operation and Protection Program projects, as specified. The bill would require that projects starting in 2020 meet specified requirements set forth as part of the State Highway Operation and Protection Program.

The bill would require the commission, in connection with the asset management plan, to adopt performance measures that include conditions of bicycle and pedestrian facilities, accessibility and safety for pedestrians, bicyclists, and transit users, and vehicle miles traveled on the state highway system. The bill would require that the State Highway Operation and Protection Program projects include capital improvements relative to accessibility for pedestrians, bicyclists, and transit users. The bill would require that each project include in its budget the cost of pedestrian and bicycle facilities. The bill would require that the plain language performance report developed by the department, in consultation with the commission, include a description of pedestrian and bicycle facilities on each project, including the number, extent, and cost of the elements relative to the overall project.

The bill would require the department, by January 1, 2021, when undertaking any capital improvement project on a state highway or a local street crossing a state highway that is funded through the State Highway Operation and Protection Program, to include new pedestrian and bicycle facilities, or improve existing facilities, as part of the project, consistent with specified requirements. The bill would require the department to establish a project development team for each project,

as specified. The bill would require, until January 1, 2021, or by which time the department can demonstrate that it has met these requirements, the department to use 3% of State Highway Operation and Protection Program funds from the Road Maintenance and Rehabilitation Account for bicycle and pedestrian facilities.

This bill would also require that funds in the State Highway Account in the State Transportation Fund be programmed, budgeted, as specified, and expended to maximize the use of federal funds for accessibility improvements for all users of the transportation system, as specified, and that safety improvements prioritize reducing fatalities and severe injuries for vulnerable road users, and not increase vehicle miles traveled.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Walking and bicycling trips have doubled between 2000 and
4 2012 and constitute nearly 20 percent of all trips in California,
5 based on the National Household Travel Survey.

6 (b) People walking and bicycling are killed or seriously injured
7 in California at much higher rates than car drivers or passengers
8 based on the percentage of trips and relative miles traveled, due
9 to a lack of safe walking and bicycling infrastructure on major
10 roadways and highways in communities across the state.

11 (c) The Department of Transportation (Caltrans) adopted Deputy
12 Directive 64 in 2008 and updated it in 2014 to require the
13 department to consider complete streets in all phases of design,
14 delivery, construction, and rehabilitation on all projects.

15 (d) Caltrans adopted Strategic Management Plan 2015-2020,
16 which includes goals to triple bicycling and double walking by
17 2020, which cannot be achieved without significant improvements
18 to infrastructure and safety on major roadways and highways.

19 (e) The plan also includes goals to include “complete streets”
20 improvements on an increasing number of projects between 2015
21 and 2020.

22 SEC. 2. Section 14007.3 is added to the Government Code, to
23 read:

1 14007.3. (a) There is in the Department of Transportation the
2 Division of Active Transportation, which is responsible for the
3 development of projects and programs that increase bicycle and
4 pedestrian safety and trips statewide, and the review of all state
5 highway capital improvement projects for inclusion of bicycle and
6 pedestrian facilities where feasible.

7 (b) An undersecretary of the agency shall be assigned to give
8 attention to active transportation matters to guide progress toward
9 meeting the department's active transportation goals and objectives.

10 (c) The commission shall give high priority to increasing safety
11 for pedestrians and bicyclists and to the implementation of bicycle
12 and pedestrian facilities.

13 SEC. 3. Section 14526.4 of the Government Code is amended
14 to read:

15 14526.4. (a) The department, in consultation with the
16 commission, shall prepare a robust asset management plan to guide
17 selection of projects for the ~~state highway operation and protection~~
18 ~~program~~ *State Highway Operation and Protection Program*
19 required by Section 14526.5. The asset management plan shall be
20 consistent with any applicable state and federal ~~requirements.~~
21 *requirements, and shall prescribe a process for community input*
22 *and "complete streets" implementation to prioritize safety and*
23 *accessibility for pedestrians, bicyclists, and transit users on all*
24 *projects in the program, where applicable, pursuant to Section*
25 *14526.7.*

26 (b) The department may prepare the asset management plan in
27 phases, with the first phase to be implemented with the 2016 state
28 highway operation and protection program, and the complete asset
29 management plan to be prepared no later than the 2020 ~~state~~
30 ~~highway operation and protection program.~~ *State Highway*
31 *Operation and Protection Program. Projects proposed starting*
32 *in the 2020 State Highway Operation and Protection Program*
33 *shall meet the requirements set forth in Sections 14526.5 and*
34 *14526.8.*

35 (c) In connection with the asset management plan, the
36 commission shall do both of the following:

37 (1) Adopt targets and performance measures reflecting state
38 transportation goals and objectives. *Performance measures shall*
39 *include conditions of bicycle and pedestrian facilities, accessibility*
40 *and safety for pedestrians, bicyclists, and transit users, and vehicle*

1 *miles traveled on the state highway system. Automobile delay shall*
2 *not be used as a performance measure.*

3 (2) Review and approve the asset management plan, including
4 the final version of the first phase and the complete plan prepared
5 by the department pursuant to subdivision (b).

6 (d) As used in this section, “asset management plan” means a
7 document assessing the ~~health~~ and condition *and performance* of
8 the state highway system with which the department is able to
9 determine the most effective way to apply the state’s limited
10 resources.

11 SEC. 4. Section 14526.5 of the Government Code is amended
12 to read:

13 14526.5. (a) Based on the asset management plan prepared
14 and approved pursuant to Section 14526.4, the department shall
15 prepare a ~~state highway operation and protection program~~ *State*
16 *Highway Operation and Protection Program* for the expenditure
17 of transportation funds for major capital improvements that are
18 necessary to preserve and protect the state highway system. Projects
19 included in the program shall be limited to improvements relative
20 to the maintenance, safety, operation, ~~and rehabilitation~~
21 *rehabilitation, and accessibility for pedestrians, bicyclists, and*
22 *transit users* of state highways and bridges that do not add a new
23 traffic lane to the ~~system~~. *system, including auxiliary lanes,*
24 *merging lanes, and toll lanes.*

25 (b) The program shall include projects that are expected to be
26 advertised prior to July 1 of the year following submission of the
27 program, but which have not yet been funded. The program shall
28 include those projects for which construction is to begin within
29 four fiscal years, starting July 1 of the year following the year the
30 program is submitted.

31 (c) (1) The department, at a minimum, shall specify, for each
32 project in the ~~state highway operation and protection program,~~
33 *State Highway Operation and Protection Program*, the capital and
34 support budget, as applicable, *including the cost of pedestrian and*
35 *bicycle facilities*, for each of the following project phases:

36 (A) Project approval and environmental documents, support
37 only.

38 (B) Plans, specifications, and estimates, support only.

39 (C) Rights-of-way.

40 (D) Construction.

1 (2) The department shall specify, for each project in the ~~state~~
2 ~~highway operation and protection program, State Highway~~
3 ~~Operation and Protection Program~~, a projected delivery date for
4 each of the following components:

5 (A) Project approval and environmental document completion.

6 (B) Plans, specifications, and estimates completion.

7 (C) Right-of-way certification.

8 (D) Start of construction.

9 (d) The department shall submit its proposed program to the
10 commission not later than January 31 of each even-numbered year.
11 Prior to submitting its proposed program, the department shall
12 make a draft of its proposed program available to transportation
13 planning agencies for review and comment and shall include the
14 comments in its submittal to the commission. The department shall
15 provide the commission with detailed information for all
16 programmed projects on cost, scope, schedule, and performance
17 metrics as determined by the commission.

18 (e) The commission shall review the proposed program relative
19 to its overall adequacy, consistency with the asset management
20 plan prepared and approved pursuant to Section 14526.4 and
21 funding priorities established in Section 167 of the Streets and
22 Highways Code, the level of annual funding needed to implement
23 the program, and the impact of those expenditures on the ~~state~~
24 ~~transportation improvement program, State Transportation~~
25 ~~Improvement Program~~. The commission shall adopt the program
26 and submit it to the Legislature and the Governor not later than
27 April 1 of each even-numbered year. The commission may decline
28 to adopt the program if the commission determines that the program
29 is not sufficiently consistent with the asset management plan
30 prepared and approved pursuant to Section 14526.4.

31 (f) As part of the commission's review of the program required
32 pursuant to subdivision (a), the commission shall hold at least one
33 hearing in northern California and one hearing in southern
34 California regarding the proposed program.

35 (g) ~~On or after July 1, 2017, In order~~ to provide sufficient and
36 transparent oversight of the department's capital outlay support
37 resources composed of both state staff and contractors, the
38 commission shall be required to allocate the department's capital
39 outlay support resources by project phase, including
40 preconstruction. Through this action, the commission will provide

1 public transparency for the department’s budget estimates,
2 increasing assurance that the annual budget forecast is reasonable.
3 The commission shall develop guidelines, in consultation with the
4 department, to implement this subdivision. Guidelines adopted by
5 the commission to implement this subdivision shall be exempt
6 from the Administrative Procedure Act (Chapter 3.5 (commencing
7 with Section 11340) of Part 1).

8 (h) ~~Beginning July 1, 2017, for~~ For a project that experiences
9 increases in capital or support costs above the amounts in the
10 commission’s allocation pursuant to subdivision (g), the
11 commission shall establish a threshold for requiring a supplemental
12 project allocation. The commission’s guidelines adopted pursuant
13 to subdivision (g) shall also establish the threshold that the
14 commission determines is necessary to ensure efficiency and may
15 provide exceptions as necessary so that projects are not
16 unnecessarily delayed.

17 (i) The department, for each project requiring a supplemental
18 project allocation pursuant to subdivision (h), shall submit a request
19 to the commission for its approval.

20 (j) Expenditures for these projects shall not be subject to
21 Sections 188 and 188.8 of the Streets and Highways Code.

22 SEC. 5. Section 14526.6 of the Government Code is amended
23 to read:

24 14526.6. (a) The department shall report to the commission
25 quarterly, for projects which complete construction in the previous
26 quarter, on the information outlined in subdivision (b) for all major
27 ~~state highway operation and protection program~~ *State Highway*
28 *Operation and Protection Program* projects, as defined by the
29 commission pursuant to subdivision (f) of Section 167 of the Streets
30 and Highways Code.

31 (b) The department shall report to the commission on the
32 approved capital and support budgets compared to expenditures
33 at contract construction acceptance for all projects included in
34 subdivision (a).

35 (c) The department shall develop, in consultation with the
36 commission, a plain language performance report to increase
37 transparency and accountability of the ~~state highway operation~~
38 ~~and protection program~~. *State Highway Operation and Protection*
39 *Program. The plain language performance report shall include a*
40 *description of pedestrian and bicycle facilities on each project,*

1 *including the number, extent, and cost of the elements relative to*
2 *the overall project.*

3 SEC. 6. Section 14526.8 is added to the Government Code, to
4 read:

5 14526.8. (a) By January 1, 2021, except as provided in
6 subdivisions (b) and (c), the department, when undertaking any
7 capital improvement project on a state highway or a local street
8 crossing a state highway that is funded through the State Highway
9 Operation and Protection Program (SHOPP), shall include new
10 pedestrian and bicycle facilities, or improve existing facilities, as
11 part of the project, as follows:

12 (1) In urbanized areas, transit priority areas, or priority access
13 areas, and on streets and highways with average daily traffic of
14 10,000 vehicles or more and a speed limit over 25 miles per hour,
15 well-lit facilities for bicyclists and pedestrians shall be provided
16 that are physically separated from motor vehicles. Bicycle facilities
17 shall be designed based on Highway Design Manual guidance for
18 selection of bicycle facilities pursuant to Section 14033. In
19 addition, signals or other facilities shall be provided to enable
20 bicyclists and pedestrians to safely cross the street or highway.

21 (2) On streets or highways other than those described in
22 paragraph (1), facilities for pedestrians and bicyclists shall be
23 provided when feasible, and reduction of vehicle traffic lanes and
24 implementation of traffic calming improvements shall be
25 considered.

26 (3) The department shall establish a project development team
27 for each project, including representatives from the local
28 transportation agency, local bicycle and pedestrian advisory
29 committee, community-based organizations, residents of
30 low-income disadvantaged communities, and other local
31 stakeholders impacted by the project. The project development
32 team shall provide input to the department on identifying bicycle
33 and pedestrian facility and transit access needs on the project,
34 including improvements identified in a local bicycle, pedestrian,
35 active transportation, or safe routes to school plan adopted by the
36 local jurisdiction.

37 (b) This section does not apply to capital improvement projects
38 on street and highway facilities that are closed, by law, to use by
39 pedestrians, bicyclists, and other nonmotorized users.

1 (c) The department may exempt a capital improvement project
2 from the requirements of this section through documentation in
3 writing by the department’s district director and supported by data,
4 after at least one public hearing in the jurisdiction most impacted
5 by the project, to demonstrate any of the following:

6 (1) The cost of accommodating the needs of the particular user
7 group for the transportation project would be excessively
8 disproportionate to the current or future need or probable use of
9 the facilities by the particular user group.

10 (2) There is a demonstrated absence of future need by the
11 particular user group, as determined by factors, including current
12 and future land use, current and projected user volumes, population
13 density, and crash data.

14 (3) The adverse impacts of accommodating the needs of the
15 particular user group significantly outweigh the benefits.

16 (d) Until January 1, 2021, or by which time the department can
17 demonstrate that it has met the requirements of subdivision (a), 3
18 percent of SHOPP funds from the Road Maintenance and
19 Rehabilitation Account shall be used only for bicycle and
20 pedestrian facilities.

21 (e) (1) As used in this section, “capital improvement project”
22 includes, but is not limited to, a reconstruction, rehabilitation, or
23 operational improvement project.

24 (2) As used in this section “priority access area” means an area
25 within one-half mile of a public school, community college,
26 university, hospital or healthcare center, senior center, employment
27 center, park, or grocery store.

28 (3) As used in this section, “transit priority area” means an area
29 within one-half mile of an existing major transit stop, or a planned
30 transit stop, if the planned stop is scheduled to be completed within
31 the planning horizon included in the interregional transportation
32 improvement program submitted pursuant to Section 14526 or a
33 regional transportation improvement program adopted and
34 submitted pursuant to Section 14527.

35 SEC. 7. Section 167 of the Streets and Highways Code is
36 amended to read:

37 167. (a) Funds in the State Highway Account in the State
38 Transportation Fund shall be programmed, budgeted subject to
39 Section 163, and expended to maximize the use of federal funds
40 and shall be based on the following sequence of priorities:

- 1 (1) *Accessibility improvements for all users of the transportation*
- 2 *system that improve the efficiency of moving people within existing*
- 3 *roadways, reduce vehicle miles traveled, and promote public*
- 4 *health.*
- 5 ~~(1)~~
- 6 (2) Operation, maintenance, and rehabilitation of the state
- 7 highway system.
- 8 ~~(2)~~
- 9 (3) Safety improvements where physical changes, other than
- 10 adding additional lanes, would reduce fatalities and the number
- 11 and severity of injuries. *Safety improvements shall prioritize*
- 12 *reducing fatalities and severe injuries for vulnerable road users,*
- 13 *and shall not increase vehicle miles traveled.*
- 14 ~~(3) Transportation capital improvements that expand capacity~~
- 15 ~~or reduce congestion, or do both.~~
- 16 (4) Environmental enhancement and mitigation programs.
- 17 (5) *Transportation capital improvements that expand capacity.*
- 18 (b) With respect to the funds in the State Highway Account, in
- 19 the Public Transportation Account, and in the Passenger Rail Bond
- 20 Fund, the proposed budget shall be organized on a program basis.
- 21 The proposed budget shall list the proposed expenditures for the
- 22 transportation program under the following program elements:
- 23 (1) Administration.
- 24 (2) Program development.
- 25 (3) Maintenance.
- 26 (4) State highway operation and protection.
- 27 (5) Local assistance.
- 28 (6) Interregional improvements.
- 29 (7) Regional improvements.
- 30 (8) Environmental enhancement and mitigation programs.
- 31 (c) State operations expenditure amounts of the department for
- 32 interregional and regional transportation improvement projects
- 33 shall be listed as required by subdivision (b) of Section 14529 of
- 34 the Government Code, but those amounts other than those for the
- 35 acquisition of rights-of-way, construction, and construction support
- 36 shall not be subject to allocation by the commission.
- 37 (d) To align the annual budget with the adopted state
- 38 transportation improvement program, the department may submit
- 39 to the Department of Finance revised capital outlay support and
- 40 capital outlay budget estimates as part of its May Revision process.

1 Budget proposals related to these changes shall be provided to the
2 Legislature no later than May 1.

3 (e) The budget shall not include specific appropriations for
4 specific transportation improvement projects, and the Legislature
5 shall not enact legislation containing specific individual
6 transportation projects.

7 (f) The basis for defining major and minor capital outlay projects
8 shall be established by the commission.

9 (g) The Legislative Analyst shall prepare an analysis of the
10 proposed expenditures for each program element as a part of the
11 budget analysis.

12 (h) The department shall submit to the Legislative Analyst, and
13 the Senate Committee on Budget and Fiscal Review and the
14 Assembly Committee on Budget, on an annual basis, supplemental
15 information to substantiate the department's proposed capital outlay
16 support budget. The information shall be provided no later than
17 May 1 of each year, and may be provided at an earlier date. The
18 information shall include, but not be limited to, the following:

19 (1) A list of projects for which the department will perform
20 capital outlay support work in the budget year. For each project,
21 the department shall include:

22 (A) The planned project support budget for support of
23 environmental, design, right-of-way, and construction phases.

24 (B) The planned capital costs, including construction capital
25 costs and right-of-way capital costs.

26 (C) The estimated or actual construction start date and
27 completion date.

28 (D) The name and year of the state transportation program in
29 which the project is programmed, if applicable.

30 (E) Total prior fiscal year expenditures for capital outlay support.

31 (F) The number of full-time equivalent positions requested to
32 perform support of environmental, design, right-of-way, and
33 construction work in the fiscal year of the budget request.

34 (G) Milestones of project work by phases that are planned to
35 be completed in the fiscal year of the budget request.

36 (H) The ratio of support to capital costs based on current
37 programming.

38 (2) The capital-to-support ratio for all projects completed in the
39 prior fiscal year in each program in each district.

1 (3) The current total number of authorized and vacant positions
2 in the capital outlay support program in headquarters and in each
3 district.

4 (4) A five-year projection of the department's staffing needs to
5 support the state's transportation capital programs and any
6 workload performed by the department related to federal or local
7 funding for highway capital projects.

8 (5) The average cost of a personnel-year equivalent in each
9 district based on the department's existing contracts for capital
10 outlay support work performed by a private company under
11 contract with the department. For each average cost, the department
12 shall provide a description of what factors are included in that cost.

13 (6) The average cost of a state staff personnel-year in the capital
14 outlay support program in each district and in headquarters. The
15 cost shall include the salary and wages, benefits, program overhead,
16 administrative overhead, and other associated costs. The
17 department shall provide a description of each component of the
18 average cost.

19 (7) A summary of expected capital outlay support workload for
20 the budget year that includes the following:

21 (A) The total full-time equivalents requested for each type of
22 the following activities: environmental, design, right-of-way, and
23 construction.

24 (B) The total full-time equivalents requested for each type of
25 project, including, but not limited to, the state transportation
26 improvement program, the ~~state highway operation and protection~~
27 ~~program~~, *State Highway Operation and Protection Program*, bond
28 programs, regional and local agency partnership workload, and
29 any other program.

30 (8) The total number of projects with requested resources, as
31 well as the number of projects in which the department is limited
32 to an oversight role.

33 (9) The number of milestones scheduled, including
34 environmental, design, right-of-way, and construction deliverables,
35 as well as the number of projects expected to begin construction
36 and reach completion.

37 (10) A summary for the most recently completed fiscal year for
38 the following:

1 (A) Full-time equivalents and related funding expended,
2 including support of environmental, design, right-of-way, and
3 construction activities.

4 (B) Approved and filled positions as of the end of the fiscal
5 year.

O

BILL: SB 526 (Allen, D-Santa Monica)

SUBJECT: SB 526 would add reporting requirements for metropolitan planning organizations on their progress in meeting the goals of SB 375 (Chapter 728, Statutes of 2008) and reprioritize the use of State Transportation Improvement Program funds in regions that are not on track to meet their greenhouse gas emission reduction targets.

STATUS: Pending in Senate Rules Committee
Introduced February 21, 2019

SUMMARY AS OF MARCH 6, 2019:

SB 526 (Allen, D-Santa Monica) builds on the author's previous legislation, SB 150 (Chapter 646, Statutes of 2017), which required the California Air Resources Board (ARB) to issue a report every four years assessing each metropolitan planning organization's (MPO) progress to meetings its SB 375 (Chapter 728, Statutes of 2008) greenhouse gas (GHG) emission reduction goals, including a discussion of any challenges and best practices. To inform this effort, SB 526 would require MPOs to submit data to the ARB delineating how transportation funds have been spent in relation to the sustainable communities strategy (SCS) developed pursuant to SB 375, and whether these expenditures have led to an increase or decrease in VMT. The ARB would be required to develop a regulation to govern how this data is to be submitted.

Starting with the development of the report due in September 2026, ARB is to make a determination if each MPO is on track to meetings its 2035 GHG emission reduction target. If the ARB determines that they are not on track, the ARB is to notify the California Transportation Commission (CTC) of that determination. SB 526 would then require the CTC to assign a lower priority within the State Transportation Improvement Program (STIP) guidelines for projects that increase vehicle miles traveled (VMT) and GHG emissions for MPOs that are deemed by the ARB to not be on track to meeting their SB 375 GHG emission reduction targets.

If an SCS is prepared by an MPO, the action element of that strategy is to specifically identify near and long-term steps to be taken to implement the SCS and achieve the GHG emission reduction targets. Each MPO is to track their progress in meeting those steps and report on that progress to the ARB to help inform the development of the reports created pursuant to SB 150.

EFFECTS ON ORANGE COUNTY:

The Southern California Association of Governments (SCAG) is responsible for developing the RTP for a six-county area, which includes Orange County, every four years. The RTP outlines the region's transportation planning objectives for at least a 20-year period. The Orange County Transportation Authority (OCTA) develops a long-range transportation plan in conjunction with the SCAG RTP process, which

provides the transportation planning priorities and specific projects for Orange County. The LRTP is ultimately integrated into SCAG's RTP.

In 2008, SB 375 required the development of the SCS as a new element of the RTP, to serve as the region's plan for reducing regional GHG by better integrating transportation, land use and planning decisions. The SCS must demonstrate the region's ability to meet GHG reduction targets for the years 2020 and 2035, as set by the California Air Resources Board. SB 375 provided a special carve-out for the SCAG region that recognizes the unique role of county transportation commissions in planning, programming and selecting transportation projects for funding. In the SCAG region, county transportation commissions and subregional council of governments may jointly elect to do a subregional SCS, to be integrated into SCAG's regional SCS. For the 2012 SCAG RTP, OCTA and the Orange County Council of Governments were one of two subregions within the SCAG region to elect to do a subregional SCS.

The intent behind SB 375 was to allow a bottoms-up planning approach that maintained maximum flexibility for regions to develop an SCS that met the region's specific needs, recognizing the differences in regional geographic, demographic and funding requirements. If a region fails to meet the GHG emission reduction targets under SB 375, the region must adopt an alternative planning strategy, which outlines a planning strategy that would meet the targets, if not subject to various constraints like funding. SB 375 also recognizes that transportation agencies do not have control over land use decisions, maintaining city and county authority over those decisions, and not requiring consistency between those decisions and the SCS.

The STIP is one of many fund sources used for transportation improvements within the RTP and SCS. Under existing law, 75 percent of the funding provided through the STIP is available for transportation capital projects nominated and programmed by regional transportation planning agencies and county transportation commissions through the adoption of a RTIP. The remaining 25 percent of the funding is used for interregional capital projects nominated by Caltrans through the adoption of the Interregional Transportation Improvement Program. The focus of these projects is usually in funding projects that improve interconnectivity in a region, including highway, rail, or transit improvements. Orange County receives, on average, about \$50 million per year in STIP funding. For a five-year RTIP, this would mean about \$250 million in funding. While SCAG leads the creating of the RTP and SCS, they do not have a role in picking the projects included within the STIP.

SB 526 would significantly change the bottoms-up approach envisioned by SB 375, which allowed regional flexibility in the meeting of the regional greenhouse gas emission reduction targets, and shift the focus to project-by-project analysis and VMT reductions. Existing STIP guidelines already emphasize investments in projects that help meet statewide environmental, goods movement, and safety goals, analyzed in combination with other statewide priorities including mobility benefits, connectivity, and improved efficiencies. These types of projects should continue to be priorities for funding in these cases to preserve the mobility demands of the highway and transit system. A more

comprehensive approach in analyzing projects for the STIP, such as is currently undertaken, allows multiple statewide and regional goals to be met, rather than focusing on singular objectives.

SB 526 is also unclear on how the prioritization process for VMT and GHG reducing projects would function if an MPO is not on track to meeting its GHG emission reduction goal. Under existing law, the CTC can only accept or reject a region's STIP submittal in its entirety. SB 526 creates the possibility that if a region does not prioritize VMT or GHG emission reduction projects in its STIP, the entire STIP submittal would be rejected. Further, it's also unclear what projects would be deemed to reduce VMT and over what timeframe. Transit projects can often induce traffic in proximity to the project, although simultaneously they can allow for mode shift and achieve GHG emission reductions. By solely focusing on VMT, and not looking at GHG emission reductions, projects beneficial to an SCS may be lower priority investments.

SB 375 already created a process where an MPO can do an APS if it cannot meet its GHG emission reduction targets. This process allows for an MPO to demonstrate what factors contribute to the inability to meet the GHG emission reduction targets, which may include the lack of compatible land use changes, funding limitations, project delivery constraints, increased project costs. Reprioritizing STIP funding may not resolve the issue. Instead, the APS should function how originally intended. In addition, the SB 150 report should function in a way to allow MPOs to more clearly inform what issues, from the regional perspective, may be hindering the ability to meet GHG emission reduction targets.

SB 526 would undermine the discretion of local transportation agencies, including the OCTA, and the state to determine the projects most necessitating investment to meet regional connectivity and maintenance needs. An oppose position on SB 526 is consistent with OCTA's 2019-2020 State Legislative Platform principle to "Oppose efforts to link or reprioritize local and state transportation funding to programs not primarily intended to help the state meet its transportation needs."

OCTA POSITION:

Staff recommends: OPPOSE

Introduced by Senator AllenFebruary 21, 2019

An act to amend Sections 14530.1 and 65080 of the Government Code, and to add Section 75132 to the Public Resources Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 526, as introduced, Allen. Regional transportation plans: greenhouse gas emissions: State Mobility Action Plan for Healthy Communities.

(1) Existing law requires designated regional transportation planning agencies to prepare and adopt a regional transportation plan. Certain of these agencies are also designated under federal law as metropolitan planning organizations. Existing law requires a regional transportation plan to include a policy element, an action element, and a financial element, and, if the transportation planning agency is also a metropolitan planning organization, a sustainable communities strategy or alternative planning strategy, which is designed to achieve certain targets for 2020 and 2035 established by the State Air Resources Board for the reduction of greenhouse gas emissions from automobiles and light trucks in the region. Existing law requires the state board to update those targets every 8 years. Existing law requires the state board, by September 1, 2018, and every 4 years thereafter, to prepare a report that assesses progress made by each metropolitan planning organization in meeting the regional greenhouse gas emission reduction targets set by the state board. Under existing law, the action element of a regional transportation plan describes the programs and actions necessary to implement the plan and assigns implementation responsibilities.

This bill would require the state board to adopt a regulation that requires a metropolitan planning organization to provide any data that the state board determines is necessary to fulfill the requirements of the above-described report and to determine if the metropolitan planning organization is on track to meet its 2035 greenhouse gas emission reduction target. After completing each report, the bill would require the state board to determine if each metropolitan planning organization is on track to meet its 2035 target and to notify the California Transportation Commission of these determinations. The bill would require the action element prepared by a metropolitan planning organization to identify near and long-term steps to be taken to implement a sustainable communities strategy and achieve the greenhouse gas emission reduction targets established by the state board. The bill would require the metropolitan planning organization to monitor progress toward implementing these steps and to report that progress to the state board for purposes of the above-described report.

By imposing additional requirements on transportation planning agencies, the bill would impose a state-mandated local program.

(2) Existing law generally provides for the programming of transportation capital improvement funds through the state transportation improvement program administered by the California Transportation Commission, which includes, among other projects, projects recommended by regional transportation planning agencies through adoption of a regional transportation improvement program. Existing law requires the Department of Transportation, in cooperation with the commission, transportation planning agencies, and county transportation commissions and local governments, to develop guidelines for the development of the state transportation improvement program and the incorporation of projects into the state transportation improvement program.

If the state board determines that a metropolitan planning organization is not on track to meet its 2035 greenhouse gas emission reduction target, the bill would require the guidelines, for projects located within jurisdiction of that metropolitan planning organization, to assign a lower priority to a project that increases vehicle miles traveled and greenhouse gas emissions than to a project that reduces vehicle miles traveled and greenhouse gas emissions.

(3) Existing law establishes the Strategic Growth Council in state government consisting of various state agency heads and 3 public members. Existing law requires the council to, among other things,

identify and review activities and funding programs of state agencies that may be coordinated to improve air and water quality, improve natural resource protection, increase the availability of affordable housing, improve transportation, and meet greenhouse gas emission reduction goals.

This bill would establish an interagency working group to be administered by the Strategic Growth Council and to be composed of a specified membership. The bill would require the interagency working group to develop and implement a State Mobility Action Plan for Healthy Communities to ensure that regional growth and development is designed and implemented in a manner that will help achieve the state’s environmental, equity, climate, health and housing goals. The bill would require the plan to include specific actions, measures, and timelines, and an investment strategy. The bill would require the interagency working group to submit the plan to the Legislature by December 31, 2020, and would require the interagency working group to submit an updated plan to the Legislature by September 1, 2024, and every 4 years thereafter.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The State Air Resources Board Scoping Plan found that in
- 4 order for California to meet its climate goals, specifically the
- 5 reductions necessary from the land use and transportation sector,
- 6 actions are needed that will reduce vehicle miles traveled (VMT).
- 7 Specifically, the State Air Resources Board determined that VMT
- 8 will need to be reduced by an additional 7 percent below 2030
- 9 levels projected by successful implementation of California's

1 regional sustainable communities strategies. This translates to a
2 reduction, on average, of 1.5 miles per person per day.

3 (b) According to a recent report by the State Air Resources
4 Board titled “2018 Progress Report: California’s Sustainable
5 Communities and Climate Protection Act,” with emissions from
6 the transportation sector continuing to rise despite increases in fuel
7 efficiency and decreases in the carbon content of fuel, California
8 will not achieve the necessary greenhouse gas emission reductions
9 to meet mandates for 2030 and beyond without significant changes
10 to how communities and transportation systems are planned,
11 funded, and built.

12 (c) The report further found that greenhouse gas emissions from
13 the land use and transportation sector and VMT per capita for
14 passenger travel are actually heading in the wrong direction, even
15 though every region in the state has prepared a sustainable
16 communities strategy outlining an expected growth pattern and
17 set of investments that will allow it to meet its greenhouse gas
18 emission reduction targets.

19 (d) In reviewing the long-term spending plans in the regional
20 transportation plans and sustainable communities strategies of the
21 largest four metropolitan planning organizations, the State Air
22 Resources Board found little shift in the overall spending
23 allocations across roadway, transit, and bike and pedestrian
24 infrastructure modes.

25 (e) As land use and community planning decisions made today
26 will have lasting repercussions for decades to come, it is clear that
27 much more needs to be done to reduce greenhouse gas emissions
28 and VMT, to aggressively shift toward community and street design
29 policies that prioritize transit, biking, and walking, and to increase
30 low carbon mobility choices, including improved access to viable
31 and affordable public transportation and active transportation
32 opportunities.

33 (f) The State Air Resources Board report also found that in order
34 to increase travel choices, economic development, access to jobs
35 and other opportunities, affordable housing for underserved
36 communities, and to reverse historic and systemic injustices,
37 including health inequities that result in significant health
38 disparities between populations, development of a state vision and
39 strategy for advancing equity through state transportation, housing,
40 and climate and air quality outreach, planning, and funding

1 activities is needed. The needed shift of investment towards more
2 compact infill development must be coupled with strategies that
3 help prevent the displacement of disadvantaged communities,
4 low-income communities, and communities of color.

5 SEC. 2. Section 14530.1 of the Government Code is amended
6 to read:

7 14530.1. (a) The department, in cooperation with the
8 commission, transportation planning agencies, and county
9 transportation commissions and local governments, shall develop
10 guidelines for the development of the state transportation
11 improvement program and the incorporation of projects into the
12 state transportation improvement program.

13 (b) The guidelines shall include, but not be limited to, all of the
14 following:

- 15 (1) Standards for project deliverability.
- 16 (2) Standards for identifying projects and project components.
- 17 (3) Standards for cost estimating.
- 18 (4) Programming methods for increases and schedule changes.
- 19 (5) Objective criteria for measuring system performance and
20 cost-effectiveness of candidate projects.

21 (c) The guidelines shall be the complete and full statement of
22 the policy, standards, and criteria that the commission intends to
23 use in selecting projects to be included in the state transportation
24 improvement program.

25 (d) *For projects located within the jurisdiction of a metropolitan*
26 *planning organization that the State Air Resources Board has*
27 *determined is not on track to meet its greenhouse gas emission*
28 *reduction target for 2035 pursuant to subparagraph (O) of*
29 *paragraph (2) of subdivision (b) of Section 65080, the guidelines*
30 *shall assign a lower priority for incorporation into the state*
31 *transportation improvement program to a project that increases*
32 *vehicle miles traveled and greenhouse gas emissions than a project*
33 *that reduces vehicle miles traveled and greenhouse gas emissions.*

34 ~~(d)~~

35 (e) The commission may amend the adopted guidelines after
36 conducting at least one public hearing. The commission shall make
37 a reasonable effort to adopt the amended guidelines ~~prior to~~ *before*
38 its adoption of the fund estimate pursuant to Section 14525. ~~In no~~
39 ~~event shall the~~ *The adopted guidelines shall not be* amended, or
40 otherwise revised, modified, or altered during the period

1 commencing 30 days after the adoption of the fund estimate
2 pursuant to Section 14525 and before the adoption of the state
3 transportation improvement program pursuant to Section 14529.

4 SEC. 3. Section 65080 of the Government Code is amended
5 to read:

6 65080. (a) Each transportation planning agency designated
7 under Section 29532 or 29532.1 shall prepare and adopt a regional
8 transportation plan directed at achieving a coordinated and balanced
9 regional transportation system, including, but not limited to, mass
10 transportation, highway, railroad, maritime, bicycle, pedestrian,
11 goods movement, and aviation facilities and services. The plan
12 shall be action-oriented and pragmatic, considering both the
13 short-term and long-term future, and shall present clear, concise
14 policy guidance to local and state officials. The regional
15 transportation plan shall consider factors specified in Section 134
16 of Title 23 of the United States Code. Each transportation planning
17 agency shall consider and incorporate, as appropriate, the
18 transportation plans of cities, counties, districts, private
19 organizations, and state and federal agencies.

20 (b) The regional transportation plan shall be an internally
21 consistent document and shall include all of the following:

22 (1) A policy element that describes the transportation issues in
23 the region, identifies and quantifies regional needs, and describes
24 the desired short-range and long-range transportation goals, and
25 pragmatic objective and policy statements. The objective and policy
26 statements shall be consistent with the funding estimates of the
27 financial element. The policy element of transportation planning
28 agencies with populations that exceed 200,000 persons may
29 quantify a set of indicators including, but not limited to, all of the
30 following:

31 (A) Measures of mobility and traffic congestion, including, but
32 not limited to, daily vehicle hours of delay per capita and vehicle
33 miles traveled per capita.

34 (B) Measures of road and bridge maintenance and rehabilitation
35 needs, including, but not limited to, roadway pavement and bridge
36 conditions.

37 (C) Measures of means of travel, including, but not limited to,
38 percentage share of all trips (work and nonwork) made by all of
39 the following:

40 (i) Single *or zero* occupant vehicle.

- 1 (ii) Multiple occupant vehicle or carpool.
- 2 (iii) Public transit including commuter rail and intercity rail.
- 3 (iv) Walking.
- 4 (v) Bicycling.

5 (D) Measures of safety and security, including, but not limited
6 to, total injuries and fatalities assigned to each of the modes set
7 forth in subparagraph (C).

8 (E) Measures of equity and accessibility, including, but not
9 limited to, percentage of the population served by frequent and
10 reliable public transit, with a breakdown by income bracket, and
11 percentage of all jobs accessible by frequent and reliable public
12 transit service, with a breakdown by income bracket.

13 (F) The requirements of this section may be met ~~utilizing~~ *using*
14 existing sources of information. No additional traffic counts,
15 household surveys, or other sources of data shall be required.

16 (2) A sustainable communities strategy prepared by each
17 metropolitan planning organization as follows:

18 (A) No later than September 30, 2010, the State Air Resources
19 Board shall provide each affected region with greenhouse gas
20 emission reduction targets for the automobile and light truck sector
21 for 2020 and 2035, respectively.

22 (i) No later than January 31, 2009, the state board shall appoint
23 a Regional Targets Advisory Committee to recommend factors to
24 be considered and methodologies to be used for setting greenhouse
25 gas emission reduction targets for the affected regions. The
26 committee shall be composed of representatives of the metropolitan
27 planning organizations, affected air districts, the League of
28 California Cities, the California State Association of Counties,
29 local transportation agencies, and members of the public, including
30 homebuilders, environmental organizations, planning organizations,
31 environmental justice organizations, affordable housing
32 organizations, and others. The advisory committee shall transmit
33 a report with its recommendations to the state board no later than
34 September 30, 2009. In recommending factors to be considered
35 and methodologies to be used, the advisory committee may
36 consider any relevant issues, including, but not limited to, data
37 needs, modeling techniques, growth forecasts, the impacts of
38 regional jobs-housing balance on interregional travel and
39 greenhouse gas emissions, economic and demographic trends, the
40 magnitude of greenhouse gas reduction benefits from a variety of

1 land use and transportation strategies, and appropriate methods to
2 describe regional targets and to monitor performance in attaining
3 those targets. The state board shall consider the report ~~prior to~~
4 *before* setting the targets.

5 (ii) ~~Prior to~~ *Before* setting the targets for a region, the state board
6 shall exchange technical information with the metropolitan
7 planning organization and the affected air district. The metropolitan
8 planning organization may recommend a target for the region. The
9 metropolitan planning organization shall hold at least one public
10 workshop within the region after receipt of the report from the
11 advisory committee. The state board shall release draft targets for
12 each region no later than June 30, 2010.

13 (iii) In establishing these targets, the state board shall take into
14 account greenhouse gas emission reductions that will be achieved
15 by improved vehicle emission standards, changes in fuel
16 composition, and other measures it has approved that will reduce
17 greenhouse gas emissions in the affected regions, and prospective
18 measures the state board plans to adopt to reduce greenhouse gas
19 emissions from other greenhouse gas emission sources as that term
20 is defined in subdivision (i) of Section 38505 of the Health and
21 Safety Code and consistent with the regulations promulgated
22 pursuant to the California Global Warming Solutions Act of 2006
23 (Division 25.5 (commencing with Section 38500) of the Health
24 and Safety Code), including Section 38566 of the Health and Safety
25 Code.

26 (iv) The state board shall update the regional greenhouse gas
27 emission reduction targets every eight years consistent with each
28 metropolitan planning organization's timeframe for updating its
29 regional transportation plan under federal law until 2050. The state
30 board may revise the targets every four years based on changes in
31 the factors considered under clause (iii). The state board shall
32 exchange technical information with the Department of
33 Transportation, metropolitan planning organizations, local
34 governments, and affected air districts and engage in a consultative
35 process with public and private stakeholders, ~~prior to~~ *before*
36 updating these targets.

37 (v) The greenhouse gas emission reduction targets may be
38 expressed in gross tons, tons per capita, tons per household, or in
39 any other metric deemed appropriate by the state board.

1 (B) Each metropolitan planning organization shall prepare a
2 sustainable communities strategy, subject to the requirements of
3 Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of
4 Federal Regulations, including the requirement to ~~utilize~~ use the
5 most recent planning assumptions considering local general plans
6 and other factors. The sustainable communities strategy shall ~~(i)~~
7 ~~identify~~ do all of the following:

8 (i) *Identify* the general location of uses, residential densities,
9 and building intensities within the ~~region~~, ~~(ii) identify~~ region.

10 (ii) *Identify* areas within the region sufficient to house all the
11 population of the region, including all economic segments of the
12 population, over the course of the planning period of the regional
13 transportation plan taking into account net migration into the
14 region, population growth, household formation and employment
15 ~~growth~~, ~~(iii) identify~~ growth.

16 (iii) *Identify* areas within the region sufficient to house an
17 eight-year projection of the regional housing need for the region
18 pursuant to Section ~~65584~~, ~~(iv) identify~~ 65584.

19 (iv) *Identify* a transportation network to service the transportation
20 needs of the ~~region~~, ~~(v) gather~~ region.

21 (v) *Gather* and consider the best practically available scientific
22 information regarding resource areas and farmland in the region
23 as defined in subdivisions (a) and (b) of Section ~~65080.01~~, ~~(vi)~~
24 ~~consider~~ 65080.01.

25 (vi) *Consider* the state housing goals specified in Sections 65580
26 and ~~65581~~, ~~(vii) set~~ 65581.

27 (vii) *Set* forth a forecasted development pattern for the region,
28 which, when integrated with the transportation network, and other
29 transportation measures and policies, will reduce the greenhouse
30 gas emissions from automobiles and light trucks to achieve, if
31 there is a feasible way to do so, the greenhouse gas emission
32 reduction targets approved by the state ~~board~~, and ~~(viii) allow~~
33 ~~board~~.

34 (viii) *Allow* the regional transportation plan to comply with
35 Section 176 of the federal Clean Air Act (42 U.S.C. Sec. 7506).

36 (C) (i) Within the jurisdiction of the Metropolitan
37 Transportation Commission, as defined by Section 66502, the
38 Association of Bay Area Governments shall be responsible for
39 clauses (i), (ii), (iii), (v), and (vi) of subparagraph ~~(B)~~; (B); the
40 Metropolitan Transportation Commission shall be responsible for

1 clauses (iv) and (viii) of subparagraph (B); and the Association of
2 Bay Area Governments and the Metropolitan Transportation
3 Commission shall jointly be responsible for clause (vii) of
4 subparagraph (B).

5 (ii) Within the jurisdiction of the Tahoe Regional Planning
6 Agency, as defined in Sections 66800 and 66801, the Tahoe
7 Metropolitan Planning Organization shall use the Regional Plan
8 for the Lake Tahoe Region as the sustainable community strategy,
9 provided that it complies with clauses (vii) and (viii) of
10 subparagraph (B).

11 (D) In the region served by the ~~multicounty transportation~~
12 ~~planning agency described in Section 130004 of the Public Utilities~~
13 ~~Code~~, *Southern California Association of Governments*, a
14 subregional council of governments and the county transportation
15 commission may work together to propose the sustainable
16 communities strategy and an alternative planning strategy, if one
17 is prepared pursuant to subparagraph (I), for that subregional area.
18 The metropolitan planning organization may adopt a framework
19 for a subregional sustainable communities strategy or a subregional
20 alternative planning strategy to address the intraregional land use,
21 transportation, economic, air quality, and climate policy
22 relationships. The metropolitan planning organization shall include
23 the subregional sustainable communities strategy for that subregion
24 in the regional sustainable communities strategy to the extent
25 consistent with this section and federal law and approve the
26 subregional alternative planning strategy, if one is prepared
27 pursuant to subparagraph (I), for that subregional area to the extent
28 consistent with this section. The metropolitan planning organization
29 shall develop overall guidelines, create public participation plans
30 pursuant to subparagraph (F), ensure coordination, resolve
31 conflicts, make sure that the overall plan complies with applicable
32 legal requirements, and adopt the plan for the region.

33 (E) The metropolitan planning organization shall conduct at
34 least two informational meetings in each county within the region
35 for members of the board of supervisors and city councils on the
36 sustainable communities strategy and alternative planning strategy,
37 if any. The metropolitan planning organization may conduct only
38 one informational meeting if it is attended by representatives of
39 the county board of supervisors and city council members
40 representing a majority of the cities representing a majority of the

1 population in the incorporated areas of that county. Notice of the
2 meeting or meetings shall be sent to the clerk of the board of
3 supervisors and to each city clerk. The purpose of the meeting or
4 meetings shall be to discuss the sustainable communities strategy
5 and the alternative planning strategy, if any, including the key land
6 use and planning assumptions to the members of the board of
7 supervisors and the city council members in that county and to
8 solicit and consider their input and recommendations.

9 (F) Each metropolitan planning organization shall adopt a public
10 participation plan, for development of the sustainable communities
11 strategy and an alternative planning strategy, if any, that includes
12 all of the following:

13 (i) Outreach efforts to encourage the active participation of a
14 broad range of stakeholder groups in the planning process,
15 consistent with the agency's adopted Federal Public Participation
16 Plan, including, but not limited to, affordable housing advocates,
17 transportation advocates, neighborhood and community groups,
18 environmental advocates, home builder representatives,
19 broad-based business organizations, landowners, commercial
20 property interests, and homeowner associations.

21 (ii) Consultation with congestion management agencies,
22 transportation agencies, and transportation commissions.

23 (iii) Workshops throughout the region to provide the public with
24 the information and tools necessary to provide a clear
25 understanding of the issues and policy choices. At least one
26 workshop shall be held in each county in the region. For counties
27 with a population greater than 500,000, at least three workshops
28 shall be held. Each workshop, to the extent practicable, shall
29 include urban simulation computer modeling to create visual
30 representations of the sustainable communities strategy and the
31 alternative planning strategy.

32 (iv) Preparation and circulation of a draft sustainable
33 communities strategy and an alternative planning strategy, if one
34 is prepared, not less than 55 days before adoption of a final regional
35 transportation plan.

36 (v) At least three public hearings on the draft sustainable
37 communities strategy in the regional transportation plan and
38 alternative planning strategy, if one is prepared. If the metropolitan
39 transportation organization consists of a single county, at least two
40 public hearings shall be held. To the maximum extent feasible, the

1 hearings shall be in different parts of the region to maximize the
2 opportunity for participation by members of the public throughout
3 the region.

4 (vi) A process for enabling members of the public to provide a
5 single request to receive notices, information, and updates.

6 (G) In preparing a sustainable communities strategy, the
7 metropolitan planning organization shall consider spheres of
8 influence that have been adopted by the local agency formation
9 commissions within its region.

10 (H) ~~Prior to~~ *Before* adopting a sustainable communities strategy,
11 the metropolitan planning organization shall quantify the reduction
12 in greenhouse gas emissions projected to be achieved by the
13 sustainable communities strategy and set forth the difference, if
14 any, between the amount of that reduction and the target for the
15 region established by the state board.

16 (I) If the sustainable communities strategy, prepared in
17 compliance with subparagraph (B) or (D), is unable to reduce
18 greenhouse gas emissions to achieve the greenhouse gas emission
19 reduction targets established by the state board, the metropolitan
20 planning organization shall prepare an alternative planning strategy
21 to the sustainable communities strategy showing how those
22 greenhouse gas emission targets would be achieved through
23 alternative development patterns, infrastructure, or additional
24 transportation measures or policies. The alternative planning
25 strategy shall be a separate document from the regional
26 transportation plan, but it may be adopted concurrently with the
27 regional transportation plan. In preparing the alternative planning
28 strategy, the metropolitan planning organization:

29 (i) Shall identify the principal impediments to achieving the
30 targets within the sustainable communities strategy.

31 (ii) May include an alternative development pattern for the
32 region pursuant to subparagraphs (B) to (G), inclusive.

33 (iii) Shall describe how the greenhouse gas emission reduction
34 targets would be achieved by the alternative planning strategy, and
35 why the development pattern, measures, and policies in the
36 alternative planning strategy are the most practicable choices for
37 achievement of the greenhouse gas emission reduction targets.

38 (iv) An alternative development pattern set forth in the
39 alternative planning strategy shall comply with Part 450 of Title
40 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations,

1 except to the extent that compliance will prevent achievement of
2 the greenhouse gas emission reduction targets approved by the
3 state board.

4 (v) For purposes of the California Environmental Quality Act
5 (Division 13 (commencing with Section 21000) of the Public
6 Resources Code), an alternative planning strategy shall not
7 constitute a land use plan, policy, or regulation, and the
8 inconsistency of a project with an alternative planning strategy
9 shall not be a consideration in determining whether a project may
10 have an environmental effect.

11 (J) (i) ~~Prior to~~ *Before* starting the public participation process
12 adopted pursuant to subparagraph (F), the metropolitan planning
13 organization shall submit a description to the state board of the
14 technical methodology it intends to use to estimate the greenhouse
15 gas emissions from its sustainable communities strategy and, if
16 appropriate, its alternative planning strategy. The state board shall
17 respond to the metropolitan planning organization in a timely
18 manner with written comments about the technical methodology,
19 including specifically describing any aspects of that methodology
20 it concludes will not yield accurate estimates of greenhouse gas
21 emissions, and suggested remedies. The metropolitan planning
22 organization is encouraged to work with the state board until the
23 state board concludes that the technical methodology operates
24 accurately.

25 (ii) After adoption, a metropolitan planning organization shall
26 submit a sustainable communities strategy or an alternative
27 planning strategy, if one has been adopted, to the state board for
28 review, including the quantification of the greenhouse gas emission
29 reductions the strategy would achieve and a description of the
30 technical methodology used to obtain that result. Review by the
31 state board shall be limited to acceptance or rejection of the
32 metropolitan planning organization's determination that the strategy
33 submitted would, if implemented, achieve the greenhouse gas
34 emission reduction targets established by the state board. The state
35 board shall complete its review within 60 days.

36 (iii) If the state board determines that the strategy submitted
37 would not, if implemented, achieve the greenhouse gas emission
38 reduction targets, the metropolitan planning organization shall
39 revise its strategy or adopt an alternative planning strategy, if not
40 previously adopted, and submit the strategy for review pursuant

1 to clause (ii). At a minimum, the metropolitan planning
2 organization must obtain state board acceptance that an alternative
3 planning strategy would, if implemented, achieve the greenhouse
4 gas emission reduction targets established for that region by the
5 state board.

6 (iv) On or before September 1, 2018, and every four years
7 thereafter to align with target setting, notwithstanding Section
8 10231.5, the state board shall prepare a report that assesses progress
9 made by each metropolitan planning organization in meeting the
10 regional greenhouse gas emission reduction targets set by the state
11 board. The report shall include changes to greenhouse gas
12 emissions in each region and data-supported metrics for the
13 strategies ~~utilized~~ *used* to meet the targets. The report shall also
14 include a discussion of best practices and the challenges faced by
15 the metropolitan planning organizations in meeting the targets,
16 including the effect of state policies and funding. The report shall
17 be developed in consultation with the metropolitan planning
18 organizations and affected stakeholders. The report shall be
19 submitted to the Assembly Committee on Transportation and the
20 Assembly Committee on Natural Resources, and to the Senate
21 Committee on ~~Transportation and Housing~~ *Transportation, the*
22 *Senate Committee on Housing*, and the Senate Committee on
23 Environmental Quality. *To assist in the creation of the report,*
24 *each metropolitan planning organization shall submit data to the*
25 *state board that delineates how transportation funds have been*
26 *spent in relation to the sustainable communities strategy and*
27 *describes whether that spending has lead to an increase or*
28 *decrease in vehicle miles traveled. The state board shall adopt a*
29 *regulation to require a metropolitan planning organization to*
30 *provide any data the state board determines is necessary to fulfill*
31 *the requirements of this clause and subparagraph (O).*

32 (K) Neither a sustainable communities strategy nor an alternative
33 planning strategy regulates the use of land, nor, except as provided
34 by subparagraph (J), shall either one be subject to any state
35 approval. Nothing in a sustainable communities strategy shall be
36 interpreted as superseding the exercise of the land use authority
37 of cities and counties within the region. Nothing in this section
38 shall be interpreted to limit the state board's authority under any
39 other ~~provision of~~ law. Nothing in this section shall be interpreted
40 to authorize the abrogation of any vested right whether created by

1 statute or by common law. Nothing in this section shall require a
2 city's or county's land use policies and regulations, including its
3 general plan, to be consistent with the regional transportation plan
4 or an alternative planning strategy. Nothing in this section requires
5 a metropolitan planning organization to approve a sustainable
6 communities strategy that would be inconsistent with Part 450 of
7 Title 23 of, or Part 93 of Title 40 of, the Code of Federal
8 Regulations and any administrative guidance under those
9 regulations. Nothing in this section relieves a public or private
10 entity or any person from compliance with any other local, state,
11 or federal law.

12 (L) Nothing in this section requires projects programmed for
13 funding on or before December 31, 2011, to be subject to the
14 provisions of this paragraph if they (i) are contained in the 2007
15 or 2009 Federal Statewide Transportation Improvement Program,
16 (ii) are funded pursuant to ~~Chapter~~ *the Highway Safety, Traffic*
17 *Reduction, Air Quality, and Port Security Bond Act of 2006*
18 *(Chapter 12.49 (commencing with Section 8879.20) of Division*
19 *1 of Title 2, 2), or (iii) were specifically listed in a ballot measure*
20 ~~prior to~~ *before* December 31, 2008, approving a sales tax increase
21 for transportation projects. Nothing in this section shall require a
22 transportation sales tax authority to change the funding allocations
23 approved by the voters for categories of transportation projects in
24 a sales tax measure adopted ~~prior to~~ *before* December 31, 2010.
25 For purposes of this subparagraph, a transportation sales tax
26 authority is a district, as defined in Section 7252 of the Revenue
27 and Taxation Code, that is authorized to impose a sales tax for
28 transportation purposes.

29 (M) A metropolitan planning organization, or a regional
30 transportation planning agency not within a metropolitan planning
31 organization, that is required to adopt a regional transportation
32 plan not less than every five years, may elect to adopt the plan not
33 less than every four years. This election shall be made by the board
34 of directors of the metropolitan planning organization or regional
35 transportation planning agency no later than June 1, 2009, or
36 thereafter 54 months ~~prior to~~ *before* the statutory deadline for the
37 adoption of housing elements for the local jurisdictions within the
38 region, after a public hearing at which comments are accepted
39 from members of the public and representatives of cities and
40 counties within the region covered by the metropolitan planning

1 organization or regional transportation planning agency. Notice
2 of the public hearing shall be given to the general public and by
3 mail to cities and counties within the region no later than 30 days
4 ~~prior to~~ before the date of the public hearing. Notice of election
5 shall be promptly given to the Department of Housing and
6 Community Development. The metropolitan planning organization
7 or the regional transportation planning agency shall complete its
8 next regional transportation plan within three years of the notice
9 of election.

10 (N) Two or more of the metropolitan planning organizations
11 for Fresno County, Kern County, Kings County, Madera County,
12 Merced County, San Joaquin County, Stanislaus County, and
13 Tulare County may work together to develop and adopt
14 multiregional goals and policies that may address interregional
15 land use, transportation, economic, air quality, and climate
16 relationships. The participating metropolitan planning organizations
17 may also develop a multiregional sustainable communities strategy,
18 to the extent consistent with federal law, or an alternative planning
19 strategy for adoption by the metropolitan planning organizations.
20 Each participating metropolitan planning organization shall
21 consider any adopted multiregional goals and policies in the
22 development of a sustainable communities strategy and, if
23 applicable, an alternative planning strategy for its region.

24 *(O) After completing the report described in clause (iv) of*
25 *subparagraph (J), due by September 1, 2026, and after completing*
26 *each subsequent report pursuant to clause (iv) of subparagraph*
27 *(J), the state board shall determine if the metropolitan planning*
28 *organization is on track to meet its greenhouse gas emission*
29 *reduction target for 2035. If the state board determines that a*
30 *metropolitan planning organization is not on track to meet its 2035*
31 *target, the state board shall notify the California Transportation*
32 *Commission of this determination for purposes of Section 14530.1.*

33 (3) (A) An action element that describes the programs and
34 actions necessary to implement the plan and assigns
35 implementation responsibilities. The action element may describe
36 all transportation projects proposed for development during the
37 20-year or greater life of the plan. The action element shall consider
38 congestion management programming activities carried out within
39 the region.

1 (B) *If a sustainable communities strategy is prepared pursuant*
2 *to paragraph (2), the action element shall also specifically identify*
3 *near and long-term steps to be taken to implement the sustainable*
4 *communities strategy and achieve the greenhouse gas emission*
5 *reduction targets established pursuant to paragraph (2). Each*
6 *metropolitan planning organization shall monitor progress toward*
7 *implementing these steps and report that progress to the state*
8 *board for inclusion in the report prepared pursuant to clause (iv)*
9 *of subparagraph (J) of paragraph (2).*

10 (4) (A) A financial element that summarizes the cost of plan
11 implementation constrained by a realistic projection of available
12 revenues. The financial element shall also contain
13 recommendations for allocation of funds. A county transportation
14 commission created pursuant to *the County Transportation*
15 *Commissions Act (Division 12 (commencing with Section ~~130000~~*
16 *130000) of the Public Utilities Code Code) shall be responsible*
17 *for recommending projects to be funded with regional improvement*
18 *funds, if the project is consistent with the regional transportation*
19 *plan. The first five years of the financial element shall be based*
20 *on the five-year estimate of funds developed pursuant to Section*
21 *14524. The financial element may recommend the development*
22 *of specified new sources of revenue, consistent with the policy*
23 *element and action element.*

24 (B) The financial element of transportation planning agencies
25 with populations that exceed 200,000 persons may include a project
26 cost breakdown for all projects proposed for development during
27 the 20-year life of the plan that includes total expenditures and
28 related percentages of total expenditures for all of the following:

- 29 (i) State highway expansion.
- 30 (ii) State highway rehabilitation, maintenance, and operations.
- 31 (iii) Local road and street expansion.
- 32 (iv) Local road and street rehabilitation, maintenance, and
33 operation.
- 34 (v) Mass transit, commuter rail, and intercity rail expansion.
- 35 (vi) Mass transit, commuter rail, and intercity rail rehabilitation,
36 maintenance, and operations.
- 37 (vii) Pedestrian and bicycle facilities.
- 38 (viii) Environmental enhancements and mitigation.
- 39 (ix) Research and planning.
- 40 (x) Other categories.

1 (C) The metropolitan planning organization or county
2 transportation agency, whichever entity is appropriate, shall
3 consider financial incentives for cities and counties that have
4 resource areas or farmland, as defined in Section 65080.01, for
5 the purposes of, for example, transportation investments for the
6 preservation and safety of the city street or county road system
7 and farm-to-market and interconnectivity transportation needs.
8 The metropolitan planning organization or county transportation
9 agency, whichever entity is appropriate, shall also consider
10 financial assistance for counties to address countywide service
11 responsibilities in counties that contribute toward the greenhouse
12 gas emission reduction targets by implementing policies for growth
13 to occur within their cities.

14 (c) Each transportation planning agency may also include other
15 factors of local significance as an element of the regional
16 transportation plan, including, but not limited to, issues of mobility
17 for specific sectors of the community, including, but not limited
18 to, senior citizens.

19 (d) Except as otherwise provided in this subdivision, each
20 transportation planning agency shall adopt and submit, every four
21 years, an updated regional transportation plan to the California
22 Transportation Commission and the Department of Transportation.
23 A transportation planning agency located in a federally designated
24 air quality attainment area or that does not contain an urbanized
25 area may at its option adopt and submit a regional transportation
26 plan every five years. When applicable, the plan shall be consistent
27 with federal planning and programming requirements and shall
28 conform to the regional transportation plan guidelines adopted by
29 the California Transportation Commission. ~~Prior to~~ *Before* adoption
30 of the regional transportation plan, a public hearing shall be held
31 after the giving of notice of the hearing by publication in the
32 affected county or counties pursuant to Section 6061.

33 SEC. 4. Section 75132 is added to the Public Resources Code,
34 to read:

35 75132. (a) An interagency working group is hereby established,
36 to be administered by the council, with the following membership:

- 37 (1) The members of the council.
- 38 (2) The Secretary for Environmental Protection.
- 39 (3) The Secretary of the Natural Resources Agency.
- 40 (4) The Secretary of Transportation.

- 1 (5) The Secretary of the Department of Housing and Community
2 Development.
- 3 (6) The Chair of the State Air Resources Board.
- 4 (7) The Chair of the California Transportation Commission.
- 5 (8) The Director of the Office of Planning and Research.
- 6 (9) The Director of the State Department of Public Health.
- 7 (10) The Executive Director of the council.
- 8 (11) Four representatives from regional and local governments
9 with each of the chairs of the State Air Resources Board and the
10 California Transportation Commission to choose two members
11 each.
- 12 (b) The interagency working group shall develop and implement
13 a State Mobility Action Plan for Healthy Communities to ensure
14 that regional growth and development is designed and implemented
15 in a manner that will help achieve the state’s environmental, equity,
16 climate, health, and housing goals.
- 17 (c) (1) The interagency working group shall identify in the State
18 Mobility Action Plan for Healthy Communities actions needed to
19 achieve the reductions in vehicle miles traveled necessary to meet
20 the greenhouse gas emission reduction targets established pursuant
21 to all of the following:
 - 22 (A) Section 65080 of the Government Code.
 - 23 (B) Section 38566 of the Health and Safety Code.
 - 24 (C) Executive Order B-55-18.
- 25 (2) The actions identified pursuant to paragraph (1) shall include
26 measures to accomplish all of the following:
 - 27 (A) Overcome identified obstacles to aligning state
28 transportation funds with climate, health, equity, and conservation
29 goals, including, but not limited to, those identified in paragraph
30 (1).
 - 31 (B) Plan and implement development, including in communities
32 identified pursuant to Section 65302.10 of the Government Code,
33 to help regions meet the requirements of Section 65080 of the
34 Government Code.
 - 35 (C) Provide increased and equitable travel options that supports
36 infill development and offers economic development, access to
37 jobs and other opportunities, and access to affordable housing,
38 including for underserved communities, including in disadvantaged,
39 unincorporated communities.

- 1 (D) Promote innovative mobility options that further the goals
2 of paragraph (1) and fosters greater livability, access to
3 destinations, and compact infill development rather than
4 accelerating sprawl.
- 5 (E) Protect disadvantaged communities, renters, low-income
6 people, and other vulnerable populations from displacement.
- 7 (F) Identify responsible parties at the state, regional, and local
8 levels to implement the actions identified pursuant to paragraph
9 (1).
- 10 (G) Identify any obstacles, including, but not limited, to data
11 gaps, at the regional and local level that inhibit monitoring the
12 progress toward and compliance with:
- 13 (i) Section 65080 of the Government Code.
14 (ii) Section 38566 of the Health and Safety Code.
15 (iii) Executive Order B-55-18.
- 16 (d) The interagency working group shall establish both of the
17 following:
- 18 (1) Definitive timelines for the development and implementation
19 of the actions identified pursuant to paragraph (1) of subdivision
20 (c).
- 21 (2) An investment strategy designed to assist local and regional
22 governments to meet the greenhouse gas emission reduction targets
23 established pursuant to Section 65080 of the Government Code
24 that includes, but is not limited to, local, state and federal funding
25 sources.
- 26 (e) In developing the State Mobility Action Plan for Healthy
27 Communities, the interagency working group shall solicit input
28 from stakeholders and hold at least four public workshops in
29 geographically diverse locations throughout the state to receive
30 feedback and public comment.
- 31 (f) The State Mobility Action Plan for Healthy Communities
32 shall be completed by December 31, 2020, and shall be submitted
33 to the Legislature pursuant to Section 9795 of the Government
34 Code.
- 35 (g) By September 1, 2024 and every four years thereafter,
36 notwithstanding Section 10231.5 of the Government Code, the
37 interagency working group shall update the State Mobility Action
38 Plan for Healthy Communities based on the findings of the
39 assessment completed by the State Air Resources Board pursuant
40 to clause (iv) of subparagraph (J) of paragraph (2) of subdivision

1 (b) of Section 65080 of the Government Code and shall submit
2 the updated report to the Legislature pursuant to Section 9795 of
3 the Government Code.

4 SEC. 5. If the Commission on State Mandates determines that
5 this act contains costs mandated by the state, reimbursement to
6 local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

O



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

February 19, 2019

Mr. Brian Kelly (via electronic mail to brian.kelly@hsr.ca.gov)
California High-Speed Rail Authority
770 L Street, Suite 620
Sacramento, California 95814

Subject: Notice of Intent to Terminate Cooperative Agreement No. FR-HSR-0118-12-01-01

Dear Mr. Kelly,

This letter provides notice to the California High-Speed Rail Authority (CHSRA) that the Federal Railroad Administration (FRA) intends to terminate Cooperative Agreement No. FR-HSR-0118-12-01-01 (Agreement) effective March 5, 2019. Following termination, FRA also intends to promptly de-obligate the full \$928,620,000 obligated under the Agreement.

FRA has determined that CHSRA has materially failed to comply with the terms of the Agreement and has failed to make reasonable progress on the Project (as defined in the Agreement), significantly endangering substantial performance. Considering this determination, FRA intends to exercise its right to terminate the Agreement, consistent with Section 23 of the Agreement.¹ FRA's determination is based on many factors, including:

- CHSRA's failures relating to required State expenditures necessary to advance the Project according to the Project's schedule.
 - CHSRA has failed to achieve the State contribution rates described in its quarterly Funding Contribution Plan (FCP). For example, CHSRA committed to a \$141.8 million State contribution to advance final design and construction activities in December 2018, but reported only \$47.9 million of actual expenditures in that month. This almost \$100 million difference shows not only CHSRA's inability to deliver State contributions as outlined in the FCP, it is also an example of CHSRA's failure to advance construction work and expend funds at a pace necessary to complete the Project according to its schedule. Other months show the same shortfall of expenditures as compared to the State contribution commitment.

¹ Section 22902(a) of Title 49 (Previously codified at 24402(a) of Title 49) authorizes the Secretary of Transportation to require terms, conditions, and other requirements that the Secretary deems necessary or appropriate on grants awarded under Section 301 of the Passenger Rail Investment and Improvement Act of 2008, which is one of the authorized programs included in the High-Speed Intercity Passenger Rail grant program. Additionally, 49 CFR § 18.43(a), provides the general authority for Federal awarding agencies to terminate awards if the grantee "materially fails to comply with any term of [the] award, whether stated in a Federal statute or regulations, an assurance, a notice of award, or anywhere else."

- Based on CHSRA Board of Directors reports, FRA has determined that CHSRA will not complete the Project by 2022, the end of the Agreement's period of performance.
 - FRA's evaluation of the various documents submitted to FRA, or publicly available (e.g., CHSRA's 4th Quarter 2018 Summary Schedule and CHSRA's February 2019 Finance and Audit Committee reports) shows CHSRA cannot complete the Project by 2022.
 - When compared against the amount of funds expended, the pending contractual completion dates show CHSRA is failing to make the type of sustained progress necessary to meet the 2022 deadline. For example, according to CHSRA's February 2019 Finance and Audit Committee report on Construction Package (CP) 4, the contractor has expended 25.1% of the contract price but approximately 86.5% of contract's period of performance has elapsed, demonstrating that CHSRA is not advancing construction work at the pace necessary to maintain the Project's schedule. Numerous prior quarterly reports reflect the same failure to expend contract dollars consistent with the contract period of performance.
- CHSRA's failure to submit required critical grant deliverables adequate to demonstrate CHSRA is effectively managing delivery of the Project. Such deliverables include Funding Contribution Plans.
 - CHSRA has failed to provide FRA with timely and satisfactory financial reports and other related deliverables. Without these deliverables, CHSRA has not demonstrated that it is making reasonable progress or effectively managing the Project. For example, since 2016, FRA has found over 40 reports and deliverables are delinquent or do not contain the type of information or level of detail necessary to allow FRA to oversee CHSRA's performance of the Project; this represents a very large portion of the reports and deliverables due over that timeframe. A portion of these delinquent or unsatisfactory deliverables are also required by Cooperative Agreement No. FR-HSR-0009-10-01-06; however, they generally show CHSRA's repeated failure to meet its obligations to FRA.
- Based on findings from FRA's oversight and monitoring, CHSRA has failed to take the appropriate corrective actions to ensure delivery of the Project.
 - FRA has regularly communicated its concerns on the above issues to CHSRA through: routine monitoring with CHSRA staff; individual meetings with CHSRA leadership; Quarterly Executive Meetings; and feedback on the Authority's reports and deliverables as part of FRA's routine business practice. CHSRA has consistently failed to take the appropriate corrective actions.

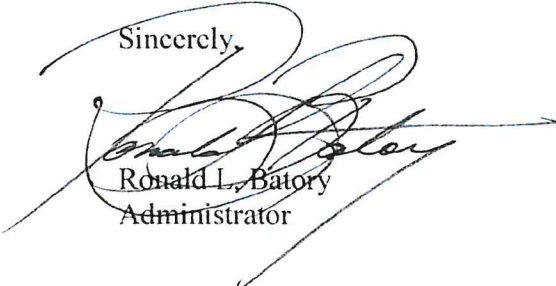
- FRA identified areas of interest in the 2017 annual monitoring (e.g., failure to develop and submit to FRA realistic Project schedules and budgets based on past performance and trends). During its most recent November 2018 monitoring, FRA found that CHSRA failed to satisfactorily address those areas of interest.

Reinforcing FRA's concerns about CHSRA's past performance, and the likelihood CHSRA will deliver on its obligations, is the significant change in the State of California's plans for its high-speed rail system. As described in the Agreement and in the various CHSRA applications for Federal financial assistance, the Project is a component part of the larger high-speed rail system that would, ultimately, connect San Francisco in the north and Los Angeles and Anaheim in the south. During his recent State-of-the-State address, Governor Newsom presented a new proposal that represents a significant retreat from the State's initial vision and commitment and frustrates the purpose for which Federal funding was awarded (i.e., an initial investment in the larger high-speed rail system).

If you believe there is information showing that: (1) CHSRA has satisfied its commitments and obligations under the Agreement; (2) is making reasonable progress to deliver the Project; and (3) that the Governor's announcement does not constitute a fundamental change in the purpose of the overall project for which Federal funding was awarded, FRA will take that information into consideration prior to taking any final action regarding termination of the Agreement. You may submit any such information before March 5, 2019, to Ms. Jamie Rennert, FRA's Director of Program Delivery at jamie.rennert@dot.gov.

FRA reserves its rights under all other grant or cooperative agreements with CHSRA and is exploring all available legal options, including termination of Cooperative Agreement No. FR-HSR-0009-10-01-06 and the recovery of the Federal funds expended under that Cooperative Agreement.

Sincerely,



Ronald L. Batory
Administrator

By e-mail to: brian.kelly@hsr.ca.gov

cc: The Honorable Gavin Newsom
Governor
State of California

The Honorable Brian C. Annis
Secretary
California State Transportation Agency



March 4, 2019

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GOVERNOR



Ms. Jamie Rennert
Director, Office of Program Delivery
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: Notice of Intent to Terminate Cooperative Agreement No. FR-HSR-0118-12-01-01

Dear Ms. Rennert:

I am responding on behalf of the California High-Speed Rail Authority (“CHSRA”) to Ronald Batory’s February 19, 2019 notification that the Federal Railroad Administration (“FRA”) intends to terminate Cooperative Agreement No. FR-HSR-0118-12-01-01 (“FY10 Agreement” or “Agreement”) and de-obligate the \$928,620,000 obligated under the Agreement effective March 5, 2019.

I urge the FRA to reconsider the precipitous and unjustified action it is contemplating. Termination of the FY10 Agreement would be unwarranted, unprecedented, and legally indefensible, and it would gravely harm a historic project on which the FRA and the CHSRA have collaborated productively for nearly a decade.

As detailed below, the CHSRA is meeting its commitments under the FY10 Agreement and Cooperative Agreement No. FR-HSR-0009-10-01-06 (the “ARRA Agreement”). The CHSRA is making reasonable progress on the Project.¹ And, far from abandoning the ultimate vision of a California high-speed rail system running from northern to southern California, Governor Newsom is proposing billions of dollars in additional state funding to expand the initial construction project in the Central Valley required by the ARRA Agreement. This expanded system will connect three of the largest cities in the Central Valley (Merced, Fresno, and Bakersfield), providing service to millions of individuals and transforming the economy of one of the nation’s most economically distressed regions, as well as providing important transit connectivity to Los Angeles, the Bay Area, and Sacramento. The threatened termination of funding, by contrast, would cause massive disruption, dislocation, and waste, damaging the region and endangering the future of high-speed rail in California and elsewhere in the nation.

Accordingly, the FRA should reconsider the rash and unlawful action it is contemplating and instead engage in reasoned and structured discussion with the CHSRA of its concerns. The FRA’s threat to terminate funding under the FY10 Agreement on two weeks’ notice is a sharp departure from the productive, collaborative relationship previously enjoyed by the FRA and the CHSRA. In light of that relationship, and the disruption and waste that abrupt termination of the Agreement would cause, we owe it to the residents of the Central Valley, state and federal

¹ Unless otherwise indicated by context, “Project” refers to Tasks 1 through 10 listed in the FY10 Agreement and the ARRA Agreement.

taxpayers, and the nation as a whole to continue cooperating on our historic and transformative high-speed rail project.

EXECUTIVE SUMMARY

The February 19, 2019 notification letter from Mr. Batory (the "Notice") asserts that the CHSRA has materially breached the FY10 Agreement based on four factors. But none of the conduct identified by the Notice constitutes a material breach of the Agreement, and the Notice's assertions of additional unidentified breaches are contradicted by the FRA's previous acknowledgements that the CHSRA has been complying with the essentially identical terms of the ARRA Agreement.

For example, although the Notice asserts that the CHSRA has failed to make required expenditures, the only shortfall that it identifies is the failure to meet projected design and construction expenditures in December 2018. Deviations from projected expenditures are, however, routine in any large construction project, and nothing in the FY10 Agreement makes such a deviation a breach, much less a material one.

Moreover, far from asserting any prior material breaches, the FRA repeatedly has acknowledged that the CHSRA was complying with its obligations. Under the ARRA Agreement, the FRA was permitted to release funds only if the CHSRA was complying with the Agreement. Nevertheless, the FRA released all the ARRA funds, making over 450 separate payments to the CHSRA from March 2011 to September 2017, when the account closed, thereby acknowledging the CHSRA's compliance with its spending (and other) obligations.

The Notice's other assertions of non-compliance are similarly unsupported. While the Notice concludes that the CHSRA will not complete the Project by the end of 2022, the only documents cited in support of this conclusion expressly state that the Project will be completed by then. Even more fundamentally, the Notice does not point to any "time is of the essence" clause or other provision in the Agreement making completion by 2022 material. The Notice similarly fails to identify any specific deliverables that the CHSRA has failed to satisfy, much less to explain why such failures would be material and cannot be cured. Finally, contrary to the Notice's assertion, the CHSRA has not failed to take any corrective action required by the FRA: indeed, the FRA has notified the CHSRA of only one corrective action, which the CHSRA completed.

The Notice also asserts that the CHSRA has failed to make reasonable progress on the Project. Here again, the Notice's assertion is belied by the FRA's prior conduct. In addition to prohibiting the release of funds absent compliance, the ARRA Agreement prohibited the release of funds unless the CHSRA was making adequate and timely progress. As a consequence, when FRA released funds under that Agreement from March 2011 through September 2017, it necessarily acknowledged that the CHSRA was making reasonable progress. Moreover, nothing in the Notice suggests that the CHSRA has stopped doing so. To the contrary, in the last year the CHSRA has made important progress in completing the Project. Indeed, there are now 24 active or completed construction sites in the Central Valley, employing more than 2,600 workers, who are realigning roads and utilities, building bridges, viaducts, and crossings, as well as grading roads and constructing embankments.

California has not changed the overall purpose of its High-Speed Rail Plan, nor has it frustrated the purpose of the Agreement. To the contrary, Governor Newsom has reiterated his support for the vision of his predecessors. He is, however, focused on completing the current project in the Central Valley and maximizing the benefits of that project. Far from frustrating the purpose of the Agreement, he is proposing to expand the construction contemplated by the Agreement so that the first building block of

the high-speed rail program will bring the benefits of high-speed rail to three of the largest cities in the Central Valley and three of the fastest growing counties in California.

The threatened termination of the FY10 Agreement on two weeks' notice is a sharp and wasteful departure from the FRA's fruitful collaboration with the CHSRA, which is necessary to complete any large infrastructure project. If this abrupt termination occurs, the FRA will not only endanger the historic project on which it has collaborated for nearly a decade; it also will set a troubling precedent that may undermine future infrastructure projects funded through state-federal partnerships. Accordingly, the CHSRA urges the FRA to reconsider its contemplated action or, at a minimum, to engage in structured discussions to share facts, clarify misunderstandings, and resolve disagreements.

DISCUSSION

I. THE CHSRA HAS NOT MATERIALLY BREACHED THE FY10 AGREEMENT

The Notice asserts that the CHSRA has materially breached the terms of the FY10 Agreement based on four specified factors.² The Notice, however, fails to identify any material breaches and thus fails to provide any legitimate ground for terminating the Agreement for non-compliance.

A. The CHSRA has Committed and Spent More Than Sufficient State Funds for the Project

The first factor specified in the Notice is the failure to make required State expenditures. The Notice, however, identifies only one specific shortfall: the CHSRA's expenditure of \$47.9 million rather than the \$141.8 projected on final design and construction in December 2018. It is true that the last quarterly Funding Contribution Plan projected design and construction expenditures of \$141.8 million in December 2018, and that only \$47.9 million was actually spent. But nothing in the FY10 Agreement required a \$141.8 million expenditure in December 2018 or that the CHSRA meet its expenditure projections each month.

Projections are just estimates for a given period. A deviation from such estimates is not a material breach. In any civil infrastructure project, the exact pace of the final design and construction activities varies over the duration of the project. If the projected progress in one month does not match the actual progress, the pace of the progress in subsequent months can be accelerated. This is especially true with delays early in a project when critical path items are being constructed because such delays may delay the commencement of others. But later noncritical path items can be accelerated to make up for the lost time and bring the project back on schedule.

The Notice's assertion that the current pace of state expenditures breaches the FY10 Agreement is also puzzling because CHSRA is not yet making expenditures under the FY10 Agreement. The FY10 Agreement funds the final set of tasks needed to complete the Project. The rest of the funding for the Project is being provided by the State and by the ARRA Agreement. Although the federal money granted under the ARRA Agreement was exhausted in September 2017, when the ARRA appropriation account closed, the CHSRA is still in the process of spending \$2.5 billion in matching state funds under the ARRA Agreement.

² The Notice states that that the FRA's assertion of material breach is based on "many" factors, but only identifies four areas of noncompliance. The CHSRA cannot respond to allegations concerning factors that have not been identified, and it would be fundamentally unfair for the FRA to terminate the Agreement based on factors that it has not given the CHSRA a chance either to contest or to cure.

Far from finding that the State materially breached the terms of the ARRA Agreement, the FRA repeatedly has recognized the CHSRA's compliance with that agreement. Under Section 7(b) of the General Provisions in Attachment 2 of the ARRA Agreement, the FRA may authorize release of funds only if it receives adequate documentation of a cost *and* the CHSRA is "complying with its obligations" under the ARRA Agreement. Pursuant to this provision, the FRA made over 450 separate payments to CHSRA from March 2011 through September 2017, thereby acknowledging that the CHSRA has been complying with its obligations.

Moreover, California is well ahead of schedule in meeting its matching obligation under the ARRA Agreement. As of December 2018, the CHSRA has submitted for FRA approval \$970 million in state matching funds, which is 39% of California's \$2.5 billion match requirement. As only 26% of the period for achieving this match has expired, California is plainly on track to meet its state match funding obligation under the ARRA Agreement. Furthermore, in 2018 the CHSRA committed an additional \$3.1 billion in state funding toward the Project, which would result in a total State contribution of 71% of the Project's cost. Thus, the State has committed to more than its fair share of the Project, and there has been no breach of the State's spending obligations.

B. The CHSRA Remains Committed to Completing the Project by December 31, 2022

The second factor identified by the Notice is that the CHSRA will not complete the Project by December 31, 2022. Here again, the facts identified by the Notice fall short.

The Notice asserts that the FRA's evaluation of various documents shows that the CHSRA cannot complete the Project by the end of 2022. But the only documents that the Notice identifies are CHSRA's Fourth Quarter 2018 Summary Schedule and its February 2019 Finance and Audit Committee reports. Far from showing that the Project will not be completed by 2022, the Fourth Quarter 2018 Summary Schedule shows that most work on the Project will be completed by March 2022 and the four final tasks by the end of that year. The Notice's reliance on the 2019 Finance and Audit Committee Reports is equally misplaced. According to the monthly report that the committee received this February, the construction packages in the Central Valley will be completed by December 31, 2020, August 31, 2021, March 31, 2022, and December 31, 2022.

Completing these packages on this schedule will be challenging. But as most recently outlined at the February 19, 2019 Finance and Audit Committee meeting with the public in attendance, the CHSRA acknowledges the risks to the project schedule that must be monitored and mitigated to keep the Project on track. The Authority is therefore implementing strategies to meet those challenges, and its Chief Operating Officer has set out the construction expenditure plan required to meet the December 31, 2022 deadline as well as creating cross-functional Strike Teams to clear project work sites, establishing teams to resolve commercial contractor charges and claims, and appointing an Executive COO and a Deputy COO focused solely on increasing construction productivity. The Notice does not—and cannot—explain why despite these actions the CHSRA cannot complete the Project by the end of 2022.

The FRA also notes one report submitted to the CHSRA's Finance and Audit Committee shows that a contractor has expended only 25.1% of a contract price even though 86.5% of the contract period has elapsed. But this report concerns "Construction Package 4," which is just one of four contract packages. The Notice offers no reason to believe that a delay in the completion of this one aspect of the Project will prevent completion of the overall Project by December 31, 2022, which is still more than three years away. Indeed, as the FRA knows, the CHSRA has been in active negotiations to correct the completion date for that contract package consistent with completion of the overall Project by the end of 2022.

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Even more fundamentally, the Notice does not explain why a delay in completion of the overall Project would constitute a material breach of the FY10 Agreement. The Agreement contains no “time is of the essence” provision. Nor does the Agreement’s termination provision state that failure to achieve 100% completion by the end of 2022 constitutes grounds for termination. To the contrary, Section 23.c of the General Provisions in Attachment 2 of the Agreement states that “[e]xpiration of any Project time period established for this Project does not, by itself, constitute an expiration or termination of this Agreement.”

It is also surprising to us that the FRA is now finding the Project hopelessly and fatally delayed, because the agency has refused for nearly a year to take simple actions that would accelerate the Project. In June 2018, the CHSRA applied to conduct environmental reviews under the National Environment Policy Act concurrent with our robust state environmental review process. As staff at the United States Department of Transportation as well as the FRA have acknowledged, this simple measure would save months in project review (as well as millions of dollars in redundant expenses). Nevertheless, the FRA has not acted on our application, and, to make matters worse, since last August it has failed to conduct even the most routine review and approval of documents necessary to advance the environmental clearance process. The FRA should not point to delays, assert that future deadlines will be missed, and abandon the Project when it has failed to take simple steps to reduce delays.

The need to amend an interim schedule does not suggest or establish that a project cannot be completed or that its ultimate value will be diminished, and it certainly provides no reason to terminate the FRA’s participation in a multi-billion-dollar project. The FRA should be working with the CHSRA on ways to limit those delays and expedite completion of the Project. Large design-build public transportation projects encounter scores of challenges and therefore require persistence, creativity, and inter-agency cooperation.

C. The CHSRA Is Meeting Its Obligations to Submit Deliverables

The Notice asserts that the CHSRA has failed to submit “critical grant deliverables,” including Funding Contribution Plans. In particular, it asserts that the FRA has found over 40 reports and deliverables either delinquent or lacking sufficient information. This is the first time that the FRA has identified deliverables as an issue so major that it might justify termination of the FY10 Agreement, and because the Notice fails to identify any particular report or deliverable, much less the deficiency in it, the CHSRA is not in a position to respond fully to this concern at this time. Nonetheless, it is clear that these asserted deficiencies do not justify termination of the Agreement.

First, a lack of sufficient information in deliverables is no basis for declaring a material breach, much less termination, because such deficiencies are obviously curable.

Second, while the Notice asserts that the FRA has found 40 reports and deliverables deficient since 2016, the FRA previously recognized that there were no material deficiencies before September 2017. As noted above, until the ARRA Agreement funds were exhausted in September 2017, the FRA approved payments under that agreement, thereby acknowledging that CHSRA was in compliance with the agreement. As the deliverables under the ARRA Agreement overlap with those under the FY10 Agreement, there could not have been any material breach of the latter concerning deliverables prior to September 2017. Moreover, nothing in the Notice suggests that any deficiencies since that time are any different in kind or number than those before.

Third, the CHSRA has made substantial submissions to the FRA. In total, it has delivered to the FRA 121 documents and plans specifically identified in the Agreements, including detailed reports, environmental documents, design plans, and other plans. The CHSRA is unaware of any deliverables

that have not been submitted other than four that were due at the end of last year, which the CHSRA has been unable to deliver because of the government shutdown and the FRA's subsequent delay in providing routine guidance concerning the content of those documents requested by the CHSRA.

While some other deliverables have been delayed, many of the delays were also attributable to the FRA. For example, environmental deliverables were delayed when the FRA ceased all work on environmental approvals pending resolution to the CHSRA's NEPA Assignment request. Other deliverables, such as the Interim Service Development Plan, were delayed while the CHSRA awaited guidance on the content of those documents, and still others such as the Program Management Plan were delayed because the FRA changed the guidance it provided or requested additional information. Because the Notice fails to identify the deliverables it contends were deficient, it is impossible to say how many of the deficiencies asserted by the FRA are attributable to its own action or inaction.

D. The CHSRA Has Not Failed to Take Corrective Actions or Respond to The FRA's Monitoring

Finally, the Notice asserts that the CHSRA has consistently failed to take appropriate corrective action. That is simply false. Under the procedures established by the FRA, if the FRA determines that a corrective action is required, it is supposed to issue a finding and a notice of the corrective actions required, usually in its monitoring reports. The FRA has issued only one such finding and notice under the ARRA and FY10 Agreements. That was in a 2014 review related to the CHSRA's oversight of a contractor's compliance with permit requirements, and the CHSRA promptly implemented a corrective action plan, which resolved the matter.

The FRA's own reports confirm that, contrary to the Notice's suggestion, the CHSRA has not failed to take corrective actions. The last monitoring report CHSRA received from the FRA was dated February 12, 2018, and the summary table of items requiring corrective action in the report is empty.

The Notice asserts that the FRA identified areas of interest in the 2017 annual monitoring review, which the CHSRA failed to satisfactorily address. This does not support the Notice's assertion that the CHSRA has failed to take corrective actions because *the FRA never notified the CHSRA that corrective action was required.*

Moreover, contrary to the Notice's suggestion, the CHSRA has spent considerable time and effort responding to issues raised in the FRA's annual monitoring reviews. Indeed, every year the FRA and the CHSRA conduct a Site Monitoring Review, which includes a one-day site review at the CHSRA's Sacramento headquarters office and three days in the Central Valley reviewing each construction package (this includes a one-day site tour of the construction packages). This week-long review covers multiple topics and involves every aspect of the program from grant management to construction oversight, providing the CHSRA and the FRA an opportunity to review issues that have arisen over the year and ongoing future needs and concerns. There has never been a suggestion before that the CHSRA fails to address the issues raised by the FRA or has failed to satisfactorily address them.

The Notice offers only one example of a supposed failure to respond to its monitoring: the CHSRA, it asserts, has not developed "realistic Project Schedules and budgets based on past performance and trends." In fact, however, the CHSRA has made extensive efforts to update and improve its scheduling and budgeting process. For example, in June 2018, as part of its business plan process, the CHSRA completed an updated baseline cost estimate and budget to complete the work underway, an updated schedule for completion, and an implementation plan for passenger service and completion of the federal grant agreement.

In addition, numerous examples of the CHSRA responding to the FRA concerns can be cited. For example:

- **Staff Capability and Capacity**—In response to the FRA’s suggestion that the CHSRA reorganize staff to facilitate project delivery and fill key positions with project delivery experts, in August 2017, the CHSRA created a new Program Delivery Office, restructured to focus on program delivery and made improvements in its governance and decision-making structure to improve internal communications.
- **Internal Processes**—In response to the FRA’s suggestion to implement a control system addressing Program Management Plan requirements, the CHSRA established a Program Management and Oversight branch and implemented a more formalized process of configuration management and change control.
- **Service Development Planning**—In response to the FRA’s suggestion that the CHSRA explain the independent utility of the Central Valley portion of the high-speed rail program, the CHSRA contracted with an Early Train Operator consultant, which evaluated different service options, including a Merced to Bakersfield approach, that were discussed in the CHSRA’s 2018 Business Plan and will be discussed further in a report to the Legislature in May 2019.
- **Right-of-Way Acquisitions**—In response to the FRA’s suggestion to increase the pace of right-of-way acquisitions, the CHSRA stepped up its acquisitions so, for example, acquisitions for Construction Package 4, increased from 39% complete in 2017 to 80% by December 2018. For all Construction Packages, 74% of the property needed has been delivered to the design-build contractors.

Here again, the Notice has failed to show any material breach of the terms of the FY10 Agreement that could justify termination of the Project.

II. THE CHSRA IS MAKING REASONABLE PROGRESS ON THE PROJECT

In addition to asserting that the CHSRA materially breached its commitments and obligations under the Agreement, the Notice contends that the CHSRA is not making reasonable progress on the Project. That is also wrong.

Since the CHSRA has not yet accessed FY10 Agreement funding as it spends down the required State matching dollars, progress must be measured against the ARRA Agreement. In releasing funds under the ARRA Agreement, however, the FRA has acknowledged that the CHSRA has been making reasonable progress. In addition to prohibiting payments absent compliance, the ARRA Agreement prohibited payments unless the CHSRA was “making adequate and timely progress toward Project completion.” As the FRA made over 450 payments under the ARRA Agreement from March 2011 through September 2017, the CHSRA must have been making adequate progress into at least the third quarter of 2017.

Nothing in the Notice shows that progress has materially stalled since then. To the contrary, CHSRA has continued to make substantial progress. Indeed, at this point:

- 90% of the design work on the Project has been completed, and 74% of the rights of way have been delivered to the CHSRA’s contractors;
- There are more than 24 active or completed construction sites in the Central Valley;

- State Route 99 has been realigned, and the realignment of other roads as well as utilities is in progress;
- Two overhead crossings, a bridge, and a viaduct have been completed; two other viaducts as well as a trench in Fresno are in progress; and abutments for bridges and ponds are being constructed;
- Over 44 miles of grading and embankment work is either finished or in progress; and
- In total, the Project has employed more than 2,600 workers in the Central Valley, involved 488 small businesses, and achieved nearly \$6 billion in economic output.

Overall, the CHSRA has made significant progress on multiple sections in the Central Valley portion of the high-speed rail program concurrently to more quickly deliver statewide mobility and environmental benefits. In light of these significant and visible achievements, it is critical for both the FRA and the CHSRA, as stewards of the significant taxpayer funds invested so far, to complete the Project. Otherwise, we risk both failure and the unthinkable abandonment of a partially completed Project that would not be fit for the purpose for which the taxpayers have made this investment.

III. CALIFORNIA HAS NOT CHANGED THE OVERALL PURPOSE OF THE HIGH-SPEED RAIL SYSTEM

The Notice's final objection is that Governor Newsom, in his recent State of the State Address, changed the overall goal for High-Speed Rail in California and made a proposal that frustrates the purpose for which federal funding was awarded. Nothing could be further from the truth.

In his State of the State Address, Governor Newsom expressly confirmed that he shares that ambitious vision for high-speed rail of his predecessors Governors Brown and Schwarzenegger. Moreover, as I made clear in a recent memorandum to the chairman of the High-Speed Rail Authority, the Authority's ultimate goal remains a high-speed rail system that connects San Francisco to Los Angeles/Anaheim and that eventually will reach north to Sacramento and south to San Diego. The Governor merely identified a pragmatic, near-term focus, which is to "get trains on the ground" in the Central Valley and to lay the foundation for the San Francisco to Los Angeles/Anaheim service. Like all mega-infrastructure projects, the California high-speed rail system will be completed in building blocks with each block placed in service upon completion with future funding and construction eventually expanding the system to its ultimate extent.

Far from frustrating the purpose of the FY10 and ARRA grants, the Governor's focus expands that purpose and maximizes the utility of the first building block in the high-speed rail program. These grants are for construction of the initial portion of the high-speed rail system, and they require the CHSRA to construct a 119-mile segment from Poplar Avenue, approximately 15 miles north of Bakersfield, to Madera. Governor Newsom is proposing to expand this project by 50 miles—with California bearing the expense of doing so—to reach south into downtown Bakersfield and north to Merced, so that this initial segment will connect three of the largest cities in the Central Valley (Merced, Fresno, and Bakersfield), three major universities and three of the fastest growing California counties, as well as providing important transit connectivity to the Altamont Corridor Express (ACE) and Amtrak traveling to the Bay Area and Sacramento and to bus services traveling from Bakersfield to Los Angeles.

This expansion will make the initial building block of the high-speed rail program more immediately productive, which furthers, rather than frustrates, the purpose of the federal grants. The expanded Central Valley project also furthers the ultimate goal of a statewide high-speed rail system by ensuring that the first step in California's high-speed rail system brings tangible benefits that will encourage extension to the San Francisco Bay area and then to the Los Angeles basin.

IV. THE THREATENED TERMINATION OF THE FY10 AGREEMENT IS A SHARP AND UNFORTUNATE DEPARTURE FROM PRIOR PRACTICE

In addition to being unjustified, the FRA's sudden threat to end the Project on two weeks' notice is a sharp—and wasteful—departure from its fruitful collaboration until now with the CHSRA.

For nearly a decade, the CHSRA and the FRA have been working together toward our common goal of achieving the first true high-speed rail system in the United States. A project of this magnitude faces challenges at every stage, from planning, funding, environmental review, and acquisition of private property to the physical challenges of construction that cannot be fully predicted or addressed until dirt is actually moved. Consequently, the cooperation and, at times, patience of numerous agencies and municipalities is required. Until now, the CHSRA and the FRA have enjoyed such cooperation including, among other things, amending the ARRA Agreement six times to accommodate various changes.

Together, the agencies have overcome numerous hurdles since the original execution of the grant agreements in 2010 and 2011. For example, in 2012, after litigation challenging the Project was filed, the FRA and the CHSRA renegotiated the ARRA grant terms to allow a tapered match payment arrangement whereby the federal ARRA funds would be used first to pay for capital costs until fully expended, which occurred in September 2017, followed by state match until the full match amount is spent. Similarly, in late 2013, as the same litigation was on appeal, the FRA and the CHSRA mutually agreed to slow down the project construction, pending the results of the appeal or access to alternative state matching funds. And the FRA and the CHSRA continued to cooperate under a tapered match arrangement to assure the full use of the federal ARRA funds prior to the September 2017 statutory deadline.

While much remains to be done, we are proud of the progress we have made. Terminating the FY10 Agreement now, especially without providing the CHSRA a fair and reasonable opportunity to be heard, would have grave consequences. Especially if paired with the clawback that the Notice threatens, termination would create uncertainty over the future of a project that has created 2,600 jobs in the Central Valley, a region that has struggled economically, and ultimately may leave that area strewn with unfinished bridges, overpasses, and viaducts.

This termination, should it go forward, also would set a troubling precedent that would undermine future infrastructure projects nationwide. Especially given the precipitous manner in which termination and withdrawal of funds has been threatened, the termination would cast doubt on the reliability of the federal government as a partner in delivering on *its* funding commitments. As a result, states may be unwilling to join the federal government in investing billions of dollars on future infrastructure projects, leaving the federal government with the unenviable choice of funding those projects itself or leaving them undone.

I urge the FRA and the Federal Government to focus on the important goal we have set together for California and the rest of the nation: to complete the first building block of a statewide high-speed rail system. That goal was established in partnership with the FRA in 2010 and 2011 when the ARRA and FY10 grant funds were awarded. Since that time, California has appropriated matching state funds, including Proposition 1A and Greenhouse Gas Reduction funds. Thus, based on the best available estimates the state and federal funds needed to satisfy capital costs to complete Central Valley construction, including right of way acquisition, construction management, environmental mitigation, final design, construction, and interim service, have all been committed or identified. Moreover, extensive construction is already underway. The FRA should not step away and waste all of these efforts.

At a minimum, in light of the massive disruption and waste that an abrupt termination would cause, I ask the FRA to agree to engage in a sincere effort to work through the issues raised in the Notice and save the

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nearly decade of collaboration on our historic high-speed rail project. Before any precipitous and potentially irreparable action is taken, the FRA should specify the deficiencies that the Notice only vaguely references and give the CHSRA an opportunity to respond to them individually and, where justified and still live, to discuss ways in which to cure or mitigate them. We also should engage in a meaningful discussion of how such issues may be cured in a more prompt and productive fashion without endangering a multibillion dollar project employing thousands of workers. And, finally, before concluding that the Project cannot be completed and abandoning it, the FRA officials should come to California and inspect the Project so that they can see for themselves both the great progress that has been made and the devastating harm that abandoning the Project at this stage would cause.

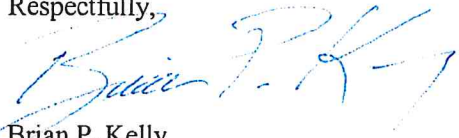
Please contact us so that we can begin to make these arrangements as soon as possible and remove any cloud over the Project. We owe it to taxpayers to continue our cooperation on this historic endeavor and to act in good faith as stewards of the funds spent and to be spent in the Agreement.

CONCLUSION

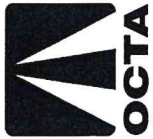
Based on the above, I urge the FRA to decide that the FY10 Agreement should not be terminated or, at a minimum, that it defer any final termination decision and meet constructively with the CHSRA to resolve any and all issues of concern and preserve the historic Project on which we have cooperated for so long.

Thank you for your consideration.

Respectfully,



Brian P. Kelly
Chief Executive Officer



Orange County Transportation Authority Legislative Matrix

2019 State Legislation Session
March 21, 2019

BILL NO. / AUTHOR	COMMENTARY	STATUS	OCTA POSITION / OTHER AGENCY POSITIONS
BILLS WITH POSITIONS			
<p>▶ AB 147 (Burke -- D) Use Taxes: Collection: Retailer Engaged in Business</p>	<p><i>Requires that sellers with no physical presence in the state collect and remit sales and use taxes under the U.S. Supreme Court's ruling in South Dakota v. Wayfair, Inc. by defining retailer as that any retailer that, in the preceding or current calendar year, sells more than \$500,000 worth of tangible personal property in California.</i></p>	<p>INTRODUCED: 12/14/2018 LOCATION: Assembly Appropriations Committee STATUS: 2/14/2019 AMENDED</p>	<p>Staff Recommends: SUPPORT Support: CA Retailers Association, CA Tax Reform Association, League of California Cities</p>
<p>AB 252 (Daly – D) Department of Transportation: Environmental Review</p>	<p>Extends indefinitely existing law which provides that the state consents to the jurisdiction of the federal courts with regard to the compliance, discharge, or enforcement of the environmental responsibilities it assumed as a participant in the federal surface transportation project delivery program.</p>	<p>INTRODUCED: 01/23/2019 LOCATION: ASSEMBLY STATUS: 01/23/2019 INTRODUCED.</p>	<p>SUPPORT Support: Self-Help Counties Coalition (Sponsor)</p>

BILL NO. / AUTHOR	COMMENTARY	STATUS	OCTA POSITION / OTHER AGENCY POSITIONS
<p>► SB 127 (Wiener -- D) Transportation Funding: Active Transportation: Streets</p>	<p>Establishes a Division of Active Transportation within the Department of Transportation, realigns statutory priorities for transportation programs funded by the State Highway Account, requires that three percent of funding for the State Highway Operation and Protection Program go to bicycle and pedestrian facilities, and requires the California Transportation Commission give high priority to increasing safety for pedestrians and bicyclists.</p>	<p>INTRODUCED: 01/10/2019 LOCATION: Senate Transportation Committee STATUS: 01/24/2019 To SENATE Committee on TRANSPORTATION .</p>	<p>Staff Recommends: OPPOSE</p>
<p>► SB 526 (Allen -- D) Regional Transportation Plans: Greenhouse Gas Emissions</p>	<p>Requires the state board of air resources to adopt a regulation that requires a metropolitan planning organization to provide any data that the board determines is necessary to fulfill the requirements of a specified report and to determine if the metropolitan planning organization is on track to meet its 2035 greenhouse gas emission reduction target. Reprioritizes the use of state transportation improvement program funds based on a region's ability to meet these goals.</p>	<p>INTRODUCED: 2/21/2019 LOCATION: SENATE STATUS: 2/21/2019 INTRODUCED</p>	<p>Staff Recommends: OPPOSE</p>



Orange County Transportation Authority Legislative Matrix

2019 State Legislative Session

BILLS BEING MONITORED

CA AB 11	AUTHOR: Chiu [D] TITLE: Community Redevelopment Law INTRODUCED: 12/03/2018 LOCATION: Assembly Housing and Community Development Committee SUMMARY:
	<p>Authorizes a city or county or two or more cities acting jointly, to propose the formation of an affordable housing and infrastructure agency by adoption of a resolution of intention. Provides for a governing board of the agency. Requires the agency to submit an annual report, and final report of any audit undertaken to its governing body. Requires the governing board of an agency to designate an appropriate official to prepare a proposed redevelopment project plan.</p>
	STATUS: 01/17/2019 To ASSEMBLY Committees on HOUSING AND COMMUNITY DEVELOPMENT and LOCAL GOVERNMENT.
	CATEGORY: Planning
CA AB 40	AUTHOR: Ting [D] TITLE: Zero-Emission Vehicles: Comprehensive Strategies INTRODUCED: 12/03/2018 LOCATION: Assembly Transportation Committee SUMMARY:
	<p>Requires the State Air Resources Board to develop a comprehensive strategy to ensure that the sales of new motor vehicles and new light-duty trucks in the state have transitioned fully to zero-emission vehicles by 2040.</p>
	STATUS: 01/24/2019 To ASSEMBLY Committees on TRANSPORTATION and NATURAL RESOURCES.
	CATEGORY: Environment
▶ CA AB 51	AUTHOR: Gonzalez [D] TITLE: Employment Discrimination: Enforcement INTRODUCED: 12/03/2018 COMMITTEE: Assembly Labor and Employment Committee HEARING: 03/06/2019 1:30 pm SUMMARY:
	<p>Prohibits a person from, as a condition of employment, continued employment, the receipt of any employment-related benefit, or as a condition of entering into a contractual agreement, prohibiting an applicant, employee, or independent contractor from disclosing sexual harassment in the workplace, or opposing any other lawful practice, or from exercising any right or obligation or participating in any investigation or proceeding with respect to unlawful harassment or discrimination.</p>
	STATUS: 01/17/2019 To ASSEMBLY Committees on LABOR AND EMPLOYMENT and JUDICIARY.
	CATEGORY: Employment Terms and Conditions

CA AB 62	AUTHOR:	Fong [R]
	TITLE:	State Government: Fiscal: Transparency
	INTRODUCED:	12/03/2018
	LOCATION:	Assembly Accountability and Administrative Review Committee
	SUMMARY:	Enacts the Budget Transparency Act of 2019. Modifies the transparency component to require information regarding all state expenditures, including the amount, the type, and a description of each state expenditure. Requires the Internet Web site to be interactive, searchable, regularly updated, and include specified features, including information on each state expenditure.
	STATUS:	
	02/15/2019	To ASSEMBLY Committees on ACCOUNTABILITY AND ADMINISTRATIVE REVIEW and BUDGET.
	CATEGORY:	State Budget

▶ CA AB 71	AUTHOR:	Melendez [R]
	TITLE:	Independent Contractors and Employees
	INTRODUCED:	12/03/2018
	LAST AMEND:	02/25/2019
	LOCATION:	Assembly Labor and Employment Committee
	SUMMARY:	Requires a determination of whether a person is an employee or an independent contractor to be based on a specific multifactor test, including whether the person to whom the service is rendered has the right to control the manner and means of accomplishing the result desired.
	STATUS:	
	02/25/2019	<i>From ASSEMBLY Committee on LABOR AND EMPLOYMENT with author's amendments.</i>
	02/25/2019	<i>In ASSEMBLY. Read second time and amended. Re-referred to Committee on LABOR AND EMPLOYMENT.</i>
	CATEGORY:	Employment Terms and Conditions

CA AB 145	AUTHOR:	Frazier [D]
	TITLE:	High-Speed Rail Authority: Senate Confirmation
	INTRODUCED:	12/13/2018
	LOCATION:	Assembly Transportation Committee
	SUMMARY:	Provides that the members of the High-Speed Rail Authority appointed by the Governor are subject to appointment with the advice and consent of the Senate.
	STATUS:	
	01/24/2019	To ASSEMBLY Committee on TRANSPORTATION.
	CATEGORY:	Rail

CA AB 146	AUTHOR:	Quirk-Silva [D]
	TITLE:	State Highways: Property Leases: County of Orange
	INTRODUCED:	12/14/2018
	LOCATION:	Assembly Local Government Committee
	SUMMARY:	Authorizes the Department of Transportation to lease airspace under a freeway, or real property acquired for highway purposes, in the County of Orange, that is not excess property, to a city located in the County of Orange, the County of Orange, a political subdivision of the state whose jurisdiction is located in the County of Orange, or another state agency for purposes of an emergency shelter or feeding program, subject to certain conditions.
	STATUS:	
	01/24/2019	To ASSEMBLY Committees on LOCAL GOVERNMENT and TRANSPORTATION.
	CATEGORY:	Planning

▶ CA AB 170	AUTHOR:	Gonzalez [D]
	TITLE:	Employment: Sexual Harassment: Liability
	INTRODUCED:	01/08/2019
	COMMITTEE:	Assembly Labor and Employment Committee
	HEARING:	03/06/2019 1:30 pm
	SUMMARY:	Requires a client employer to share with a labor contractor all civil legal responsibility and civil liability for harassment for all workers supplied by that labor contractor.
	STATUS:	
	01/24/2019	To ASSEMBLY Committees on LABOR AND EMPLOYMENT and JUDICIARY.
	CATEGORY:	Employment Terms and Conditions

▶ CA AB 171	AUTHOR:	Gonzalez [D]
	TITLE:	Employment: Sexual Harassment
	INTRODUCED:	01/08/2019
	COMMITTEE:	Assembly Labor and Employment Committee
	HEARING:	03/06/2019 1:30 pm
	SUMMARY:	Prohibits an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee's status as a victim of sexual harassment, as defined by the California Fair Employment and Housing Act. Establishes a rebuttable presumption of unlawful retaliation if an employer takes specified actions within 90 days following the date that the victim provides notice to the employer or the employer has actual knowledge of the status.
	STATUS:	
	01/24/2019	To ASSEMBLY Committees on LABOR AND EMPLOYMENT and JUDICIARY.
	CATEGORY:	Employment Terms and Conditions

▶ CA AB 176 AUTHOR: Cervantes [D]
 TITLE: Alternative Energy Advanced Transportation Financing
 INTRODUCED: 01/09/2019
 LAST AMEND: 02/25/2019
 LOCATION: Assembly Natural Resources Committee
 SUMMARY:
 Extends the authorization for the California Alternative Energy and Advanced Transportation Financing Authority to provide financial assistance in the form of a sales and use tax exclusion for qualifying projects until a *specified month and year*. *Excludes the lease or transfer of title of tangible personal property constituting a project to any contractor for use in the performance of a construction contract for a party that will use that property as an integral part of the project.*
 STATUS:
 02/25/2019 *From ASSEMBLY Committee on NATURAL RESOURCES with author's amendments.*
 02/25/2019 *In ASSEMBLY. Read second time and amended. Re-referred to Committee on NATURAL RESOURCES.*
 CATEGORY: Funding

CA AB 185 AUTHOR: Grayson [D]
 TITLE: Transportation Commission: Transportation Policies
 INTRODUCED: 01/10/2019
 LOCATION: Assembly Transportation Committee
 SUMMARY:
 Requires the Department of Housing and Community Development to participate in joint meetings held by the Transportation Commission and the State Air Resources Board to coordinate implementation of transportation policies.
 STATUS:
 02/04/2019 To ASSEMBLY Committee on TRANSPORTATION.
 CATEGORY: Miscellaneous

▶ CA AB 226 AUTHOR: Mathis [R]
 TITLE: Transportation Funds: Transit Operators: Fare Revenues
 INTRODUCED: 01/17/2019
 LOCATION: *Assembly Transportation Committee*
 SUMMARY:
 Requires a fare paid pursuant to a reduced fare transit program to be counted as a full adult fare for purposes of calculating any required ratios of fare revenues to operating costs specified in the Transportation Development Act, except for purposes of providing information in a specified annual report to the Controller or providing information to the entity conducting a fiscal or performance audit pursuant to specified provisions.
 STATUS:
 02/04/2019 *To ASSEMBLY Committee on TRANSPORTATION.*
 CATEGORY: Transit

▶ CA AB 246	AUTHOR:	Mathis [R]
	TITLE:	State Highways: Property Leases
	INTRODUCED:	01/22/2019
	LOCATION:	<i>Assembly Transportation Committee</i>
	SUMMARY:	Authorizes the Department of Transportation to offer a lease on a right of first refusal basis of any airspace under a freeway, or real property acquired for highway purposes, located in a disadvantaged community, that is not excess property to the city or county in which the disadvantaged community is located for purposes of an emergency shelter or feeding program, or for park or open-space purposes for a rental amount of \$1 per month, subject to certain conditions.
	STATUS:	
	02/07/2019	<i>To ASSEMBLY Committee on TRANSPORTATION.</i>
	CATEGORY:	Planning

▶ CA AB 249	AUTHOR:	Choi [R]
	TITLE:	Public Employers: Employee Organizations
	INTRODUCED:	01/22/2019
	LOCATION:	<i>Assembly Public Employment and Retirement Committee</i>
	SUMMARY:	Prohibits a public employer from deterring or discouraging a public employee or an applicant to be a public employee from opting out of becoming or remaining a member of an employee organization. Prohibits a public employer from taking adverse action against a public employee or applicant to be a public employee who opts out of becoming or remaining a member of an employee organization.
	STATUS:	
	02/07/2019	<i>To ASSEMBLY Committee on PUBLIC EMPLOYMENT AND RETIREMENT.</i>
	CATEGORY:	Employment Terms and Conditions

CA AB 254 which pertained to ARB support for zero emission and alternative fuel vehicles, was gut-and-amended to pertain to health issues. Therefore, the bill has been removed from the matrix.

<p>▶ CA AB 285</p>	<p>AUTHOR: Friedman [D] TITLE: California Transportation Plan INTRODUCED: 01/28/2019 LOCATION: <i>Assembly Transportation Committee</i> SUMMARY: Requires the Department of Transportation to address in the California Transportation Plan how the state will achieve maximum feasible emissions reductions in order to attain a certain statewide reduction of greenhouse gas emissions below 1990 levels by the end of 2030 and carbon neutrality by 2045. STATUS: 02/11/2019 <i>To ASSEMBLY Committees on TRANSPORTATION and NATURAL RESOURCES.</i> CATEGORY: Environment</p>
<p>▶ CA AB 287</p>	<p>AUTHOR: Voepel [R] TITLE: Public Employees' Retirement: Annual Audits INTRODUCED: 01/28/2019 LOCATION: <i>Assembly Public Employment and Retirement Committee</i> SUMMARY: Requires each state and local pension or retirement system to post a concise annual audit of the investments and earnings of the system on that system's internet website no later than the ninetieth day following the audit's completion. STATUS: 02/07/2019 <i>To ASSEMBLY Committee on PUBLIC EMPLOYMENT AND RETIREMENT.</i> CATEGORY: Employment Terms and Conditions</p>
<p>▶ CA AB 296</p>	<p>AUTHOR: Cooley [D] TITLE: Climate Change: Climate Innovation Commission INTRODUCED: 01/28/2019 LOCATION: <i>Assembly Natural Resources Committee</i> SUMMARY: Establishes the Climate Innovation Grant Program, to be administered by the Climate Innovation Commission, which the bill would establish in the Natural Resources Agency. Provides that the program would award grants in the form of matching funds for the development and research of new innovations and technologies to address issues related to emissions of greenhouse gases and impacts caused by climate change. STATUS: 02/07/2019 <i>To ASSEMBLY Committee on NATURAL RESOURCES.</i> CATEGORY: Funding</p>
<p>▶ CA AB 313</p>	<p>AUTHOR: Frazier [D] TITLE: Road Maintenance and Rehabilitation Account: Reports INTRODUCED: 01/30/2019 LOCATION: <i>Assembly Transportation Committee</i> SUMMARY: Requires the University of California and the California State University, on or before a specified date of each year, to each submit a report to the Transportation Agency and specified legislative committees detailing its expenditures of those moneys for that fiscal year, including, but not limited to, research activities and administration. STATUS: 02/11/2019 <i>To ASSEMBLY Committee on TRANSPORTATION.</i> CATEGORY: Funding</p>

▶ CA AB 314	<p>AUTHOR: Bonta [D] TITLE: Public Employment: Labor Relations: Release Time INTRODUCED: 01/30/2019 COMMITTEE: <i>Assembly Public Employment and Retirement Committee</i> HEARING: 03/20/2019 9:00 am SUMMARY: Prescribes requirements relating to release time that would apply to all of the public employers and employees subject to specified labor relations laws. Repeals the provisions relating to release time in those acts. Requires these public employers to grant a reasonable number of employee representatives of the exclusive representative reasonable time off without loss of compensation or other benefits for specified activities. STATUS: 02/11/2019 To ASSEMBLY Committee on PUBLIC EMPLOYMENT AND RETIREMENT. CATEGORY: <i>Employment Terms and Conditions</i></p>
▶ CA AB 322	<p>AUTHOR: Gallagher [R] TITLE: Political Reform Act: Online Filing System INTRODUCED: 01/30/2019 COMMITTEE: <i>Assembly Elections and Redistricting Committee</i> HEARING: 03/13/2019 9:00 am SUMMARY: Requires a local government agency to post on its internet website a copy of any specified statement, report, or other document filed with that agency in paper format. Requires that the statement, report, or other document be made available for four years from the date of the election associated with the filing. STATUS: 02/11/2019 To ASSEMBLY Committee on ELECTIONS AND REDISTRICTING. CATEGORY: Information Systems</p>
▶ CA AB 352	<p>AUTHOR: Garcia E [D] TITLE: <i>Greenhouse Gas Reduction Fund: Investment Plan</i> INTRODUCED: 02/04/2019 LOCATION: <i>Assembly Natural Resources Committee</i> SUMMARY: <i>Requires state agencies administering competitive grant programs that allocate moneys from the Greenhouse Gas Reduction Fund to give specified communities preferential points during grant application scoring for programs intended to improve air quality, to include a specified application timeline, and to allow applicants from the Counties of Imperial and San Diego to include daytime population numbers in grant applications.</i> STATUS: 02/11/2019 To ASSEMBLY Committee on NATURAL RESOURCES. CATEGORY: Funding</p>

► CA AB 355 AUTHOR: *Daly [D]*
 TITLE: *Public Employee Relations Board: Orange County*
 INTRODUCED: *02/04/2019*
 COMMITTEE: *Assembly Public Employment and Retirement Committee*
 HEARING: *03/20/2019 9:00 am*
 SUMMARY:
Requires employers and employees of the Orange County Transportation Authority to adjudicate complaints of specified labor violations before the Public Employment Relations Board (PERB) as an unfair practice and authorizes specified parties aggrieved by PERB's decision or order to petition for relief from that decision or order, as provided.
 STATUS:
02/11/2019 To ASSEMBLY Committee on PUBLIC EMPLOYMENT AND RETIREMENT.
 CATEGORY: *Employment Terms and Conditions*

► CA AB 371 AUTHOR: *Frazier [D]*
 TITLE: *Transportation: Freight: Statewide Economic Vitality*
 INTRODUCED: *02/05/2019*
 LOCATION: *Assembly Jobs, Economic Development, and The Economy Committee*
 SUMMARY:
Requires the Governor's Office of Business and Economic Development, or GO Biz, in consultation with the State Air Resources Board, the California Transportation Commission, and the Transportation Agency, to prepare a statewide economic vitality assessment of the state freight industry, and to update the assessment at least once every five years.
 STATUS:
02/15/2019 To ASSEMBLY Committees on JOBS, ECONOMIC DEVELOPMENT AND THE ECONOMY and TRANSPORTATION.
 CATEGORY: *Miscellaneous*

► CA AB 380 AUTHOR: *Frazier [D]*
 TITLE: *Office of the Transportation Inspector General*
 INTRODUCED: *02/05/2019*
 COMMITTEE: *Assembly Transportation Committee*
 HEARING: *03/11/2019 2:30 pm*
 SUMMARY:
Eliminates the Independent Office of Audits and Investigations and would instead create the Independent Office of the Transportation Inspector General in state government, as an independent office that would not be a subdivision of any other government entity, to ensure that specified state agencies and all external entities that receive state and federal transportation funds are operating efficiently, effectively, and in compliance with federal and state laws.
 STATUS:
02/15/2019 To ASSEMBLY Committees on TRANSPORTATION and ACCOUNTABILITY AND ADMINISTRATIVE REVIEW.
 CATEGORY: *Miscellaneous*

► CA AB 421 AUTHOR: Waldron [R]
 TITLE: Transportation Finance: De Luz Community District
 INTRODUCED: 02/07/2019
 LOCATION: Assembly Transportation Committee
 SUMMARY:
Requires the Controller to allocate a portion of revenues derived from increases in the motor vehicle fuel excise tax available for counties to the De Luz Community Services District for local street and road purposes as though the De Luz Community Services District were a county.
 STATUS:
 02/25/2019 To ASSEMBLY Committee on TRANSPORTATION.
 CATEGORY: Funding

► CA AB 422 AUTHOR: Frazier [D]
 TITLE: High-Speed Rail: Performance Measurement Dashboards
 INTRODUCED: 02/07/2019
 LOCATION: Assembly Transportation Committee
 SUMMARY:
Requires the High-speed Rail Authority, in consultation with the independent peer review group, to develop and update quarterly a set of summary performance measurement dashboards that show ongoing performance of the project and post on its internet website full sets of the summary performance measurement dashboards.
 STATUS:
 02/15/2019 To ASSEMBLY Committee on TRANSPORTATION.
 CATEGORY: Rail

► CA AB 456 AUTHOR: Chiu [D]
 TITLE: Public Contracts: Claim Resolution
 INTRODUCED: 02/11/2019
 LOCATION: Assembly Accountability and Administrative Review Committee
 SUMMARY:
Removes the repeal date of a claim resolution process applicable to any claim by a contractor in connection with a public works project against a public entity, thereby making this claim resolution process operative indefinitely.
 STATUS:
 02/21/2019 To ASSEMBLY Committee on ACCOUNTABILITY AND ADMINISTRATIVE REVIEW.
 CATEGORY: Public Works

► CA AB 491 AUTHOR: Rubio [D]
 TITLE: Energy: Hydrogen
 INTRODUCED: 02/12/2019
 LOCATION: Assembly Utilities and Energy Committee
 SUMMARY:
Requests the California Council on Science and Technology to undertake and to complete a study analyzing the potential impacts of increased hydrogen concentration in the natural gas supply on the California natural gas system, including specified information. Requires the PUC, if the Council agrees to undertake and complete the study, to adopt standards for hydrogen to be injected into a common carrier pipeline, taking the study into consideration, while insuring pipeline facility safety.
 STATUS:
 02/21/2019 To ASSEMBLY Committee on UTILITIES AND ENERGY.
 CATEGORY: Miscellaneous

<p>▶ CA AB 510</p>	<p>AUTHOR: Cooley [D] TITLE: Local Government Records: Destruction of Records INTRODUCED: 02/13/2019 LOCATION: Assembly Local Government Committee SUMMARY: <i>Exempts the head of a department of a county or city, or the head of a special district from recording retention requirements if the county, city, or special district adopts a records retention policy governing recordings of routine video monitoring and recordings of telephone and radio communications.</i> STATUS: 02/21/2019 To ASSEMBLY Committee on LOCAL GOVERNMENT. CATEGORY: Audits, Records, Reports, and Litigation</p>
<p>▶ CA AB 520</p>	<p>AUTHOR: Kalra [D] TITLE: Prevailing Wage: Locality INTRODUCED: 02/13/2019 LOCATION: Assembly Labor and Employment Committee SUMMARY: <i>Relates to prevailing wages for workers employed on public works. Eliminates a distinction in the definition of "locality in which public work is performed" and instead defines the term in all cases as meaning the county in which the public work is done.</i> STATUS: 02/21/2019 To ASSEMBLY Committee on LABOR AND EMPLOYMENT. CATEGORY: Employment Terms and Conditions</p>
<p>▶ CA AB 553</p>	<p>AUTHOR: Melendez [R] TITLE: High-Speed Rail Bonds: Housing INTRODUCED: 02/13/2019 LOCATION: Assembly Transportation Committee SUMMARY: <i>Provides that no further bonds shall be sold for high-speed rail purposes pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, except as specifically provided with respect to an existing appropriation for high-speed rail purposes for early improvement projects in the Phase I blended system. Requires the net proceeds of other bonds subsequently issued and sold to be made available to the Department of Housing Community Development's Multifamily Housing Program.</i> STATUS: 02/25/2019 To ASSEMBLY Committee on TRANSPORTATION. CATEGORY: High-Speed Rail</p>
<p>▶ CA AB 628</p>	<p>AUTHOR: Bonta [D] TITLE: Employment: Victims of Sexual Harassment INTRODUCED: 02/15/2019 LOCATION: Assembly Labor and Employment Committee SUMMARY: <i>Extends employment protections to victims of sexual harassment. Also extends these employment protections to family members of the victims for taking time off from work to provide assistance to the victims when seeking relief or obtaining specified services and counseling. Applies these protections to state and local public employers and to the Legislature.</i> STATUS: 02/25/2019 To ASSEMBLY Committees on LABOR AND EMPLOYMENT and JUDICIARY. CATEGORY: Employment Terms and Conditions</p>

▶ CA AB 634 AUTHOR: Salas [D]
 TITLE: Traffic Control Devices: Roundabouts: signs
 INTRODUCED: 02/15/2019
 LOCATION: Assembly Transportation Committee
 SUMMARY:
Requires that roundabouts be added as a type of highway facility that may be used for memorial or dedication signing.
 STATUS:
 02/25/2019 To ASSEMBLY Committee on TRANSPORTATION.
 CATEGORY: Planning

▶ CA AB 652 AUTHOR: Mayes [R]
 TITLE: Supplemental Destination Highway Signs
 INTRODUCED: 02/15/2019
 LOCATION: Assembly Transportation Committee
 SUMMARY:
Requires the Department of Transportation to include a private stadium or sports arena as a facility that qualifies for supplemental destination signs in its regulations if the stadium otherwise meets the criteria for supplemental destination signs described in the California Manual on Uniform Traffic Control Devices.
 STATUS:
 02/25/2019 To ASSEMBLY Committee on TRANSPORTATION.
 CATEGORY: Planning

▶ CA AB 659 AUTHOR: Mullin [D]
 TITLE: Transportation: Emerging Technologies: Grant Program
 INTRODUCED: 02/15/2019
 LOCATION: Assembly Transportation Committee
 SUMMARY:
Establishes the California Smart City Challenge Grant Program to enable municipalities to compete for grant funding for emerging transportation technologies to serve their transportation system needs, and specifies certain program goals. Requires the California Transportation Commission to form the California Smart City Challenge Workgroup to guide the commission on program matters.
 STATUS:
 02/25/2019 To ASSEMBLY Committee on TRANSPORTATION.
 CATEGORY: Funding

▶ CA AB 676 AUTHOR: Frazier [D]
 TITLE: California Transportation Commission: Annual Report
 INTRODUCED: 02/15/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Requires the California Transportation Commission to adopt and submit its annual report by 12/31 of each year.
 STATUS:
 02/15/2019 INTRODUCED.
 CATEGORY: Miscellaneous

▶ CA AB 697 AUTHOR: *Ting [D]*
 TITLE: *Bicycles*
 INTRODUCED: *02/19/2019*
 LOCATION: *ASSEMBLY*
 SUMMARY:
Requires a person operating a bicycle to ride in the right-hand lane or bicycle lane, if one is present, and additionally requires a person operating a bicycle in a lane that is wide enough for a vehicle and bicycle to travel safely side by side within the lane to ride far enough to the right to allow vehicles to pass, except when it is reasonably necessary to avoid conditions that make it hazardous to continue along the right-hand edge of the lane.
 STATUS:
02/19/2019 INTRODUCED.
 CATEGORY: *Active Transportation*

▶ CA AB 745 AUTHOR: *Petrie-Norris [D]*
 TITLE: *Sales and Use Tax: Exemption: Retail Hydrogen Fuel*
 INTRODUCED: *02/19/2019*
 LOCATION: *ASSEMBLY*
 SUMMARY:
Exempts from sales and use taxes the gross receipts from the sale in this state of, and the storage, use or other consumption in this state of, retail hydrogen vehicle fuel.
 STATUS:
02/19/2019 INTRODUCED.
 CATEGORY: *Funding*

▶ CA AB 753 AUTHOR: *Garcia E [D]*
 TITLE: *Alternative and Renewable Fuel and Vehicle Technology*
 INTRODUCED: *02/19/2019*
 LOCATION: *ASSEMBLY*
 SUMMARY:
Requires the State Energy Resources Conservation and Development Commission to make available at least 30% of the moneys available for allocation as part of the Alternative and Renewable Fuel and Vehicle Technology Program for projects to produce alternative and renewable low-carbon fuels in the state and projects to develop stand-alone alternative and renewable fuel infrastructure, fueling stations, and equipment.
 STATUS:
02/19/2019 INTRODUCED.
 CATEGORY: *Environment*

▶ CA AB 782 AUTHOR: *Berman [D]*
 TITLE: *Environmental Quality Act: Exemption: Agencies*
 INTRODUCED: *02/19/2019*
 LOCATION: *ASSEMBLY*
 SUMMARY:
Exempts from California Environmental Quality Act (CEQA) the acquisition, sale, or other transfer of property by a public agency for certain purposes, or the funding of that acquisition, sale, or other transfer by a public agency conditions those transactions on compliance with CEQA before making physical changes to the transferred property.
 STATUS:
02/19/2019 INTRODUCED.
 CATEGORY: *Environment*

▶ CA AB 790 AUTHOR: Levine [D]
 TITLE: Eligible Employers: Personal Service Contracts
 INTRODUCED: 02/20/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Requires the Department of Industrial Relations to develop a list of eligible employers that the department determines are valued at least a certain amount. Requires an eligible employer that enters into a personal services contract on or after a certain date, to include a provision in that contract that requires the employees that will perform the services in that contract to be paid a wage that is equal to an unspecified amount.
 STATUS:
 02/20/2019 INTRODUCED.
 CATEGORY: Employment Terms and Conditions

▶ CA AB 808 AUTHOR: Chu [D]
 TITLE: Vehicles: Wiper-Activated Headlamps
 INTRODUCED: 02/20/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Requires every new motor vehicle, other than a motorcycle, manufactured and first registered or sold in the State on or after a certain date, to be equipped with headlamps that are wired to be automatically activated when the windshield wiper is in operation.
 STATUS:
 02/20/2019 INTRODUCED.
 CATEGORY: Transit

▶ CA AB 821 AUTHOR: O'Donnell [D]
 TITLE: Transportation: Trade Corridor Enhancement Account
 INTRODUCED: 02/20/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Requires the Transportation Commission to allocate not less than a certain percentage of the funds that are required to be allocated to projects nominated by the Department of Transportation to projects nominated pursuant to the State Port Efficiency Program, which this bill creates.
 STATUS:
 02/20/2019 INTRODUCED.
 CATEGORY: Funding

▶ CA AB 839 AUTHOR: Mullin [D]
 TITLE: Climate Adaption: Strategy
 INTRODUCED: 02/20/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Relates to the adaption through resiliency, economic vitality, and equity account. Requires the Secretary of the Natural Resources Agency, no later than a certain date, to develop, adopt, and implements a comprehensive, coordinated, and proactive strategy for the state to adapt to the unavoidable impacts of climate change, with the intent to ensure the state is prepared for climate change impacts modeled for a certain year and beyond, as specified.
 STATUS:
 02/20/2019 INTRODUCED.
 CATEGORY: Environment

▶ CA AB 847 AUTHOR: Grayson [D]
 TITLE: Transportation Finance: Priorities: Housing
 INTRODUCED: 02/20/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Requires the Department of Housing and Community Development, on or before June 30, 2020, and on or before June 30 every year thereafter, to review each production report submitted by a city or county in accordance with the provisions to determine if that city or county has met its very low, low-, and moderate-income housing goals, as defined, for that reporting period.
 STATUS:
 02/20/2019 INTRODUCED.
 CATEGORY: Funding

▶ CA AB 882 AUTHOR: McCarty [D]
 TITLE: Termination of Employment: Drug Testing
 INTRODUCED: 02/20/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Prohibits an employer, regardless of the number of employees, from discharging an employee for testing positive for a drug that is being used as a medical-assisted treatment, under the care of physician or licensed treatment program.
 STATUS:
 02/20/2019 INTRODUCED.
 CATEGORY: Employment Terms and Conditions

▶ CA AB 891 AUTHOR: Burke [D]
 TITLE: Public Property: Safe Parking Program
 INTRODUCED: 02/20/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Requires a city with a population greater than 330,000 and each county, in coordination with cities and local nonprofit entities. Establishes a safe parking program that provides safe parking locations and options for individuals and families living in their vehicles. Requires the Department of General Services, in coordination with the Department of Transportation, to identify surplus state properties that are suitable for safe parking programs.
 STATUS:
 02/20/2019 INTRODUCED.
 CATEGORY: Planning

▶ CA AB 903 AUTHOR: Levine [D]
 TITLE: Political Reform Act of 1974
 INTRODUCED: 02/20/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Provides that an exclusion from the definition of expenditure under the Political Reform Act does not apply to communications paid for with public moneys by a state or local government. Requires preelection statements to disclose contributions and independent expenditures made to a state, county, or city general purpose committee or made to support or oppose a candidate measure appearing on the ballot as a specified election.
 STATUS:
 02/20/2019 INTRODUCED.
 CATEGORY: Audits, Records, Reports, and Litigation

► CA AB 905 AUTHOR: *Chen [R]*
 TITLE: *Highway Design Manual: Fire Prone Areas*
 INTRODUCED: *02/20/2019*
 LOCATION: *ASSEMBLY*
 SUMMARY:
 Requires the Department of Transportation to update the Highway Design Manual to incorporate the use of k-rails, weed mates, or other fire proofing devices in fire prone areas.
 STATUS:
 02/20/2019 *INTRODUCED.*
 CATEGORY: *Planning*

► CA AB 923 AUTHOR: *Wicks [D]*
 TITLE: *Bay Area Rapid Transit District: Electricity*
 INTRODUCED: *02/20/2019*
 LOCATION: *ASSEMBLY*
 SUMMARY:
 Authorizes BART to elect to obtain electricity purchased from an electrical corporation or marketer, as defined, and electricity purchases through a market operated by the Independent System Operator or any other electricity market.
 STATUS:
 02/20/2019 *INTRODUCED.*
 CATEGORY: *Rail*

► CA AB 931 AUTHOR: *Boerner Horvath [D]*
 TITLE: *State and Local Boards and Commission*
 INTRODUCED: *02/20/2019*
 LOCATION: *ASSEMBLY*
 SUMMARY:
 Requires the composition of each state and local board and commission with appointed members to have a specified minimum number of women board members or commissioners based on the total number of board members or commissioners on that board.
 STATUS:
 02/20/2019 *INTRODUCED.*
 CATEGORY: *Miscellaneous*

► CA AB 939 AUTHOR: *Frazier [D]*
 TITLE: *California Environmental Protection Agency*
 INTRODUCED: *02/20/2019*
 LOCATION: *ASSEMBLY*
 SUMMARY:
 Requires the California Environmental Protection Agency and any department, board, commission, or office within the California Environmental Protection Agency to provide to the public, not later than 72 hours prior to involvement of the public through workshops or any other proceedings, all materials and presentations relevant to the process regarding complex proposals described as specified.
 STATUS:
 02/20/2019 *INTRODUCED.*
 CATEGORY: *Environment*

► CA AB 983 AUTHOR: *Boerner Horvath [D]*

TITLE:	<i>Transportation Electrification</i>
INTRODUCED:	02/21/2019
LOCATION:	ASSEMBLY
SUMMARY:	<i>Requires an electrical corporation to work with local agencies or regional planning agencies in its service territory with responsibility for planning electric vehicle deployment to determine where to install new electrical charging stations along local transit corridors. Authorizes an electrical corporation to file an application with the Public Utilities Commission by December 31, 2020, as specified.</i>
STATUS:	
02/21/2019	INTRODUCED.
CATEGORY:	Environment

▶ CA AB 1017	AUTHOR:	<i>Boerner Horvath [D]</i>
	TITLE:	<i>Railroads: At-Grade Pedestrian Crossings</i>
	INTRODUCED:	02/21/2019
	LOCATION:	ASSEMBLY
	SUMMARY:	<i>Requires the Public Utilities Commission to identify standardized supplemental safety measure improvements for at-grade pedestrian crossings.</i>
	STATUS:	
	02/21/2019	INTRODUCED.
	CATEGORY:	Rail

▶ CA AB 1046	AUTHOR:	<i>Ting [D]</i>
	TITLE:	<i>Charge Ahead California Initiative</i>
	INTRODUCED:	02/21/2019
	LOCATION:	ASSEMBLY
	SUMMARY:	<i>Sets an additional goal of the Charge Ahead California Initiative the placement in service of at least 5 million zero-emission vehicles by January 1, 2030 (2030 goal). Requires the forecast for the Clean Vehicle Rebate Project to include the total state rebate investment necessary to facilitate reaching the 2030 goal and recommendation on changes to the project structure and rebate levels.</i>
	STATUS:	
	02/21/2019	INTRODUCED.
	CATEGORY:	Environment

▶ CA AB 1056	AUTHOR:	<i>Garcia E [D]</i>
	TITLE:	<i>State Air Resources Board: Report</i>
	INTRODUCED:	02/21/2019
	LOCATION:	ASSEMBLY
	SUMMARY:	<i>Relates to a report prepared by the State Air Resources Board that assesses progress made by each metropolitan planning organization in meeting the regional greenhouse gas emission reduction targets set by the state board. Requires this report to be prepared every 2 years.</i>
	STATUS:	
	02/21/2019	INTRODUCED.
	CATEGORY:	Audits, Records, Reports, and Litigation

▶ CA AB 1100	AUTHOR:	<i>Kamlager-Dove [D]</i>
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TITLE: *Electric Vehicles: Parking Requirements*
INTRODUCED: 02/21/2019
LOCATION: ASSEMBLY
SUMMARY:
Requires a parking space served by electric vehicle service equipment and a parking space designated as a future electric vehicle charging space to be counted as a least one standard automobile parking space for the purpose of complying with any applicable minimum parking requirements establishing by a local jurisdiction.
STATUS:
02/21/2019 *INTRODUCED.*
CATEGORY: Miscellaneous

▶ CA AB 1142 **AUTHOR:** *Friedman [D]*
TITLE: *Strategic Growth Council: Transportation Pilot Projects*
INTRODUCED: 02/21/2019
LOCATION: ASSEMBLY
SUMMARY:
Requires the Strategic Growth Council, in consultation with the State Air Resources Board, to manage and award financial assistance to specified local entities for the purpose of funding pilot projects that reduce vehicle miles traveled to support the planning and development of sustainable communities. Requires a local entity that receives funding for a pilot project to provide data regarding the reduction of vehicle miles traveled by the project to the board for use in a specified report.
STATUS:
02/21/2019 *INTRODUCED.*
CATEGORY: Miscellaneous

▶ CA AB 1148 **AUTHOR:** *Patterson [R]*
TITLE: *High Speed Rail: Independent Peer Review Group*
INTRODUCED: 02/21/2019
LOCATION: ASSEMBLY
SUMMARY:
Requires the independent peer review group to study and annually report to the legislature on alternative uses for high speed rail project infrastructure that is located in the projects Central Valley corridor and the construction of which the group anticipates will be completed by the end of the calendar year in which the report will be submitted to the legislature.
STATUS:
02/21/2019 *INTRODUCED.*
CATEGORY: Rail

▶ CA AB 1167 **AUTHOR:** *Mathis [R]*
TITLE: *Greenhouse Gas Reduction Fund: High-Speed Rail*
INTRODUCED: 02/21/2019
LOCATION: ASSEMBLY
SUMMARY:
Removes continuously appropriate 25% of the annual proceeds of the Greenhouse Gas Reduction Fund for certain components of a specified high-speed rail project.
STATUS:
02/21/2019 *INTRODUCED.*
CATEGORY: Funding

▶ CA AB 1212 **AUTHOR:** *Levine [D]*

TITLE: *Public Employees' Retirement: Pension Fund*
INTRODUCED: 02/21/2019
LOCATION: ASSEMBLY
SUMMARY:
Requires a state agency that is responsible for infrastructure projects to produce a list of priority infrastructure projects for funding consideration by the retirement boards, as described, and to provide it to them. Requires a state agency also to provide further project information to a board upon request.
STATUS:
02/21/2019 INTRODUCED.
CATEGORY: Employment Terms and Conditions

► CA AB 1226 AUTHOR: *Holden [D]*
TITLE: *State Highways: Property Leases*
INTRODUCED: 02/21/2019
LOCATION: ASSEMBLY
SUMMARY:
Authorizes the Department of Transportation to lease airspace that it owns to a city, county, or other political subdivision or another state agency for emergency shelter, feeding program, or wraparound services purposes, or any combination of these purposes, subject to specified terms and conditions.
STATUS:
02/21/2019 INTRODUCED.
CATEGORY: Planning

► CA AB 1237 AUTHOR: *Aguiar-Curry [D]*
TITLE: *Greenhouse Gas Reduction Fund: Guidelines*
INTRODUCED: 02/21/2019
LOCATION: ASSEMBLY
SUMMARY:
Requires an agency that receives an appropriation from the Greenhouse Gas Reduction Fund to post on its internet website the agency's guidelines, as specified, for how moneys from the fund are allocated.
STATUS:
02/21/2019 INTRODUCED.
CATEGORY: Funding

► CA AB 1241 AUTHOR: *Quirk-Silva [D]*
TITLE: *Contracts Between Public and Private Entities*
INTRODUCED: 02/21/2019
LOCATION: ASSEMBLY
SUMMARY:
Requires an agency that contracts with a person or private entity that owns or licenses an electronic database that contains the personal information of individuals for the purpose of hiring and training specified individuals, to do so only if the contract requires the person or private entity to comply with the requirements for disclosure and maintenance of personal information that are applicable to an agency pursuant to the Information Practices Act.
STATUS:
02/21/2019 INTRODUCED.
CATEGORY: Employment Terms and Conditions

► CA AB 1266 AUTHOR: *Rivas R [D]*

TITLE: *Traffic Control Devices: Bicycles*
INTRODUCED: 02/21/2019
LOCATION: ASSEMBLY
SUMMARY:
Permits drivers of bicycles to disobey the directions of a traffic control device requiring a turn when pavement markings indicate that bicycles may travel straight through a right-turn only lane.
STATUS:
02/21/2019 INTRODUCED.
CATEGORY: Active Transportation

▶ CA AB 1277 AUTHOR: Obernolte [R]
TITLE: *Major Transportation Infrastructure Construction*
INTRODUCED: 02/21/2019
LOCATION: ASSEMBLY
SUMMARY:
Requires a public agency undertaking a publicly funded major transportation infrastructure construction project that is estimated to cost \$500,000,000 or more to form an oversight committee subject to applicable open meeting laws and to develop and use risk management plans throughout the course of the project.
STATUS:
02/21/2019 INTRODUCED.
CATEGORY: Audits, Records, Reports, and Litigation

▶ CA AB 1284 AUTHOR: Carrillo [D]
TITLE: *Carbon Neutrality*
INTRODUCED: 02/21/2019
LOCATION: ASSEMBLY
SUMMARY:
Requires the State Air Resources Board to adopt a regulation defining carbon neutrality, as specified.
STATUS:
02/21/2019 INTRODUCED.
CATEGORY: Environment

▶ CA AB 1286 AUTHOR: Muratsuchi [D]
TITLE: *Shared Mobility Devices: Agreements*
INTRODUCED: 02/21/2019
LOCATION: ASSEMBLY
SUMMARY:
Requires a shared mobility service provider to enter into an agreement with the city or county with jurisdiction over the area of use that requires the provider to maintain a specified amount of general liability insurance and prohibits the provider from including specified provisions in a user agreement before distributing a shared mobility device within that jurisdiction.
STATUS:
02/21/2019 INTRODUCED.
CATEGORY: Miscellaneous

▶ CA AB 1351 AUTHOR: Lackey [R]

TITLE: *Paratransit and Dial a Ride Services*
INTRODUCED: *02/22/2019*
LOCATION: *ASSEMBLY*
SUMMARY:
Requires a for profit or nonprofit transit operator that receives funds through the Mills-Alquist-Deddeh Act and that provides a dial a ride paratransit service to determine the eligibility of an applicant for those services within a number of days following the submission of a complete application, and provide service to an eligible person at any requested time on a particular day in response to a request for service made the previous day.
STATUS:
02/22/2019 INTRODUCED.
CATEGORY: *Transit*

▶ CA AB 1397 **AUTHOR:** *Burke [D]*
TITLE: *Income Tax Credit: Railroad in Reconstruction*
INTRODUCED: *02/22/2019*
LOCATION: *ASSEMBLY*
SUMMARY:
Allows a credit for each taxable year to a qualified taxpayer in an amount equal to a percentage of the qualified railroad reconstruction or replacement expenditures paid or incurred by the qualified taxpayer, subject to a specified limitation. Includes the additional information required for any bill authorizing a new income tax credit.
STATUS:
02/22/2019 INTRODUCED.
CATEGORY: *Rail*

▶ CA AB 1411 **AUTHOR:** *Reyes [D]*
TITLE: *Integrated Action Plan for Sustainable Freight*
INTRODUCED: *02/22/2019*
LOCATION: *ASSEMBLY*
SUMMARY:
Establishes as a state goal the deployment of a number of zero emission and medium and heavy duty vehicles and off road vehicles and equipment, and the corresponding infrastructure to support them, by a year. Requires the Public Utilities Commission, the state board, the Department of Transportation, the State Energy Resources Conservation and Development Commission, and the Governor's Office to develop and update by a certain date, and every number of years after.
STATUS:
02/22/2019 INTRODUCED.
CATEGORY: *Miscellaneous*

▶ CA AB 1413 **AUTHOR:** *Gloria [D]*
TITLE: *Transportation: Local Transportation Authorities*
INTRODUCED: *02/22/2019*
LOCATION: *ASSEMBLY*
SUMMARY:
Authorizes a local transportation authority to impose a tax applicable to only a portion of its county if two thirds of the voters voting on the measure within the portion of the county to which the tax would apply vote to approve the tax, as specified, and other requirements are met, including that the revenues derived from the tax be spent within, for the benefit of, the portion of the county to which the tax would apply.
STATUS:
02/22/2019 INTRODUCED.
CATEGORY: *Funding*

▶ CA AB 1430 AUTHOR: Garcia E [D]
 TITLE: State Government: Public Investment Opportunities
 INTRODUCED: 02/22/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Requires the Public Utilities Commission, the State Air Resources Board, the California Transportation Commission, and the Labor Workforce Development Agency by January 1, 2021, to provide a joint assessment of options for redefining the term cost effective to the Legislature for the purposes of prioritizing public investment opportunities.
 STATUS:
 02/22/2019 INTRODUCED.
 CATEGORY: Miscellaneous

▶ CA AB 1442 AUTHOR: Rivas [D]
 TITLE: California Transportation Commission
 INTRODUCED: 02/22/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Authorizes the California Transportation Commission to organize itself into at least four committees relative to the programming of transportation capital projects and allocation of funds to those projects pursuant to the state transportation improvement program and various other transportation funding programs.
 STATUS:
 02/22/2019 INTRODUCED.
 CATEGORY: Miscellaneous

▶ CA AB 1457 AUTHOR: Reyes [D]
 TITLE: Omnitrans Transit District
 INTRODUCED: 02/22/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Creates Omnitrans Transit District in the County of San Bernardino. Provides that the jurisdiction of the district would initially include the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, and Yucaipa and specified portions of the unincorporated areas of the County of San Bernardino.
 STATUS:
 02/22/2019 INTRODUCED.
 CATEGORY: Miscellaneous

▶ CA AB 1475 AUTHOR: Bauer-Kahan [D]
 TITLE: Construction Method: Bollinger Canyon Bridge
 INTRODUCED: 02/22/2019
 LOCATION: ASSEMBLY
 SUMMARY:
Authorizes the use of the Construction Manager and General Contractor method for the construction of the bridge over Bollinger Canyon to extend the Iron Horse Trail. Includes the County of Contra Costa and the Contra Costa Transportation Authority within the definition of a regional transportation agency for the purposes only of this authorization.
 STATUS:
 02/22/2019 INTRODUCED.
 CATEGORY: Miscellaneous

▶ CA AB 1486 AUTHOR: Ting [D]

TITLE: *Local Agencies: Surplus Land*
INTRODUCED: *02/22/2019*
LOCATION: *ASSEMBLY*
SUMMARY:
Expands the definition of local agency to include sewer, water, utility, and local and regional park districts, joint powers authorities, successor agencies to former redevelopment agencies, housing authorities, and other political subdivisions of this state, and any instrumentality thereof, that is empowered to acquire and hold real property, thereby requiring these entities to comply with requirements for the disposal of surplus land.
STATUS:
02/22/2019 INTRODUCED.
CATEGORY: *Miscellaneous*

▶ CA AB 1515 **AUTHOR:** *Friedman [D]*
TITLE: *California Environmental Quality Act*
INTRODUCED: *02/22/2019*
LOCATION: *ASSEMBLY*
SUMMARY:
Defines transit priority area to mean an area with a half mile of a major transit stop that is existing or planned if the planned stop is scheduled to be a program or an applicable regional transportation plan.
STATUS:
02/22/2019 INTRODUCED.
CATEGORY: *Transit*

▶ CA AB 1560 **AUTHOR:** *Friedman [D]*
TITLE: *California Environmental Quality Act*
INTRODUCED: *02/22/2019*
LOCATION: *ASSEMBLY*
SUMMARY:
Revises the definition of major transit stop to include a bus rapid transit station that is served by a local circulator or a local serving on-demand transit program. Increases the frequency of service interval to 20 minutes.
STATUS:
02/22/2019 INTRODUCED.
CATEGORY: *Transit*

▶ CA AB 1614 **AUTHOR:** *Gipson [D]*
TITLE: *Vehicles: License Plate Pilot Program*
INTRODUCED: *02/22/2019*
LOCATION: *ASSEMBLY*
SUMMARY:
Extends the authorization to conduct a license plate pilot program until January 1, 2021, and would authorize the Department of Motor Vehicles, if it conducts any pilot program to evaluate the inclusion of participants in the Business Partner Automation Program.
STATUS:
02/22/2019 INTRODUCED.
CATEGORY: *Miscellaneous*

▶ CA AB 1633 **AUTHOR:** *Grayson [D]*

TITLE: *Regional Transportation Plans: Traffic Signals*
INTRODUCED: 02/22/2019
LOCATION: ASSEMBLY
SUMMARY:
Authorizes each city located within the jurisdiction of Metropolitan Transportation Commission (MTC) to develop and implement a traffic signal optimization plan intended to reduce greenhouse gases and particulate emissions and to reduce travel times, the number of stops, and fuel use.
STATUS:
 02/22/2019 INTRODUCED.
CATEGORY: Miscellaneous

▶ CA AB 1671 **AUTHOR:** *Berman [D]*
TITLE: *Department of Transportation*
INTRODUCED: 02/22/2019
LOCATION: ASSEMBLY
SUMMARY:
Extends the operation of provisions requiring the Department of Transportation to report its findings from the testing to the Legislature on or before January 1, 2023. Requires the department to submit an additional updated report to the Legislature on or before July 1, 2022.
STATUS:
 02/22/2019 INTRODUCED.
CATEGORY: Audits, Records, Reports, and Litigation

CA ACA 1 **AUTHOR:** Aguiar-Curry [D]
TITLE: Local Government Financing: Affordable Housing
INTRODUCED: 12/03/2018
LOCATION: ASSEMBLY
SUMMARY:
 Creates an exception to the 1% limit on the ad valorem property tax rate on real property that would authorize a city or county to levy an ad valorem tax to service bonded indebtedness incurred to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure or affordable housing, if the proposition proposing that tax is approved by 55% of the voters of the city or county.
STATUS:
 12/03/2018 INTRODUCED.
CATEGORY: Funding

CA ACA 2 **AUTHOR:** Nazarian [D]
TITLE: State Tax Agency
INTRODUCED: 12/03/2018
DISPOSITION: Pending
LOCATION: ASSEMBLY
SUMMARY:
 Abolishes the State Board of Equalization and instead requires the Legislature to create a state tax agency by statute for purposes of carrying out those powers, duties and responsibilities previously vested in the State Board of Equalization. Authorizes the Legislature to vest all powers, duties, and responsibilities in a single state tax agency or separately in multiple state tax agencies.
STATUS:
 12/03/2018 INTRODUCED.
CATEGORY: Funding

▶ CA SB 1 **AUTHOR:** Atkins [D]

TITLE:	Environmental, Public Health, and Workers Defense Act
INTRODUCED:	12/03/2018
COMMITTEE:	Senate Environmental Quality Committee
HEARING:	03/20/2019
SUMMARY:	Enacts the California Environmental, Public Health, and Workers Defense Act, which prohibits a state or local agency from amending or revising its rules to be less stringent than the federal baseline standards pertaining to environmental protection.
STATUS:	01/16/2019 To SENATE Committees on ENVIRONMENTAL QUALITY, NATURAL RESOURCES AND WATER, and JUDICIARY.
CATEGORY:	Environment

CA SB 5	AUTHOR:	Beall [D]
	TITLE:	Local-State Sustainable Investment Incentive Program
	INTRODUCED:	12/03/2018
	LOCATION:	Senate Governance and Finance Committee
	SUMMARY:	Establishes the Local-State Sustainable Investment Incentive Program, which would be administered by the Sustainable Investment Incentive Committee. Authorizes a city, county, city and county, joint powers agency, enhanced infrastructure financing district, affordable housing authority, community revitalization and investment authority or transit village development district to apply to the Committee to participate in the program and authorizes Committee to approve or deny applications for projects.
	STATUS:	01/24/2019 To SENATE Committees on GOVERNANCE AND FINANCE and HOUSING.
	CATEGORY:	Funding

▶ CA SB 25	AUTHOR:	Caballero [D]
	TITLE:	Environmental Quality Act: Qualified Opportunity Zones
	INTRODUCED:	12/03/2018
	COMMITTEE:	Senate Environmental Quality Committee
	HEARING:	03/20/2019
	SUMMARY:	Establishes procedures for the administrative and judicial review of the environmental review and approvals granted for projects located in qualified opportunity zones that are funded by qualified opportunity funds or moneys from the Greenhouse Gas Reduction Fund.
	STATUS:	01/16/2019 To SENATE Committees on ENVIRONMENTAL QUALITY and JUDICIARY.
	CATEGORY:	Environment

▶ CA SB 43	AUTHOR:	Allen [D]
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TITLE:	Carbon Taxes
INTRODUCED:	12/03/2018
COMMITTEE:	Senate Environmental Quality Committee
HEARING:	03/20/2019
SUMMARY:	Requires the State Air Resources Board in consultation with the Department of Tax and Fee Administration, to submit a report to the Legislature on the results of a study to propose and determine the feasibility and practicality of a system to replace the tax imposed pursuant to the Sales and Use Tax Law with an assessment on retail products sold or used in the state based on the carbon intensity of the product to encourage the use of less carbon-intensive products.
STATUS:	
01/16/2019	To SENATE Committees on ENVIRONMENTAL QUALITY and GOVERNANCE AND FINANCE.
CATEGORY:	Funding

CA SB 50	AUTHOR:	Wiener [D]
	TITLE:	Planning and Zoning: Housing Development
	INTRODUCED:	12/03/2018
	LOCATION:	Senate Housing Committee
	SUMMARY:	Requires a city or county to grant upon request an equitable communities incentive when a development proponent seeks and agrees to construct a residential development that satisfies specified criteria, including, among other things, that the residential development is either a job-rich housing project or a transit-rich housing project.
	STATUS:	
01/24/2019		To SENATE Committees on HOUSING and GOVERNANCE AND FINANCE.
CATEGORY:		Planning

CA SB 59	AUTHOR:	Allen [D]
	TITLE:	Automated Vehicle Technology: Statewide Policy
	INTRODUCED:	12/19/2018
	LOCATION:	Senate Transportation Committee
	SUMMARY:	Establishes the policy of the state relating to automated vehicles in order to ensure that these vehicles support the state's efforts to, among other things, reduce greenhouse gas emissions and encourage efficient land use. Requires the Office of Planning and Research in the Governor's office, in coordination with the State Air Resources Board, to convene an automated vehicle interagency working group of specified state agencies to guide policy development for automated vehicle technology.
	STATUS:	
01/24/2019		To SENATE Committees on TRANSPORTATION and ENVIRONMENTAL QUALITY.
CATEGORY:		Miscellaneous

CA SB 128	AUTHOR:	Beall [D]
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TITLE:	Enhanced Infrastructure Financing Districts: Bonds
INTRODUCED:	01/10/2019
LOCATION:	Senate Governance and Finance Committee
SUMMARY:	Authorizes the public financing authority to issue bonds for purposes of enhanced infrastructure financing districts without submitting a proposal to the voters. Requires specified information related to the issuance of the bonds to be contained in the resolution.
STATUS:	
01/24/2019	To SENATE Committee on GOVERNANCE AND FINANCE.
CATEGORY:	Funding

CA SB 137	AUTHOR:	Dodd [D]
	TITLE:	Federal Transportation Funds: State Exchange Programs
	INTRODUCED:	01/15/2019
	LOCATION:	SENATE
	SUMMARY:	Authorizes the Department of Transportation to allow federal transportation funds that are allocated as local assistance to be exchanged for Road Maintenance and Rehabilitation Program funds appropriated by the department.
	STATUS:	
01/24/2019		To SENATE Committee on TRANSPORTATION.
CATEGORY:		Funding

▶ CA SB 146	AUTHOR:	Beall [D]
	TITLE:	Peninsula Rail Transit District
	INTRODUCED:	01/18/2019
	LOCATION:	Senate Transportation Committee
	SUMMARY:	Repeals provisions relating to the Peninsula Rail Transit District.
	STATUS:	
01/31/2019		To SENATE Committee on TRANSPORTATION.
CATEGORY:		Rail

▶ CA SB 147	AUTHOR:	Beall [D]
	TITLE:	High-Speed Rail Authority
	INTRODUCED:	01/18/2019
	LOCATION:	Senate Transportation Committee
	SUMMARY:	Authorizes the High-Speed Rail Authority to keep the public informed through activities, including, but not limited to, community outreach events, public information workshops, and newsletters posted on the authority's internet website.
	STATUS:	
01/31/2019		To SENATE Committee on TRANSPORTATION.
CATEGORY:		Rail

▶ CA SB 162	AUTHOR:	Galgiani [D]
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TITLE: Alternative Energy and Advanced Transportation
INTRODUCED: 01/24/2019
LOCATION: Senate Governance and Finance Committee
SUMMARY:
 Extends the authorization for the Alternative Energy and Advanced Transportation Financing Authority to provide financial assistance in the form of specified sales and use tax exclusions for qualifying projects, and extends the sales and use tax exclusion for the lease or transfer of title of tangible personal property constituting a project to any contractor for use in the performance of a construction contract for a party that will use that property as part of the approved project.
STATUS:
 02/06/2019 To SENATE Committee on GOVERNANCE AND FINANCE.
CATEGORY: Funding

► CA SB 168 **AUTHOR:** Wieckowski [D]
TITLE: Chief Officer of Climate Adaptation and Resilience
INTRODUCED: 01/28/2019
COMMITTEE: Senate Environmental Quality Committee
HEARING: 03/20/2019
SUMMARY:
 Establishes the Chief Officer of Climate Adaptation and Resilience in the Office of Planning and Research to serve as the statewide lead for planning and coordination of climate adaptation policy and implementation in California and would specify the duties of the chief officer.
STATUS:
 02/06/2019 To SENATE Committees on ENVIRONMENTAL QUALITY and NATURAL RESOURCES AND WATER.
CATEGORY: Planning

► CA SB 197 **AUTHOR:** Beall [D]
TITLE: Department of Transportation: Retention Proceeds
INTRODUCED: 01/31/2019
LOCATION: Senate Transportation Committee
SUMMARY:
 Deletes the repeal provision of existing law prohibiting the Department of Transportation, until 1/1/2020 from withholding retention proceeds when making progress payments for work performed by a contractor, thereby making the prohibition operative indefinitely.
STATUS:
 02/13/2019 To SENATE Committee on TRANSPORTATION.
CATEGORY: Funding

► CA SB 211 **AUTHOR:** Beall [D]
TITLE: State Highways: Leases
INTRODUCED: 02/04/2019
LOCATION: Senate Rules Committee
SUMMARY:
 Authorizes the Department of Transportation to consider future lease potential of areas above or below state highway projects when planning new state highway projects and authorizes this consideration to be accomplished by intradepartment consultation among offices concerned with project development and airspace lease development.
STATUS:
 02/13/2019 To SENATE Committee on RULES.
CATEGORY: Planning

► CA SB 241 **AUTHOR:** Moorlach [R]

TITLE: *Public Agencies: Joint Powers Authorities: Contracts*
INTRODUCED: *02/11/2019*
LOCATION: *Senate Governance and Finance Committee*
SUMMARY:
Relates to the Joint Powers Act. Requires the governing body of each member agency of an agency established pursuant to a joint powers agreement to approve and ratify each memorandum of understanding negotiated between the joint powers agency and its employees. Requires each member agency to approve and ratify each contract for municipal services or functions, as defined, negotiated between the joint powers agency and the entity providing the services or functions.
STATUS:
02/21/2019 To SENATE Committees on GOVERNANCE AND FINANCE and LABOR, PUBLIC EMPLOYMENT AND RETIREMENT.
CATEGORY: *Miscellaneous*

▶ CA SB 319 **AUTHOR:** *Moorlach [R]*
TITLE: *Highways: Interstate Route 5: State Route 99: Speeds*
INTRODUCED: *02/15/2019*
LOCATION: *SENATE*
SUMMARY:
Requires the Department of Transportation to initiate a project to construct two additional traffic lanes on northbound and southbound Interstate Route 5 and State Route 99 and prohibits the imposition of a maximum speed limit for those traffic lanes.
STATUS:
02/15/2019 INTRODUCED.
CATEGORY: *Planning*

▶ CA SB 336 **AUTHOR:** *Dodd [D]*
TITLE: *Transportation: Fully-Automated Transit Vehicles*
INTRODUCED: *02/19/2019*
LOCATION: *SENATE*
SUMMARY:
Requires a transit operator, as defined, to ensure each of its fully-automated transit vehicles, as defined, is staffed by at least one of its employees, who has had specified training, while the vehicle is in service.
STATUS:
02/19/2019 INTRODUCED.
CATEGORY: *Transit*

▶ CA SB 340 **AUTHOR:** *Stone [R]*
TITLE: *High Speed Rail Bonds*
INTRODUCED: *02/19/2019*
LOCATION: *SENATE*
SUMMARY:
Provides that no further bonds shall be sold for high-speed rail purposes pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, except as specifically provided with respect to an existing appropriation for high-speed rail purposes for early improvement projects in the Phast 1 blended system.
STATUS:
02/19/2019 INTRODUCED.
CATEGORY: *Rail*

▶ CA SB 355 **AUTHOR:** *Portantino [D]*

TITLE: *Joint Powers Agencies: Meetings*
INTRODUCED: 02/19/2019
LOCATION: SENATE
SUMMARY:
Relates to The Joint Exercise of Powers Act. Relates to The Ralph M. Brown Act. Eliminates the requirement that the designated alternate member of the legislative body of the joint powers agency also be a member of the legislative body of a member local agency.
STATUS:
02/19/2019 INTRODUCED.
CATEGORY: Miscellaneous

▶ CA SB 397 AUTHOR: *Glazer [D]*
TITLE: *Public Transit Operators: Passengers with Pets*
INTRODUCED: 02/20/2019
LOCATION: SENATE
SUMMARY:
Requires each public transit operator to develop best practices for allowing pets on public transit vehicles, serving areas subject to an evacuation order.
STATUS:
02/20/2019 INTRODUCED.
CATEGORY: Transit

▶ CA SB 400 AUTHOR: *Umberg [D]*
TITLE: *Reduction of Greenhouse Gases Emissions: Mobility*
INTRODUCED: 02/20/2019
LOCATION: SENATE
SUMMARY:
Provides that the term mobility option also includes bike sharing and electric bicycles under the Clean Cars 4 All Program.
STATUS:
02/20/2019 INTRODUCED.
CATEGORY: Active Transportation

▶ CA SB 405 AUTHOR: *Archuleta [D]*
TITLE: *Reclaimed Asphalt Pavement: County of Los Angeles*
INTRODUCED: 02/20/2019
LOCATION: SENATE
SUMMARY:
Requires the Department of Public Works of the County of Los Angeles to create a pilot project to demonstrate the viability of paving streets, roads and highways with hot mix asphalts composed as specified.
STATUS:
02/20/2019 INTRODUCED.
CATEGORY: Miscellaneous

▶ CA SB 517 AUTHOR: *Archuleta [D]*

TITLE:	<i>Department of Motor Vehicles: Records: Confidentiality</i>
INTRODUCED:	02/21/2019
LOCATION:	SENATE
SUMMARY:	<i>Extends a prohibition against the disclosure of the home addresses of certain public employees and officials to code enforcement officers and parking control officers.</i>
STATUS:	02/21/2019 INTRODUCED.
CATEGORY:	Audits, Records, Reports, and Litigation

▶ CA SB 615	AUTHOR:	<i>Hueso [D]</i>
	TITLE:	<i>Public Records: Disclosure</i>
	INTRODUCED:	02/22/2019
	LOCATION:	SENATE
	SUMMARY:	<i>Permits any person to institute proceedings for injunctive or declarative relief or a writ of mandate in any court of competent jurisdiction to enforce their right to inspect or to receive a copy of any public record or class of public records covered by the California Public Records Act. Requires a person to meet and confer in good faith with the agency in an attempt to informally resolve each issue.</i>
	STATUS:	02/22/2019 INTRODUCED.
	CATEGORY:	Audits, Records, Reports, and Litigation

▶ CA SB 662	AUTHOR:	<i>Archuleta [D]</i>
	TITLE:	<i>Green Electrolytic Hydrogen</i>
	INTRODUCED:	02/22/2019
	LOCATION:	SENATE
	SUMMARY:	<i>Requires the Public Utilities Commission (PUC) and Energy Commission to take into account opportunities to increase grid-responsive production of green electrolytic hydrogen for use in the transportation sector. Includes use of green electrolytic hydrogen as an alternative transportation fuel.</i>
	STATUS:	02/22/2019 INTRODUCED.
	CATEGORY:	Environment



March 21, 2019

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Federal Legislative Status Report

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Overview

A support position is recommended for a bill related to the streamlining of the Transportation Infrastructure Finance and Innovation Act program. An overview of the omnibus appropriations bill and the President's budget request is provided, as well as summaries of transportation-related hearings.

Recommendation

Adopt a SUPPORT position on S. 353 (Cornyn, R-TX), which would help streamline the Transportation Infrastructure Finance and Innovation Act program under the Department of Transportation.

Discussion

S. 353 (Cornyn, R-TX): Revitalizing American Priorities for Infrastructure Development Act.

S. 353 (Cornyn, R-TX) would implement changes to streamline the Transportation Infrastructure Finance and Innovation Act (TIFIA) program by redefining eligibility requirements, improving the streamlined applications process, and increasing overall transparency by requiring the Department of Transportation (DOT) to publish monthly and quarterly status reports online. These improvements would help expedite the application process, which would provide added certainty and allow projects to move through the TIFIA program more efficiently.

The TIFIA program, originally authorized under the Transportation Equity Act for the 21st Century and recently amended by Fixing America's Surface Transportation (FAST) Act, provides credit assistance in the form of direct loans, loan guarantees, and standby lines of grants to projects of regional or national significance. TIFIA assistance has leveraged limited Federal funding and

stimulated capital market investment in large-scale surface transportation projects, such as the Orange County Transportation Authority's (OCTA) Interstate 405 (I-405) Improvement Project. This program has allowed projects with dedicated revenue sources, such as tolls, user fees, or transportation sales tax measures, that are also in a state's long-range transportation plan and the State Transportation Improvement Program, to receive financing under TIFIA.

In July 2017, OCTA secured a direct \$629 million loan to help finance a portion of the \$1.9 billion I-405 Improvement Project, which will serve one of the busiest corridors in the nation. Though the project is primarily funded by OC Go, Orange County's half-cent transportation sales tax measure, the TIFIA loan is secured by pledged net toll revenues from the planned four-lane express lanes facility. In addition, with the fixed TIFIA interest rates that are equivalent to Treasury rates, OCTA was provided with a low-interest rate of 2.91 percent that will save Orange County taxpayers \$300 million over the 35-year life of the loan as compared to traditional bond financing. Thus, it is worth noting the importance of innovative federal financing methods such as TIFIA in delivering overall cost savings not only on the I-405 Improvement Project, but also for use in future projects.

As OCTA explores potential future opportunities for TIFIA in Orange County, several improvements could be made to make the process faster and more accessible. S. 353 would incorporate application process improvements by raising investment-grade rating requirements on senior debt obligations from \$75 million to \$150 million, reducing the overall timeline for loans under \$150 million. The bill would also expand the streamlined application process by establishing additional assurances to allow for expedited decisions. Specifically, the bill requires the Secretary of Transportation, within 120 days of enactment, to implement an expedited decision timeline for public agency borrowers seeking secured loans, if certain conditions are met, including, but not limited to: the secured loan is rated in the A category or higher, is less than \$100 million, and is payable from pledged revenues. This would provide added certainty for the DOT's Build America Bureau, which oversees the TIFIA program, in qualifying projects.

While the reforms proposed in S.353 are important and needed, OCTA will continue to pursue additional reforms in the TIFIA application process. Potential reforms include creating separate processes for government agencies and public-private partnerships in establishing credit worthiness, mandating timeframes for each step of the application process, providing additional clarity in the loan requirements, and reconsidering the 50/50 revenue split in situations where excess revenues could be reinvested in other projects, provided the TIFIA repayment terms are being met. OCTA staff will continue to remain involved in

these discussions given the value of the TIFIA program in advancing surface transportation projects.

A copy of S. 353 is included as Attachment A. Staff recommends a SUPPORT position on S. 353, consistent with the principle included in OCTA's 2019-20 Federal Legislative Platform that states, "Support expansion and further development of innovative project finance methods, including the Transportation Infrastructure Finance and Innovation Act loan program."

Overview of the Omnibus Appropriations Bill

On February 14, 2019, the House signed omnibus appropriations legislation by a vote of 300 to 128. The Senate passed the bill shortly thereafter by a vote of 83-18. On February 15, 2019, the President signed the bill into law, funding the remaining seven appropriations bills, including the Transportation, Housing and Urban Development (THUD) bill, through the end of the fiscal year. The THUD division received \$71.1 billion in discretionary funding, \$23.1 billion above the President's budget request and \$1 billion above the federal fiscal year (FFY) 2018 enacted level. The portion of the omnibus bill that funds the DOT provides \$85.6 billion overall.

The omnibus bill provides more than \$16 billion for public transportation and intercity passenger rail grants, which is \$1.2 billion above authorized levels in the FAST Act. Within the \$13.4 billion provided for public transportation grants is \$2.55 billion for the Capital Investment Grants (CIG) program. The bill allocates \$1.27 billion for New Starts projects, \$635 million for Core Capacity projects, and \$526.5 million for Small Starts programs. In addition, the bill also includes language directing the Federal Transit Administration (FTA) to obligate \$2.17 billion of the CIG funds in a timely manner, specifically by December 31, 2020. There was also language emphasizing that the CIG program should be administered pursuant to the policies authorized in the FAST Act.

The \$2.6 billion provided for intercity passenger rail grants is \$1.94 billion for Amtrak, \$400 million for Federal-State Partnership for State of Good Repair grants, and \$255 million for the Consolidated Rail Infrastructure and Safety Improvements program, among other programs. Of the \$1.94 billion included for Amtrak, the bill allocates \$650 million for Northeast Corridor grants and \$1.29 billion for the National Network. As for the Federal-State Partnership for State of Good Repair program, the bill also directs the Federal Railroad Administration to release funding for FFY 2017, 2018, and 2019 grants within 30 days of enactment of this bill to expedite the timeline of grant notices and awards.

The omnibus bill also provides \$900 million for the competitive Better Utilizing Investments to Leverage Development (BUILD) program, which funds surface transportation projects that include multi-modal investments. The bill requires BUILD grants to be split evenly between large urban areas and rural areas with a population of under 200,000. The bill also contains language requiring that the FFY 2019 funding application process commence within 60 days of enactment. Staff will continue to monitor the implementation of these funds as it relates to OCTA.

President's Budget Request

The President released his FFY 2020 budget request to Congress on March 11, 2019, to begin the FFY 2020 appropriations process. The President's budget proposes funding cuts across most federal agencies, while also proposing an increase in defense spending. In order to allow for the increase in defense spending, the budget provides for cuts in the discretionary budget of most federal agencies. Similar to past Presidential budget proposals, it is not expected that the proposed funding cuts included in this year's request will gain traction with Congress, as many of these programs enjoy bi-partisan support.

For the DOT, the President is requesting \$84 billion overall, which is over \$1.6 billion less than the FFY 2019 enacted level. The recommended cuts do not impact programs funded by the Highway Trust Fund (HTF), including the Buses and Bus Facilities Program, Urbanized Area Formula Grants, and the State of Good Repair Grants, which are funded at authorized levels consistent with the fifth and final year of the FAST Act. In addition, the budget request for DOT's discretionary programs includes the following:

- \$1.5 billion for FTA's CIG program, compared to \$2.55 billion appropriated for FFY 2019.
- \$2 billion for Infrastructure for Rebuilding America discretionary grants, which is in addition to \$1 billion authorized under the FAST Act.
- \$1 billion for BUILD discretionary grants, compared to \$900 million appropriated for FFY 2019.
- \$550 million in transitional grants to States to restructure Amtrak's long-distance network.

In conjunction with the budget request, the President maintained support for an infrastructure initiative that would generate at least \$1 trillion in infrastructure investment. The initiative calls on Congress to pass a long-term surface transportation reauthorization bill along with a placeholder in the amount of \$200 billion for other infrastructure priorities. Staff will continue to monitor discussions related to the FFY 2020 appropriations process as it moves forward.

Summaries of Recent Transportation-Related Hearings

Over the last month, there have been several Congressional hearings focused on the following four themes: the HTF shortfall, funding future infrastructure investments, streamlining the federal permitting process, and the role of infrastructure policy in addressing climate change.

On February 13, 2019, the Senate Committee on Commerce, Science, and Transportation held a hearing entitled, "America's Infrastructure Needs: Keeping Pace with a Growing Economy." Chairman Roger Wicker (R-MS) and Ranking Member Maria Cantwell (D-WA) spoke about the current infrastructure conditions and how it is impacting the United States' global competitiveness. There was bipartisan agreement on increasing investment in existing infrastructure. Witnesses such as Chairman William Friedman of the American Association of Port Authorities, and President Ian Jefferies of the Association of American Railroads, suggested increasing the gas tax, developing a vehicle mile traveled (VMT) fee, or establishing a freight waybill fee. There was also a discussion on making multi-modal investments, as evidenced by Chairman Friedman's call to remove funding caps for non-highway projects under the freight formula program and the Infrastructure For Rebuilding America discretionary grant program.

On February 26, 2019, the House Transportation and Infrastructure Committee held a hearing entitled, "Examining How Federal Infrastructure Policy Could Help Mitigate and Adapt to Climate Change." Committee members and witnesses discussed how transportation policy impacts the environment and, specifically, how federal transportation policy might be altered to achieve both goals. Committee members discussed how the transportation sector is one of the largest contributors to climate change and, as such, transportation policy should reward local transportation agencies for pursuing low-carbon technologies and strategies. California Air Resources Board Member Dr. Daniel Sperling testified about policies implemented in the State of California, most notably regional greenhouse gas emission reduction targets, as well as the importance of funding in incentivizing transportation agencies to achieve climate goals. Committee members and witnesses also focused on the airline industry's success in achieving emissions reductions as an example of a market-based approach to protecting the environment. According to a witness from Airlines for America, the air travel industry is responsible for driving five percent of gross domestic product, yet airlines are only responsible for two percent of greenhouse gas emissions. These statistics, and others like them, generated significant discussion about the need for market-based policies to combat greenhouse gas emissions as opposed to top-down environmental mandates that might harm taxpayers.

On March 6, the House Committee on Ways and Means held a hearing entitled, "Our Nation's Crumbling Infrastructure and the Need for Immediate Action." Committee members and witnesses discussed the need to find a sustainable funding situation for federal transportation programs, specifically a solution to the long-term structural deficit facing the HTF. Ways and Means Ranking Member Kevin Brady (R-TX) noted that HTF expenditures should only be used for highway projects, arguing against the longstanding 80-20 split of HTF expenditures, which directs 80 percent of HTF funds to highway projects and 20 percent to transit programs. House Transportation and Infrastructure Committee Chair Peter DeFazio (D-OR), testifying as a witness, advocated for increasing the federal gas tax. There were in-depth discussions during the hearing about how a VMT fee might compare, in terms of revenue stability, to the current gas tax, as well as the potential impacts of a VMT fee on urban and rural users. Other major themes in the hearing included job creation, the need to address the effects of climate change, and delays caused by an extensive federal permitting process. Prior to the hearing, there were reports that the newly-installed majority was reserving floor time, within the next 100 days, to consider infrastructure legislation.

On March 6, 2019, the Senate Committee on Environment and Public Works held a hearing entitled, "The Economic Benefits of Highway Infrastructure Investment and Accelerated Project Delivery." The discussion during the hearing revolved around the immediate need to fill the growing shortfall in the Highway Trust Fund and streamline the environmental permitting process. Ranking Member Senator Thomas R. Carper (D-MD) asked the panelists for suggestions on how to fund future infrastructure programs. In response, Steven Demetriou, Business Round Table Infrastructure Committee, and Patrick McKenna, American Association of State Highway and Transportation Officials, agreed that an initial increase in the gas tax followed by a long-term mileage-based user fee should be considered. In addition, Patrick McKenna also suggested expanding the National Environmental Policy Act Assignment Program, which allows certain states to assume federal environmental responsibilities on highway projects, to include rail and transit projects to provide expedited environmental approvals across the board.

Summary

A support position is recommended for a bill to improve the Transportation Infrastructure Finance and Innovation Act program. Summaries are provided on recent Congressional hearings, the omnibus bill, and the President's budget request.

Attachments

- A. S. 353 (Cornyn, R-TX) Bill Language
- B. Potomac Partners DC, Monthly Legislative Report – February 2019

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116TH CONGRESS
1ST SESSION

S. 353

To amend title 23, United States Code, to improve the transportation infrastructure finance and innovation (TIFIA) program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2019

Mr. CORNYN (for himself and Mr. KAINE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend title 23, United States Code, to improve the transportation infrastructure finance and innovation (TIFIA) program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Revitalizing American
5 Priorities for Infrastructure Development Act” or the
6 “RAPID Act”.

1 **SEC. 2. TRANSPORTATION INFRASTRUCTURE FINANCE AND**
2 **INNOVATION PROGRAM.**

3 (a) **ELIGIBILITY.**—Section 602(a)(2) of title 23,
4 United States Code, is amended—

5 (1) in subparagraph (A)(iv)—

6 (A) by striking “a rating” and inserting
7 “an investment-grade rating”; and

8 (B) by striking “\$75,000,000” and insert-
9 ing “\$150,000,000”; and

10 (2) in subparagraph (B)—

11 (A) by striking “the senior debt” and in-
12 serting “senior debt”; and

13 (B) by striking “credit instrument is for
14 an amount less than \$75,000,000” and insert-
15 ing “total amount of other senior debt and the
16 Federal credit instrument is less than
17 \$150,000,000”.

18 (b) **STREAMLINED APPLICATION PROCESS.**—Section
19 603(f) of title 23, United States Code, is amended by add-
20 ing at the end the following:

21 “(3) **ADDITIONAL TERMS FOR EXPEDITED DE-**
22 **CISIONS.**—

23 “(A) **IN GENERAL.**—Not later than 120
24 days after the date of enactment of this para-
25 graph, the Secretary shall implement an expe-

1 dited decision timeline for public agency bor-
2 rowers seeking secured loans that meet—

3 “(i) the terms under paragraph (2);

4 and

5 “(ii) the additional criteria described
6 in subparagraph (B).

7 “(B) ADDITIONAL CRITERIA.—The addi-
8 tional criteria referred to in subparagraph
9 (A)(ii) are the following:

10 “(i) The secured loan is made on
11 terms and conditions that substantially
12 conform to the conventional terms and
13 conditions established by the National Sur-
14 face Transportation Innovative Finance
15 Bureau.

16 “(ii) The secured loan is rated in the
17 A category or higher.

18 “(iii) The TIFIA program share of el-
19 igible project costs is 33 percent or less.

20 “(iv) The applicant demonstrates a
21 reasonable expectation that the contracting
22 process for the project can commence by
23 not later than 90 days after the date on
24 which a Federal credit instrument is obli-

1 gated for the project under the TIFIA pro-
2 gram.

3 “(v) The project has received a cat-
4 egorical exclusion, a finding of no signifi-
5 cant impact, or a record of decision under
6 the National Environmental Policy Act of
7 1969 (42 U.S.C. 4321 et seq.).

8 “(C) WRITTEN NOTICE.—The Secretary
9 shall provide to an applicant seeking a secured
10 loan under the expedited decision process under
11 this paragraph a written notice informing the
12 applicant whether the Secretary has approved
13 or disapproved the application by not later than
14 180 days after the date on which the Secretary
15 submits to the applicant a letter indicating that
16 the National Surface Transportation Innovative
17 Finance Bureau has commenced the credit-
18 worthiness review of the project.”.

19 (c) STATUS REPORTS.—Section 609 of title 23,
20 United States Code, is amended by adding at the end the
21 following:

22 “(c) STATUS REPORTS.—

23 “(1) IN GENERAL.—The Secretary shall publish
24 on the website for the TIFIA program—

1 “(A) on a monthly basis, a current status
2 report on all submitted letters of interest and
3 applications received for assistance under the
4 TIFIA program; and

5 “(B) on a quarterly basis, a current status
6 report on all approved applications for assist-
7 ance under the TIFIA program.

8 “(2) INCLUSIONS.—Each monthly and quar-
9 terly status report under paragraph (1) shall in-
10 clude, at a minimum, with respect to each project in-
11 cluded in the status report—

12 “(A) the name of the party submitting the
13 letter of interest or application;

14 “(B) the name of the project;

15 “(C) the date on which the letter of inter-
16 est or application was received;

17 “(D) the estimated project eligible costs;

18 “(E) the type of credit assistance sought;

19 and

20 “(F) the anticipated fiscal year and quar-
21 ter for closing of the credit assistance.”.

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Monthly Legislative Report – February 2019

February Advocacy Meetings

Congressman Lou Correa (D-CA) – We met with Congressman Correa and his senior staff to follow-up on our discussions from last month regarding OCTA's future transportation needs and possible funding requests for Fiscal Year (FY) 2020. We also discussed the Congressman's priorities as the Chairman of the House Homeland Security's Transportation and Maritime Security Subcommittee. We also discussed a support letter from the Orange County Congressional delegation to DOT Secretary Chao regarding OCTA's INFRA grant for State Route 55.

Congressman Gil Cisneros (D-CA) – We met with Congressman Cisneros and his staff this month to follow-up on our discussions regarding OCTA's priority projects and opportunities for funding in a potential infrastructure bill and the FY20 Appropriations process. We also discussed a support letter from the County's congressional delegation regarding the State Route (SR) 55 project.

Congresswoman Linda Sanchez (D-CA) – We met Congresswoman Sanchez's staff to follow-up on our discussions regarding OCTA's ongoing projects that include the OC Streetcar and the I-405 project. We also discussed the potential for legislation regarding internet sales tax situs rules. We also discussed a support letter for State Route 55 project.

Congressman Harley Rouda (D-CA) – We met with Congressman Rouda and his staff this month to discuss the LOSSAN corridor and funding opportunities for passenger rail and clean bus technologies leading up to the House T&I Committee's hearing on climate change and resilient transportation infrastructure. We also discussed with senior staff the information on OCTA's future transportation needs. We also discussed a support letter for State Route 55 project and timeline for the Congressman's FY 20 Appropriations requests.

Congressman Mike Levin (D-CA) – We met with Congressman Levin's staff to follow-up on our discussions regarding the 91 Express Lanes and the use of congestion management pricing. We also discussed OCTA's project on the I-405 and the TIFIA program and provided information on OCTA's future transportation needs. We also discussed a support letter from the congressional delegation to DOT Secretary Chao regarding the State Route 55 project.

Congressman Alan Lowenthal (D-CA) – We met with Congressman Lowenthal and his staff to discuss possible appropriations and policy requests as well as provide information on OCTA's future transportation needs. We also discussed support for legislation that

would streamline the TIFIA program and reduce barriers to financing options for transportation authorities. We also discussed the delegation support letter for State Route 55 project.

Congresswoman Katie Porter (D-CA) – We followed-up with Congresswoman Porter’s staff regarding our briefings on OCTA’s future transportation needs and provided additional background materials on congestion mitigation pricing on the 91 Express Lanes. We also discussed a support letter for State Route 55 project.

Senator Dianne Feinstein (D-CA) – We met with senior staff to Senator Feinstein to discuss the timeline for the FY20 appropriations requests and possible funding levels for key transportation programs in the FY20 THUD appropriations bill. We also discussed the outlook of a broad infrastructure package in the Senate this year, as well as legislation regarding transit safety.

Congressman Sam Graves (R-MO) – We met with Ranking Member Graves to discuss the House T&I Committee’s progress on a new infrastructure package that they expect to release later this year. We also discussed this month’s developments regarding CA high speed rail.

FY19 Appropriations and Shutdown Update

On February 14th, House and Senate Leaders passed a bill including the seven remaining appropriations bills as a minibus package using procedural rules that would prohibit any new amendments on the floor. The President signed the spending legislation on Friday, February 15th.

Highlights from the bill’s ([H.J.Res. 31](#)) Transportation, Housing and Urban Development division are included below:

Division G - Transportation, Housing and Urban Development (THUD)

- The Transportation, and Housing and Urban Development, and Related Agencies division provides \$71.1 billion in discretionary funding, \$23.1 billion above the President’s budget request and \$1 billion above the FY2018 enacted level. The total includes more than \$17 billion in funding for new infrastructure projects in addition to \$59 billion for infrastructure from dedicated fuel and aviation taxes.
 - Department of Transportation (DOT) – \$86.5 billion overall for DOT, including \$9 billion for new transportation infrastructure.
 - National Infrastructure Investments (TIGER or BUILD) – \$900 million, a decrease of \$600 million below the FY2018 enacted level and \$900 million above the President’s budget request. The funding will be allocated 50 percent to urban areas and 50 percent to rural areas.

- Federal Aviation Administration (FAA) – \$17.5 billion, which is \$549 million below the FY2018 enacted level and \$1.3 billion above the President’s budget request. Within this amount, Airport Improvement Program grants receive an additional \$500 million to accelerate infrastructure investments at airports.
- Federal Highway Administration (FHWA) – \$49.3 billion, an increase of \$1.8 billion above the FY2018 enacted level and \$3.5 billion above the President’s budget request. Within this amount, Highway Infrastructure Programs are funded at \$3.3 billion for highway and bridge rehabilitation and construction as well as safety improvements at railroad grade crossings.
- Federal Motor Carrier Safety Administration (FMCSA) – \$667 million, which is \$178 million below the FY2018 enacted level and \$1 million above the President’s budget request.
- National Highway Traffic Safety Administration (NHTSA) – \$966 million, an increase of \$19 million above the FY2018 enacted level and \$52 million above the President’s budget request.
- Federal Railroad Administration (FRA) – \$2.9 billion, which is \$218 million below the FY2018 enacted level and \$1.9 billion above the President’s budget request. Within this amount, Amtrak is funded at \$1.9 billion, equal to FY2018 enacted level, and \$670 million is provided for rail infrastructure improvements. The Magnetic Levitation Program is funded at \$10 million.
- Federal Transit Administration (FTA) – \$13.4 billion, a reduction of \$67 million below the FY2018 enacted level and \$2.3 billion above the President’s budget request. Within this amount, Capital Investment Grants are funded at \$2.6 billion, sufficient to fund all signed Full Funding Grant Agreements and continue work on projects in the development pipeline. Transit Infrastructure Grants are funded at \$700 million to improve and modernize transit infrastructure.

The bill **does not** include provisions on:

- High speed rail in California;
- China trade policy related to transit manufacturers; or
- Meal and rest breaks for interstate truckers.

The bill ([H.J.Res. 31](#)) included \$1.376 billion for a physical barrier on the Southern Border, compared to the President’s request for \$5.7 billion. The President signed the legislation on Friday, February 15th while simultaneously declaring a National Emergency on the Southern Border.

This declaration would allow the President to use approximately \$3.6 billion in Military Construction funds for construction of new physical barriers along the southern border. The White House is also planning to use \$2.5 billion from a Department of Defense drug prevention program and \$600 million from a Treasury Department drug forfeiture program.

House Democrats introduced a resolution of disapproval to stop President Trump from using these funds for a border wall on Tuesday, February 26th. These funds will likely be tied up in court as a series of lawsuits are being filed by watchdog groups, advocacy organizations, and the State of California.

As a result of the partial government shutdown, the release of the President's FY2020 budget request has been delayed. The President's budget is typically released on the first Monday of February each year. The White House has indicated that they expect to have a final FY20 Budget Request transmitted to Congress sometime in mid-March.

Other Legislative and Administrative Updates

- On February 5th, the President delivered the State of the Union to a joint session of Congress after having delayed his previous address due to the partial Government Shutdown. During the State of the Union, the President asked both parties to unite for a bipartisan effort on an infrastructure bill, saying "I know that Congress is eager to pass an infrastructure bill, and I am eager to work with you on legislation to deliver new and important infrastructure investment."
- On February 6th, Senators John Cornyn (R-TX) and Tim Kaine (D-VA) reintroduced legislation from late last session entitled the RAPID Act ([S. 353](#)). If enacted, the bill would make a number of changes to the Transportation Infrastructure Finance and Innovation Act (TIFIA) program. These changes would include raising the investment grade rating requirements from \$75 million to \$150 million, add new criteria to the streamlined applications process at DOT, and increase transparency by requiring DOT to publish status reports online.
- On February 7th, the House Transportation and Infrastructure Committee held their first full committee hearing of the session, entitled "*The Cost of Doing Nothing: Why Investing in Our Nation's Infrastructure Cannot Wait.*" Witnesses included Los Angeles Mayor Eric Garcetti, former DOT Secretary Ray LaHood, and Amtrak CEO and President Richard Anderson. During his opening remarks, Chairman Peter DeFazio (D-OR) said "Congress must act to provide significant federal dollars to invest in US Infrastructure." Ranking Member Sam Graves (R-MO) reiterated the need for federal investment and remarked that he believes a Vehicle Miles Traveled (VMT) system of revenue is the only sustainable way to shore up the Highway Trust Fund. During the hearing, former Secretary LaHood said that it is critical that Congress act soon before the Presidential races begin ramping-up near the end of the year, a sentiment that has also been expressed by Ranking Member Graves.

- On February 11th, Congresswoman Grace Napolitano (D-CA) introduced legislation ([HR 1139](#)) entitled the “*Transit Worker and Pedestrian Protection Act*”. If enacted, this bill would require operators of fixed route bus services and rail systems not regulated by the FRA to develop and implement risk reduction plans related to assaults on transit works and traffic accidents. The bill also authorizes \$25 million per year from 2019-2023 for the implementation of the risk reduction plans. House T&I is likely to take up the bill in Committee during the month of March according to T&I staff.
- On February 12th, California Governor Gavin Newsom delivered a State of the State address. During this speech, Governor Newsom announced major changes to the scope of the California High-Speed Rail project. Governor Newsom commented that “The project, as currently planned, would cost too much and respectfully take too long. Right now, there simply isn’t a path to get from Sacramento to San Diego, let alone from San Francisco to L.A.” and that the project would now seek to complete work on a section between Merced and Bakersfield while rolling-back plans to connect downtown San Francisco with downtown Los Angeles.

In response, on February 19th, the Department of Transportation (DOT) announced plans to cancel \$929 million in federal funds set aside to be used for the California High-Speed Rail project. In addition, the DOT is planning on exploring legal options to recapture \$2.5 billion in federal funds that have already been granted to what the DOT is calling a “now-defunct project.” Federal Railroad Administration Administrator Ron Batory wrote a letter to California High-Speed Rail Authority Chief Brian Kelly on the same day outlining the decision, saying that the project has materially failed to comply with the terms of the agreement between the State and Federal Government. The letter can be found [HERE](#).

- On Tuesday, February 26th, the full House Transportation and Infrastructure Committee held a hearing entitled “*Examining How Federal Infrastructure Policy Could Help Mitigate and Adapt to Climate Change*.” Due to a large snowstorm in Oregon, Chairman DeFazio (D-OR) was unable to attend the hearing. During his opening statements, Vice Chairman Salud Carbajal (D-CA) remarked that the US is the largest contributor to global warming with the transportation sector making up 83% of global warming emissions. Carbajal also said that while the Committee has Members that support and oppose the Green New Deal, this is not the forum to debate that the plan, which far exceeds the jurisdiction of the Committee. Ranking Member Sam Graves (R-MO) also noted in response that he believes industry stakeholders are making considerable progress towards reducing emissions, and that it should be the role of the federal government to encourage new technologies to reduce emissions without implementing “one size fits all” mandates. Witnesses for the hearing included Daniel Sperling of the California Air Resources Board, American Airlines Vice President Nancy Young, and a number of environmental groups advocates.
- The White House has announced the President’s intention to nominate Deputy Transportation Secretary Jeff Rosen to be the next Deputy Attorney General. Jeff

Rosen was easily confirmed in the Senate in May of 2017 as Deputy Transportation Secretary. In his role at the DOT he was responsible for day-to-day operations, deregulatory efforts, and grant decisions. He has previously served as General Counsel at the DOT and at the Office of Management and Budget during the George W. Bush administration.