



**September 20, 2018**

**To:** Legislative and Communications Committee

**From:** Darrell E. Johnson, Chief Executive Officer

**Subject:** State Legislative Status Report

### **Overview**

An overview is provided on a bill related to Construction Manager/General Contractor authority on Metrolink commuter rail improvements. A status update is provided on bills where the Orange County Transportation Authority has an official position that are pending with the Governor. An overview is provided of a proposal by the United States Environmental Protection Agency and the National Highway Traffic Safety Administration to freeze fuel economy and emission standards, and revoke California's Clean Air Act preemption waiver.

### **Recommendation**

Receive and file as an information item.

### **Discussion**

SB 502 (Portantino, D-La Cañada Flintridge): Commuter Rail Systems: Availability of Automated External Defibrillators: Construction Manager/General Contractor Project Delivery Method: Metrolink Commuter Rail Projects

Since last September, SB 502 (Portantino, D-La Cañada Flintridge) included language requiring public entities that operate a commuter rail system to ensure that each train is equipped with an automated external defibrillator (AED). As most recently amended, the deadline to accomplish the requirement was July 1, 2020. This was not an issue for commuter rail operators within the region. The Los Angeles – San Diego – San Luis Obispo Rail Corridor Agency, though not required to comply as an intercity passenger rail service, has installed AEDs on every train. In addition, the Southern California Regional Rail Authority (Metrolink) is currently taking the necessary steps to install AEDs on its trains.

However, on August 23, 2018, amendments were made to SB 502 that added language that provided Construction Manager/General Contractor (CM/GC)

authority to Metrolink for commuter rail projects without the consent or oversight of its member agencies, including the Orange County Transportation Authority (OCTA). These initial amendments would have subverted OCTA's prerogative to maintain local control over the delivery of transportation projects on the 42 miles of OCTA-owned rail right-of-way in Orange County. The language amending SB 502 was not shared with OCTA or the Metrolink member agencies until immediately before SB 502 was amended. Because the bill was amended during the very last days of session, there was not enough time to allow for a full negotiations process. As such, OCTA communicated an oppose position to the author consistent with OCTA's 2017-2018 Legislative Platform principle to "oppose legislation and regulations adversely affecting OCTA's ability to efficiently and effectively contract for goods and services, conduct business of the agency, and limit or transfer the risk of liability." The letter of opposition to SB 502 is included as Attachment A.

Due to OCTA's opposition, Metrolink and the author's office showed a willingness to accept amendments to ensure the use of CM/GC would only be conducted according to previous precedent. On August 27, 2018, SB 502 was amended to clarify Metrolink could only use CM/GC authority upon approval from the county transportation commission that has jurisdiction over the project. The bill also provided CM/GC authority for the county transportation commissions, such as OCTA, to construct Metrolink commuter rail projects utilizing CM/GC. These amendments allowed OCTA to remove its opposition to SB 502 and support the bill. Furthermore, the amendments ensure that the use of CM/GC authority leverages the expertise and local decision-making processes of county transportation commissions in the region, all of which have an extensive history of successfully delivering projects in the Metrolink service area.

In its current form, SB 502 could serve as a tool to expedite the delivery of Metrolink improvement projects that will improve mobility and reduce congestion throughout Southern California. A support position is consistent with OCTA's 2017-18 State Legislative Platform principle to "support efforts to expand, extend, and preserve new and existing alternative project delivery methods such as design-build, public-private partnership authority, and construction manager/general contractor authority, including expanding mode and funding eligibility, while allowing the appropriate balance of partnership between the state and local agencies." A copy of the current bill language and the letter of support for SB 502 are included as Attachment B.



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**End of Session Update**

August 31, 2018, marked the last day which the Legislature could pass bills to the Governor. The Governor will have until September 30, 2018, to sign or veto bills that the Legislature passed. At the time of the writing of this staff report, there were three bills which the OCTA had taken position on that remained active, or were already signed into law. Below is the status of those bills:

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

Position: Oppose

Status: Pending with the Governor

AB 1912 (Rodriguez, D-Chino) was introduced to ensure that all joint power authority (JPA) entities can cover their retirement obligations, even if these liabilities were not considered at the time the JPA was formed. The bill originally held current and former JPA member agencies jointly-and-severally liable for pension obligations. OCTA opposed the bill in this form because it would adversely affect the agency's financial structure and deter against the future use of JPAs. AB 1912 was amended in an attempt to give more discretion to member agencies. While some stakeholders viewed the amendments as a compromise, OCTA remains opposed to the bill as the previously mentioned concerns were not adequately addressed.

As amended, AB 1912 does not allow a JPA to dissolve without a plan to apportion outstanding pension liabilities between current and former member agencies. Absent an apportionment agreement by member agencies, either the California Public Employees' Retirement System or the appropriate retirement plan, depending on the legal structure of the JPA, has discretion to apportion liability, with any challenges subject to arbitration. As a direct result of this bill, OCTA could be subject to significantly more financial liability than was anticipated upon the formation of the Metrolink JPA. If the Metrolink JPA was to dissolve, there would also be insufficient legal remedy in the face of an unfavorable arbitration result subjecting OCTA to an inequitable apportionment of retirement liability. In addition, this bill continues to place additional burdens on the formation of future JPAs, making it more difficult for OCTA to collaborate with interested partners to improve mobility in Orange County.

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

Position: Support

Status: Signed by the Governor

Sponsored by the California Transit Association (CTA), AB 3124 (Bloom, D-Santa Monica) authorizes the use of three-position bicycle racks on 60-foot articulated transit buses, subject to the approval of a route review committee. This legislation expands upon the authority provided by AB 2707 (Chapter 310, Statutes of 2014), which only allowed 40-foot buses to be equipped with three-position bicycle racks. The higher capacity racks on articulated buses will reduce the number of times a bicyclist will be left behind and will make the system more compatible for bicyclists. Transit agencies in support of this bill noted that despite the difference in length, the turning radius between 40-and 60-foot buses is relatively similar. AB 3124 was approved unanimously by both houses of the Legislature with the understanding that it is only logical that 60-foot buses be authorized to accommodate three bicycles as well. OCTA will be allowed to start deploying three position racks as soon as January 1, 2019, assuming approval from a route review committee. In addition, OCTA's internal Configuration Control Committee would also review such addition.

SB 1119 (Beall, D-San Jose): Low Carbon Transit Operations Program

Position: Sponsor

Status: Pending with the Governor

Co-sponsored by CTA and supported by a number of transportation agencies, SB 1119 (Beall, D-San Jose) seeks to provide additional flexibility in the use of Low Carbon Transit Operations Program (LCTOP) funding for new transit pass programs, new or expanded transit service serving disadvantaged communities (DACs), and the purchase of zero-emission transit buses and supporting infrastructure. LCTOP is the only formula program funded by cap-and-trade revenues and is unique because it allows transit agencies to invest in both operational and capital improvements.

OCTA has had recent success in implementing a new student transit pass program for Santa Ana College using LCTOP funding. With the success of the program, other universities have shown interest in adopting a similar program, but do not meet the DAC requirements under existing law, which requires recipients of LCTOP funding to demonstrate that at least 50 percent of program funds received be expended on projects or services that benefit DACs. SB 1119 will provide system-wide flexibility to allow for the expansion of this program, further expanding transportation choices for students and residents of DACs. This will have the dual benefit of increasing ridership while simultaneously reducing congestion and greenhouse gas emissions.

SB 1119 passed unanimously out of both the Senate and the Assembly, and did not receive a single vote in opposition in any of its committee hearings.



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### United States Environmental Protection Agency and National Highway Traffic Safety Administration's Proposed Action on Vehicle Emissions Rules

On August 24, 2018, the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) published "The Safer Affordable Fuel Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks." The SAFE Vehicles Rule, if finalized, would amend existing Corporate Average Fuel Economy and greenhouse gas emissions standards for passenger cars and light-duty trucks covering model years 2021 through 2026. Specifically, this rule would freeze fuel economy standards and tailpipe emission standards for new cars at 2020 levels through 2026. Under the current agreement put in place by the EPA and NHTSA under the previous Administration in 2012, auto manufacturers must make continuous improvements in fuel economy through 2025, up to an average of 54 miles per gallon. In addition, the previous administration conducted a midterm review in January 2017 pursuant to the agreement and determined that the increases in fuel economy and the stringent tailpipe standards should remain in place. However, in April 2018, both agencies under the current Administration found that the 2012 standards were not feasible, and thus initiated this rulemaking process.

Within the SAFE Vehicles Rule, EPA and NHTSA are also rescinding California's ability to set its own, more stringent standards. The agencies propose to withdraw the California's Clean Air Act preemption waiver, which was granted on January 9, 2013, for California's Advanced Clean Car Program. The Clean Air Act generally preempts the state regulation of motor vehicles, but given California's unique air quality issues, California has the authority to set its own motor vehicle emission standards. California has received numerous waivers since the 1960s for each iteration of its vehicle regulations. By removing this waiver, California would be unable to enforce its own vehicle standards, potentially creating hurdles for the state in achieving federal air quality standards, state greenhouse gas emission reduction requirements, and zero-emission vehicle targets. Currently, 13 states and the District of Columbia have opted into California's more stringent standards and, therefore, any change would impact 35 percent of the U.S. population.

Given this potential impact, negotiations have commenced between Administration officials from the White House, U.S. Department of Transportation, EPA, and the California Air Resources Board to discuss the possibility of one national set of standards for vehicle fuel economy and greenhouse gas emissions. Currently, the SAFE Vehicles Rule is still only a proposal, but once the rule is finalized, litigation is to be expected unless an agreement can be made beforehand. California's Attorney General is leading 17 other states in a lawsuit against EPA's decision, and has warned that it will

challenge any determination that limits its long-standing authority to set more stringent standards. Staff will keep the OCTA Board of Directors updated as these discussions progress.

**Summary**

An overview is provided on a bill related to the use of an alternative project delivery method. An end of session update is provided on bills continuing to move through the Legislature. An overview is provided of a proposal pertaining to vehicle emissions rules.

**Attachments**

- A. Letter from Lisa A. Bartlett, Chairwoman, Orange County Transportation Authority, to Senator Anthony J. Portantino, dated August 24, 2018, in opposition to SB 502
- B. Letter from Lisa A. Bartlett, Chairwoman, Orange County Transportation Authority, to Senator Anthony J. Portantino, dated August 28, 2018, in support of SB 502, with Bill language

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