



June 6, 2022

To: Executive Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: SB 1196 (Umberg, D-Santa Ana) Update

Overview

SB 1196 (Umberg, D-Santa Ana) seeks to make the Anaheim Transportation Network eligible for state transit funding. The bill was presented to the Orange County Transportation Authority Legislative and Communications Committee and Board of Directors with a recommended oppose position on March 17, 2022, and April 11, 2022, respectively. While no position was adopted at that time, pursuant to direction by the Orange County Transportation Authority Board of Directors, additional conversations have taken place with Senator Umberg and the Anaheim Transportation Network. An update is provided on the status of those discussions.

Recommendation

Provide staff direction on a position for SB 1196 (Umberg, D-Santa Ana).

Discussion

SB 1196 (Umberg, D-Santa Ana): Transportation Development Act: eligibility: Anaheim Transportation Network.

SB 1196 was initially introduced on February 17, 2022, and sought to define the Anaheim Transportation Network (ATN) as a public transportation “operator” in statute to allow ATN to be eligible to receive state transit funding under the Transportation Development Act – from both the Local Transportation Fund (LTF) and State Transit Assistance (STA). By doing this, the bill would have also made ATN eligible for formula funds from both SB 1 (Chapter 5, Statutes of 2017) State of Good Repair (SGR) funding and cap-and-trade Low Carbon Transit Operations Program (LCTOP) funds, which are both allocated via the STA formula. In addition, the bill would have allowed increased eligibility for ATN to apply for competitive grant programs as a transit “operator.” OCTA is currently the primarily recipient for all of these funds in Orange County. Funding from the LTF and STA are the only sources of state transit funding that OCTA can use for

operational purposes, while funding from LCTOP and SGR have been used for a variety of capital and fare programs, including such things as the Youth Ride Free program, the college pass program, and zero-emission technology.

According to their articles of incorporation, ATN is a nonprofit public benefit corporation that was initially formed through an environmental mitigation measure under the Anaheim Resort Specific Plan environmental impact report to consolidate various shuttles operated by resorts and attractions within the Anaheim resort area.

Based within the Anaheim resort area, ATN's Board of Directors are not elected officials, but rather consist of resort hoteliers, Disneyland, Angels Baseball, the Honda Center, and other hospitality organizations. The City of Anaheim has a seat on the Board of Directors, currently held by the city's Deputy Director of Convention, Sports & Entertainment. ATN provides a service primarily designed to transport guests to and from Disneyland and other tourist destinations and is not designed to serve Orange County's general transit riding public. Illustrating this point, in ATN's 2021 Annual Stakeholder Report, it stated that 79 percent of total passenger boardings for 2021 were from Disneyland's Toy Story parking lot. In 2020, 46 percent of ATN's total revenues were generated from this parking lot.

As originally introduced, this bill would have significant impacts on OCTA funding while not providing a commensurate level of public transportation. Based on the analysis of the bill in its initial form, Orange County Transportation Authority (OCTA) staff estimated that if SB 1196 passed as introduced, ATN could be eligible for about \$26 million from all funding sources, representing about 17 percent of OCTA's existing service levels. A majority of these funds would be diverted away from OCTA.

OCTA staff presented on SB 1196 to the March 17, 2022, Legislative and Communications Committee meeting, and the April 11, 2022, Board of Directors (Board) meeting, and recommended an "oppose" position. Staff presented this "oppose" recommendation because of concerns not only about the significant shift of funding away from OCTA to an entity that does not currently meet the definition of a public transportation "operator," directly impacting transit services throughout Orange County, but also because of concerns that this bill was inconsistent with statutory intent to facilitate coordinated transit planning and service in the County through OCTA. OCTA's initial analysis of the bill is included as Attachment A. Following its deliberation, the Board did not take a position, rather directing staff to meet with ATN and explore the potential for a non-legislative pathway, and work with Senator Umberg to limit the impacts of the bill. The Board also emphasized the importance of working with Senator Umberg to ensure that in any alternative, the result would be a net funding gain for Orange County and would not divert funds from OCTA.

Since that Board direction, OCTA staff has met with both ATN and Senator Umberg. In these meetings, OCTA has conveyed that existing statute affords ATN the opportunity to qualify for state transit funding if they can qualify as a “municipal operator,” as defined under statute. This would mean that ATN would have to be “wholly owned or controlled by the city or county.” OCTA has offered to work with ATN and assist them in meeting this requirement, if this is a path ATN would like to pursue. Senator Umberg has indicated that while he supports those conversations, he would like to pursue a double-track approach, and continue moving forward with SB 1196.

SB 1196 has been amended since it was initially presented to the Board. The bill in its current form is included as Attachment B. As SB 1196 currently reads, ATN would be defined as an “STA-eligible operator,” for purposes of Section 99314 of the Public Utilities Code, which governs the distribution of STA funding based on each transit agency’s annual revenues. This would only be the case if ATN’s bylaws are amended to increase transparency and accountability, including to provide for appointment of ATN’s Board of Directors by the Anaheim City Council.

While this language is an effort to try to narrow ATN’s eligibility for state transit funding and increase public accountability of its Board of Directors, there are still concerns that this would not preclude ATN from accessing funds from other state transit funding sources, redirecting funding from OCTA. This concern was confirmed in the Senate Floor Legislative Analyses for the bill (Attachment C), in addition to that analysis confirming an existing process to allow for eligibility, as provided under a bill OCTA supported in 2017, AB 1113 (Chapter 86, Statutes of 2017). Similar conclusions were also reached in the Senate Appropriations Committee analysis (Attachment D), which also notes that ATN is not a public transportation operator and that is why they do not currently qualify for state transit funding. Senate Appropriations Committee analysis expresses concern that SB 1196 creates a precedent of ATN sidestepping existing law by avoiding restructuring as a fully public transit district, and instead just defining themselves as eligible for state transit funding in statute. This could be replicated by other entities in the State if successful, further diluting funding available for public transportation purposes.

In a good faith effort to make SB 1196 be consistent with the stated intent of Senator Umberg and ATN, and also address concerns raised by OCTA and state legislative staff, OCTA staff drafted amendments to the bill, which are included as Attachment E. These amendments would do the following:

1. Remove the amendments out of the existing section to a standalone section, and clearly state that ATN would only be eligible for funding the revenue share of STA funding, and will not be eligible for or claim funds from the LTF, SGR, LCTOP, or future transit operations funding. The language would also ensure that OCTA is reimbursed for any funding lost

due to ATN's eligibility for funding it receives pursuant to Public Utilities Code section 99314.

2. Consistent with existing law, clearly state that OCTA is the entity which would make the findings that ATN is eligible for the funding provided pursuant to Public Utilities Code section 99314.
3. Include required findings to ensure that ATN increases transparency and is in compliance with government transparency and accountability rules – including existing language in SB 1196 related to the appointment of the ATN Board of Directors by the Anaheim City Council, and additional language to ensure compliance by ATN with the Ralph M. Brown Act, Fair Political Practices Commission requirements and the California Public Records Act.
 - a. As part of the findings, ensure there is no duplication of routes between OCTA and ATN, and that ATN reimburses OCTA for any complementary paratransit service required as part of ATN's service.
 - b. As part of the findings, ensure that ATN is addressing a demand that exists for transit service, and that OCTA cannot otherwise provide that service. As part of this effort, analysis can be done related to equity considerations.
 - c. Include a requirement that ATN must supply OCTA with any required documentation to make the associated findings.
4. Include language to cross-reference existing statutory provisions that make OCTA the lead agency for the planning and development of any future fixed guideway projects.
5. Cross-reference existing requirements related to STA funding that ATN would be subject to, if deemed eligible.

OCTA has shared these amendments with Senator Umberg's office, who at the time this staff report was drafted, has shared them with ATN and is awaiting comment or input. At the June 6, 2022, Executive Committee meeting, OCTA staff will provide an update on the status of these suggested amendments. SB 1196 is currently pending in the Assembly Transportation Committee, and must be voted on before July 1, 2022, to remain viable. The last scheduled Assembly Transportation Committee hearing is June 27, 2022, with position letters due by June 20, 2022. The last day for the author to amend the bill prior to the committee hearing, pursuant to Assembly Transportation Committee deadlines, is June 17, 2022. Given these deadlines, if the Board wishes to inform this bill when it is heard in policy committee, a position would need to be adopted at the June 13, 2022, Board meeting.


Summary

An update is provided on a bill to allow the Anaheim Transportation Network to be eligible for state transit funding.

Attachments

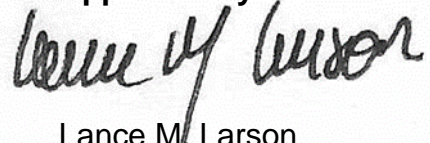
- A. SB 1196 (Umberg, D-Santa Ana) Bill Analysis, dated February 28, 2022
- B. SB 1196 (Umberg, D-Santa Ana) Bill Language
- C. Senate Rules Committee, Office of Senate Floor Analysis – SB 1196 (Umberg, D-Santa Ana)
- D. Senate Committee on Appropriations Analysis – SB 1196 (Umberg, D-Santa Ana)
- E. OCTA Proposed Amendments to SB 1196 (Umberg, D-Santa Ana)

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