



March 16, 2017

To: Legislative and Communications Committee
From: Darrell Johnson, Chief Executive Officer
Subject: State Legislative Status Report

Overview

An update is provided on a request to the Joint Legislative Audit Committee to analyze fluctuations in transit funding. A support position is recommended on a bill that would clarify the administration of the State Transit Assistance program. An oppose position is recommended on two bills related to the membership of the California Transportation Commission and the prioritization of State Transportation Improvement Program funding. An overview of a bill is provided related to the environmental streamlining for projects in an existing right-of-way that is being supported consistent with the 2017-2018 Orange County Transportation Authority State Legislative Platform. Summaries are provided of two alternative transportation funding proposals introduced in the state legislature.

Recommendations

- A. Adopt an OPPOSE position on AB 179 (Cervantes, D-Corona), which would place restrictions on the qualifications a member can have to serve on the California Transportation Commission.
- B. Adopt a SUPPORT position on AB 1113 (Bloom, D-Santa Monica), which clarify the provisions governing the State Transit Assistance Program.
- C. Adopt an OPPOSE position on AB 1640 (Garcia, D-Coachella), which seeks to prioritize State Transportation Improvement Program funding for disadvantaged communities.

Discussion**Joint Legislative Audit Committee Request Regarding Transit Funding**

On March 3, 2017, Assembly Member Tom Daly (D-Anaheim) and Assembly Member Todd Gloria (D-San Diego) submitted a request to the Joint Legislative Audit Committee (JLAC) to analyze the assessment and distribution of the Local Transportation Fund (LTF), including how various exemptions and exclusions may be impacting the distribution of funds. Specifically, the request will also analyze the impact the point-of-sale determination for internet sales is having on LTF revenues and their distribution. This request is included as Attachment A to this staff report.

The LTF was originally instituted as part of the Transportation Development Act in 1971, directing revenues from a 0.25 cent sales and use tax primarily for public transportation purposes. Each County Board of Supervisors was required to create the fund for their respective county, which Orange County did in 1972. The LTF now serves as the primary source of transit funding for Orange County.

Traditionally, LTF receipts have kept pace with sales tax revenues from other local transportation sales taxes. However, since 2013, those growth rates have not been consistent. In Orange County, this has led to about a two percent difference between the sales tax growth rate for the LTF and that for the local transportation sales tax, Measure M2. LTF receipts have historically funded about 50 percent of OCTA's bus operations. Based on a new forecast methodology, OCTA's LTF revenues are expected to decrease from \$5.4 billion to \$4.4 billion over the next 20 years. In addition, State Transit Assistance (STA) funding and fare revenue continue to decline. This has dramatically impacted the ability to provide consistent transit services within Orange County. Recently, San Diego began discussing similar issues.

Prior to the submittal of this request, the Orange County Transportation Authority (OCTA) sought information from the Board of Equalization on details related to why LTF is not keeping pace with other sales tax measures, to what extent the increase in internet sales is impacting LTF revenues, and whether other areas of the State are experiencing similar issues. However, the information gathered from these efforts did not provide extensive details about the issue and was sometimes inconsistent. It is expected that if the audit request is approved, information will be provided by the State Auditor that will allow OCTA to understand the overall impacts internet sales and other sales tax exclusions and variances are having on the LTF, the long-term projections for the funding source, and where else in the State these issues are most prominent. It is also believed that this effort will allow for additional clarity regarding potential statutory

options that can provide more consistency for the LTF and inform potential, future sponsor bill efforts.

The next hearing of the JLAC takes place on March 28, 2017, where this request will likely be heard. Pursuant to the 2017-2018 OCTA State Legislative Platform principle to "Support efforts to restore equity with regards to the generation and disbursement of sales tax revenues that support the LTF," OCTA has taken a SPONSOR position on the audit request. Staff will provide more information as the audit request is presented to the Legislature for consideration.

AB 179 (Cervantes, D-Corona): California Transportation Commission

AB 179 would require appointments to the California Transportation Commission (CTC) after January 1, 2018, to ensure seven of the eleven voting members have training and experience related to such areas as public health, disadvantaged communities, sustainable transportation, climate change, and air quality. The Regional Transportation Plan (RTP) would also be required to create a five-member Environmental Justice Advisory Committee to advise on the allocation and programming of transportation funds and related policy issues. Further, each calendar year, the CTC and the California Air Resources Board (ARB) would have to hold two joint meetings to coordinate implementation of transportation programs and policies.

The CTC is responsible for the programming and allocation of transportation funding for highway, passenger rail, and transit improvements in the State, and advises the Administration and Legislature on transportation policies and planning documents related to transportation. The requirements imposed by AB 179 would disproportionately require members of the CTC to have background in issues surrounding the environment and public health, while ignoring other prominent issues related to transportation, including project delivery, funding and financing, technology advancement, labor and jobs, among others.

While environmental issues are a key component of project planning, these issues are thoroughly covered in existing transportation planning documents, including the RTP. Furthermore, all agencies seeking funding from the CTC are already subject to numerous environmental regulations and laws including SB 375 (Chapter 728, Statutes of 2008), AB 32 (Chapter 488, Statutes of 2006), the California Environmental Quality Act (CEQA), and water and endangered species protections. Recently, additional requirements have been put in place for funding related to disadvantaged communities, including funding provided through cap-and-trade and the Active Transportation Program. These actions already show a growing emphasis on issues related to the environment and public health in transportation planning. Rather than requiring the CTC to be

overwhelmingly focused on these issues, the CTC should include a broad, geographically balanced set of interests to ensure that not only the environment, environmental justice, and public health issues are addressed, but also to ensure projects are delivered in a fiscally responsible manner and within a reasonable period of time.

The CTC is also already able to convene joint hearings with the ARB, if deemed necessary, and create task forces focused on specific policy issues. Statutory authority is not needed to allow for these actions. It is also not clear whether these additional processes are needed to protect these interests when these policies are already being extensively integrated into program guidelines. In addition, the CTC and the ARB are already required to collaborate in various program areas, including that related to freight planning and cap-and-trade programming.

Consistent with the 2017-2018 OCTA State Legislative Platform's principles to, "Oppose efforts to unnecessarily subject projects to additional reviews and project selection approvals that could adversely affect delivery timelines and processes," an OPPOSE position is recommended on AB 179. A copy of the bill and analysis is included as Attachment B.

AB 1113 (Bloom, D-Santa Monica) State Transit Assistance Program

AB 1113 (Bloom, D-Santa Monica) would clarify several provisions of existing law that govern the administration of the STA and the allocation of revenues provided through the sales tax on diesel fuel, to the state's transit operators. Currently, STA is the only source of state transit funding that can be used for both operations and capital purposes. Traditionally, STA has been governed by formulas under the Public Utilities Code, where transit operators receive funds directly through the State Controller's Office (SCO), or through transportation planning agencies who receive their own share of STA funds through the SCO.

Last year, as a result of inquiries made by various planning agencies in the state seeking greater clarification of provisions under STA's governing statute, SCO reexamined the rationale and interpretation of those statutes. As a result, the SCO, without transit agency consultation, implemented a new interpretation of STA statutes that impacted the administration of the program, and for some transit agencies, diminished the amount of their STA funding shares.

In response to the SCO's action, the California Transit Association (CTA) successfully secured the passage of SB 838 (Chapter 339, Statutes of 2016), which temporarily prevented implementation of the SCO reinterpretation for the next two fiscal years, allowing CTA, its member agencies, and the SCO, time to develop a long-term solution to address the SCO action. To that end, CTA, with

its member agencies, worked collaboratively through 2016 to draft language that provides improved safeguards and accountability to the administration of STA, and greater clarity with regards to the reporting requirements under the program. As a result of those efforts, CTA is sponsoring AB 1113, which clarifies which agencies are eligible to receive STA funding, defines the types of revenues that are to be reported for the purposes of calculating shares of STA funding, and outlines the type of public transportation services that can be supported by STA. In addition, AB 1113 contains provisions that will ensure more accurate and manageable revenue reporting practices under the program going forward.

Consistent with the 2017-2018 OCTA State Legislative Platform's principles to support program reforms to realign administrative rules, farebox recovery requirements, and various exclusions under the State Transit Assistance Program, a SUPPORT position is recommended on AB 1113. A copy of the bill and analysis is included as Attachment C.

AB 1640 (Garcia, D-Coachella): Transportation Funding: Low-Income Communities

AB 1640 (Garcia, D-Coachella) would require, beginning January 1, 2020, each Regional Transportation Improvement Program (RTIP) to allocate a minimum of 25 percent of available funds to projects or programs that provide direct and meaningful benefits to low-income individuals who live in communities that are disadvantaged with respect to transportation or to riders of transit service, of which at least 65 percent of its ridership is composed of low-income riders.

To guide this process, the bill requires the California Department of Transportation (Caltrans), in consultation with residents of low-income communities, the ARB, the Strategic Growth Council, and the State Department of Public Health, to adopt guidelines for the allocation of funding no later than January 1, 2018. The CTC and regional transportation agencies are not currently included in this process. The guidelines will identify the communities that are to benefit from the funding requirements. The guidelines are also to ensure that projects and programs avoid harm to the residents of low-income communities, including the risk of health and safety harm, and of displacement. In order to implement this provision, AB 1640 will require regional planning agencies and congestion management agencies to report to Caltrans information regarding the transportation project or program benefits to low-income residents. Caltrans and CTC are also to annually report this information to the Legislature.

Caltrans is also to provide financial support to disadvantaged community residents for planning and technical assistance in identifying their priorities for projects and programs that reduce their disadvantage with respect to

transportation. There is no cap on the funding to be used for this purpose, or details from where this funding would come.

Under existing law, 75 percent of the funding provided through the State Transportation Improvement Program (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 \$45 million per year in STIP funding. For a five-year RTIP, this would mean about \$225 million in funding. Due to recent adjustments made to the price-based excise tax in 2016, the funding source for the STIP and continued diversion of weight fee revenues funding has significantly decreased for the STIP necessitating about \$750 million in project cuts over the five-year period, and an additional \$755 million in project delays. For Orange County, this meant it only received about \$25 million per year, and about \$123 million over the five-year period.

With the STIP dramatically underfunded to meet existing transportation needs, additional requirements placed on the use of this funding will only serve to exacerbate existing project cuts and delays. In order to meet the prioritization requirements of AB 1640, many regions will have to shift or delete additional projects from the RTIP. Many of these projects are funded through a combination of sources, including local and federal funds, putting those funds potentially in jeopardy due to these requirements. 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.

AB 1640 is also unclear on how the prioritization process would function. While a 25 percent floor is provided for investment in areas with low-income residents and transportation disadvantaged communities, it is unclear what would happen if a region does not have projects in such communities, or if those projects cannot meet other statewide goals and requirements of the STIP.

It is also unclear how the standard created by AB 1640 for agencies to avoid causing harm or displacement of low-income communities will be enforced. Because this standard is undefined, it could be interpreted very broadly to also include any taking of property, any shift in service area, or other issues beyond the control of transportation agencies implementing RTIP funded projects,

such as emission standards for vehicles. There is also no allowance for mitigation or recognition of existing eminent domain policies.

AB 1640 would undermine the discretion of local transportation agencies, including OCTA and the state, to determine the projects most necessitating investment to meet regional connectivity and maintenance needs, requiring the prioritization of investment in certain areas, even if it is not clear that actual transportation needs are present. A well-functioning regional system supports a variety of services ranging from freight to transit that benefits all communities equally regardless of community income levels.

Consistent with the 2017-2018 OCTA State Legislative Platform's principles to protect local decision making in programming expenditures of transportation funds and to support maintaining the current STIP formula, an OPPOSE position is recommended on AB 1640. A copy of the bill and analysis is included as Attachment D.

AB 278 (Steinorth, R-Rancho Cucamonga) California Environmental Quality Act: Exemption: Existing Transportation Infrastructure

AB 278 (Steinorth, R-Rancho Cucamonga) would exempt various transportation projects, or the issuance of a permit for those projects, from the CEQA if the project is located within an existing right-of-way. If any area surrounding the right-of-way for the project is altered as a result of the construction, the project would also be required to restore it to its condition before construction began. Eligible projects include the inspection, maintenance, repair, rehabilitation, replacement, or removal of existing transportation infrastructure including, but not limited to, highways, roadways, bridges, transit systems, bikeways, and paths serving pedestrians. While the provisions of AB 278 do not apply to projects that add additional motor vehicle lanes, it could apply to the addition of auxiliary lanes. The provisions of AB 278 are also identical to AB 1569 (Steinorth, R-Rancho Cucamonga) that OCTA supported last year, but ultimately failed to pass out of the Assembly Natural Resources Committee.

To utilize the exemption provided by AB 278, agencies carrying out an applicable project would be required to notify any affected agencies that may have jurisdiction over the project site and be required to comply with any existing conditions imposed by city or county as part of the local permitting process. In addition, projects would still have to comply with other existing state or federal laws, including the Water Quality Control Act and the California Endangered Species Act.

Among the projects which could benefit from the exemption provided by AB 278 are projects within the State Highway Operation and Protection Program, Local

Street and road maintenance projects, active transportation projects, including the development of new bike and pedestrian walkways, and transit systems. Consistent with the 2017-2018 OCTA State Legislative Platform's principle to support legislation to streamline the environmental review and permitting processes for transportation projects and programs, a SUPPORT position has been taken on AB 278. A copy of the bill and a letter of support are included as Attachment E.

Republican Transportation Funding Proposals

In conjunction with the ongoing transportation funding discussions in Sacramento, Assembly and Senate Republicans introduced two proposals to provide transportation funding. On the Assembly side, Assembly Transportation Committee Vice-Chair Vince Fong (R-Tehachapi) introduced AB 496, which seeks to provide \$5.6 billion in transportation funding annually, by primarily relying on redirecting existing General Fund revenues for transportation purposes. The bill would also provide approximately \$2.2 billion in one-time revenues by expediting the repayment of transportation loans that were previously made to the General Fund.

Among its provisions, AB 496 would create the Traffic Relief and Road Improvement Program (TRRIP) which would be prioritize revenues to address traffic congestion and deferred maintenance on the state highway system, and local streets and roads. Specifically, the funding provided by the TRRIP would be split by formula with 40 percent going to the State Highway Operation and Protection program, 40 percent to local streets and roads, and the remaining 20 percent to the STIP. The TRRIP would be funded through various funding mechanisms including, but not limited to, the redirection of sales and use taxes generated from sale of automobiles, revenues raised from vehicle insurance taxes, smog abatement fees established by AB 118 (Chapter 750, Statutes of 2007), and diesel sales tax revenues to instead be used for transportation purposes. The bill would also require the backfill of the diverted smog abatement fees and diesel sales tax revenues with increased cap-and-trade dollars. This could impact ongoing transit funding, which is currently funded by diesel sales tax revenue. AB 496 would also require Caltrans to identify efficiency measures with the goal of generating \$100 million in savings that would be prioritized for active transportation projects.

AB 496 proposes similar policy reforms that are included in AB 1 (Frazier, D-Oakley) and SB 1 (Beall, D-San Jose), including exemptions from CEQA for projects within an existing right-of-way, additional oversight over Caltrans, the extension of public-private partnership authority, and the creation of a Transportation Inspector General. AB 496 would also require Caltrans to increase its contracting out practices, and prohibit

the establishment of alternative metrics in place of levels of service metrics under CEQA for areas outside transit priority areas per SB 743 (Chapter 386, Statutes of 2013). AB 496 currently resides in the Assembly, awaiting committee assignment. A copy of AB 496 is included as part of this report as Attachment F.

In the Senate, Senator Patricia Bates (R-Laguna Niguel) introduced SB 337 which creates the Repatriation Infrastructure Fund (RIF) that would seek to provide infrastructure funding by allocating any funds the state may receive in repatriated federal tax dollars in the event that taxes are applied and collected from domestic accounts held overseas. Currently, it is estimated that as much as \$2.5 trillion is being held overseas that, if repatriated under existing tax rates, would be subject to a rate of 35 percent. However, policy proposals continue to be considered on the federal level that would lower the tax rates these funds would be subject to between five to 10 percent, thereby incentivizing companies holding earnings off-shore to return and reinvest those funds locally. It remains unclear, though, whether any proposal, if passed and signed into law, would distribute any tax revenues generated from the repatriation of funds to the states.

In the event that repatriated tax revenues are generated in California, SB 337 would require 65 percent of those funds to be used to support trade corridor improvement projects, 30 percent to be allocated to cities and counties for local streets and road projects, and the remaining five percent to be allocated to support transit operators in the State. The revenues would be appropriated for these purposes through the CTC. Lastly, the bill would also require the sunset of the RIF on January 1, 2026. Due to the proposal's reliance on yet undefined federal action to repatriate domestic accounts held overseas, it remains unclear as to what extent funding could be expended under the provisions of SB 337. Furthermore, the bill does not provide any new funding for existing programs like the STIP, which is the primary funding program that focuses on regional mobility investment priorities. A copy of SB 337 is included as part of this report as Attachment G. Currently, SB 337 has been double referred to the Senate Committees on Governance and Finance, and the Transportation and Housing Committee, and is awaiting a hearing.

Summary

An update is provided on a Joint Legislative Audit Committee request related to transit funding. A support position is recommended on a bill related to State Transit Assistance program. Oppose positions are recommended on bills related to transportation investments in disadvantaged communities, and membership requirements for members of the California Transportation Commission. An overview of a bill being supported related to the environmental streamlining for projects in an existing right-of-way is provided. Overviews are provided of two transportation funding proposals.

Attachments

- A. March 3, 2017, Assembly Member Tom Daly (D-Anaheim) and Assembly Member Todd Gloria (D-San Diego) Joint Legislative Audit Committee request
- B. AB 179 (Cervantes, D-Corona) Bill Analysis with Bill Language
- C. AB 1113 (Bloom, D-Santa Monica) Bill Analysis with Bill Language
- D. AB 1640 (Garcia, D-Coachella) Bill Analysis with Bill Language
- E. Orange County Transportation Authority Support Letter for AB 278 (Steinorth, R-Rancho Cucamonga), with Bill Language
- F. AB 496 (Fong, R-Tehachapi) Bill Language
- G. SB 337 (Bates, R-Dana Point) Bill Language
- H. Orange County Transportation Authority Legislative Matrix

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