



April 20, 2017

To: Legislative and Communications Committee

From: Darrell Johnson, Chief Executive Officer

Subject: State Legislative Status Report

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Overview

An update is provided on state legislation to provide additional funding for transportation purposes and a request to the Joint Legislative Audit Committee to analyze fluctuations in transit funding. An oppose position is recommended on three bills related to the toll evasion penalty payment process, requirements to reduce regional greenhouse gas emissions from transportation and land use, and restrictions on the use of excess toll revenues. An update is provided on litigation related to cap-and-trade.

Recommendations

- A. Adopt an OPPOSE position on AB 344 (Melendez, R-Lake Elsinore), which revises the payment process for disputed toll payments.
- B. Adopt an OPPOSE position on SB 150 (Allen, D-Santa Monica), which revises the process to reduce regional greenhouse gas emissions from transportation and land use, prioritizing reduction of vehicle miles travelled and the funding of projects that reduce such and achieve other co-benefits.
- C. Adopt an OPPOSE position on SB 264 (Nguyen, R-Garden Grove), which restricts how excess toll revenues from the Interstate 405 Improvement Project can be spent.

Discussion

Legislature Passes Legislation to Provide Additional Transportation Funding

On April 6, 2017, SB 1 (Beall, D-San Jose) was passed by the State Legislature by a vote of 27-11 in the Senate and 54-26 in the Assembly, narrowly achieving the two-thirds vote required in each house. Senator Cannella (R-Ceres) was the

lone Republican vote on the bill. SB 1 represents a compromise proposal by the Governor, the Senate and Assembly Democratic leadership, Senate Transportation and Housing Committee Chair Jim Beall, (D-San Jose) and Assembly Transportation Committee Jim Frazier (D-Oakley). At the time of the writing of this staff report, the Governor had not yet signed the bill, but it was expected to happen in the coming days. A copy of SB 1 is included as Attachment A.

It is estimated that SB 1 will provide \$52 billion for transportation purposes over the next 10 years, with investments targeted towards fix-it-first purposes on local street and roads and highways, transit operations and maintenance, capital investments, and active transportation. There is no sunset on the revenue sources included in the bill, and with many of the taxes and fees to be indexed for inflation, the funding source may grow in later years.

It is expected that SB 1 will provide increased formula funding for Orange County and the Orange County Transportation Authority (OCTA) as follows, over a 10 year period:

- A doubling of local street and roads funding for each city and the county, that is to be focused on projects such as rehabilitation and maintenance, grade separations, safety projects, complete street components, and traffic control devices. Cities that achieve a pavement condition index over 80 will have additional flexibility to use their funds for expanded eligibility purposes. Projects funded by these provisions will have oversight by the California Transportation Commission (CTC), be subject to reporting requirements, and are to make efforts to use advanced technology, incorporate complete street elements, and make climate adaptation efforts. Overall, \$15 billion is applied statewide over the next ten years. Attachment B shows how much funding is expected, on average, to go to Orange County and each of its cities. This is based on a ten-year revenue estimate, which may include less funding in the early years of the package and more funding in the out years.
- \$741 million in new funds for the State Highway Operation and Protection Program (SHOPP) for Orange County, with the same eligibility parameters, guidelines, and reporting requirements as that provided for the local street and roads funding. Overall, \$15 billion is provided for these purposes statewide. In addition, \$4 billion will be provided over the next ten years for bridge and culvert repairs.
- Over \$18 million in new transit funding per year for Orange County, with about \$13 million eligible for transit capital or operations purposes, and over \$5 million annually for capital purposes. The latter capital funds are subject to reporting requirements with the State Controller.

- The stabilizing of the State Transportation Improvement Program, which is expected to allow for \$825 million in funding for Regional Transportation Improvement Programs statewide over the ten-year period, and \$275 million for the Interregional Transportation Improvement Program. If SB 1 is signed, OCTA will immediately start communications with the CTC about the need to fully fund those projects delayed or cut from the State Transportation Improvement Program in 2016.

In addition, statewide funding will be provided as follows, with OCTA as an eligible recipient or beneficiary:

- \$3 billion in a new Trade Corridors Enhancement Account, allowing statewide funding for corridor-based freight projects nominated by the state and local governments. No specific formula is provided for the program or mandate for guidelines development or oversight.
- \$250 million a year for a new state Congested Corridors Program for projects designed to provide for comprehensive corridor relief, reducing congestion and providing more transportation choices. Administered by the CTC, both regional transportation agencies and the California Department of Transportation (Caltrans) are eligible to apply.
- \$245 million a year for the Transit and Intercity Rail Capital Program for statewide transit capital improvements, administered by California State Transportation Agency (CalSTA).
- \$200 million a year for a state and local partnership program, with funding directed to counties that have voted to impose fees or taxes dedicated to statewide transportation purposes. No specifics are provided related to the formula for distribution, with the CTC to create guidelines by January 1, 2018.
- \$100 million annually for the Active Transportation Program statewide.
- \$40 million a year for intercity and commuter rail purposes, including Los Angeles-San Diego-San Luis Obispo (LOSSAN) Rail Corridor Agency and Metrolink, with both capital and operating expenses eligible. Funding is to be administered by guidelines created by CalSTA.
- \$25 million a year in Freeway Service Patrol funding statewide.
- \$25 million a year in local planning grants statewide.

Revenues for the investments in the bill come from a variety of sources, including:

- The complete repayment of \$706 million in transportation loans made to the General Fund; funds that were previously diverted for non-transportation purposes.

- A 12 cent gas tax increase that takes effect November 1, 2017, to be adjusted for inflation.
- A re-setting of the price-based excise tax to 17.3 cents starting in July 1, 2019, to be adjusted for inflation.
- A four percent increase in the sales tax on diesel that takes effect November 1, 2017.
- A 20 cent diesel tax increase that takes effect November 1, 2017, to be indexed for inflation.
- A new transportation improvement fee starting on January 1, 2018, which will be based on the cost of the vehicle, ranging from \$25-\$175, to be adjusted for inflation.
- A \$100 road improvement fee for zero-emission vehicles starting for 2020 model cars and later. A study is also required by the bill to analyze future methodologies to raise revenue from zero-emission and low-emission vehicles.
- Caltrans efficiency measures estimated to generate \$100 million annually.

Several reforms were also included in the bill, including:

- The creation of a Senate-confirmed position of Inspector General appointed by the Governor within Caltrans to audit and investigate state and local projects to ensure expenditures are done in conformance with existing law.
- The development of an advanced mitigation program for projects receiving state funding.
- Increased CTC oversight over Caltrans projects within the SHOPP, with additional performance measures.
- A constitutional measure contained in a companion bill protecting new fees from diversion contained in SCA 5 (Frazier, D-Oakley).

It is expected much activity will occur over the coming months related to distribution and guideline development for the newly created funds. In addition, still pending in the Legislature is SB 132 (Committee in Budget and Fiscal Review), which includes various reforms and funding allocations directed at regions of the state where swing-district Legislators voting for SB 1 originate. This includes \$427 million for projects in Riverside County, \$400 million for the Altamont Corridor Express, \$100 million for University of California Merced, and \$50 million for a zero-emission warehouse program. In addition, this language is linked to SB 496 (Cannella, R-Ceres), a bill sponsored by the American Council of Engineering Companies, which allows for indemnity provisions for design professionals on infrastructure projects. A similar bill, which OCTA opposed, failed last year.

Joint Legislative Audit Committee Request Regarding Transit Funding

On March 29, 2017, the Joint Legislative Audit Committee approved, on consent, an audit request submitted by Assembly Member Tom Daly (D-Anaheim) and Assembly Member Todd Gloria (D-San Diego) 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. It is expected that the audit will be completed by the end of the year.

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 California 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 a 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. This has dramatically impacted the ability to provide consistent transit services within Orange County. Recently, the County of San Diego began discussing similar issues.

It is expected with this audit, 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.

AB 344 (Melendez, R-Lake Elsinore): Toll Evasion Violations

AB 344 would require a person contesting a notice of toll evasion violation or notice of delinquent toll evasion to only have to pay the penalty after exhausting all potential forms of appeal. Existing law states that if the person contesting a notice of toll evasion violation or delinquent toll evasion violation is not satisfied with the results of the initial investigation, then that person, within 15 days of the

mailing of the results of the investigation, must deposit the full amount of the toll evasion penalty and request an administrative review.

OCTA is the owner and operator of the 91 Express Lanes. Under existing practice, if a person contacts OCTA disputing a toll violation notice, OCTA investigates the toll violation to ensure that the correct vehicle was cited, the time/location was correct on the citation, that no payment was made, and that the correct party was cited. If these factors are confirmed, then OCTA continues enforcement of the toll penalty. There is no payment required for this process. Overall, OCTA receives about 5,500 challenges annually to toll violations.

After the investigative stage, the contestant can then appeal the results to an administrative hearing. When this occurs, a person will be required to deposit the total amount of the toll violation plus penalties unless: a) the person is an account patron and the violation arose out of the same operative facts, then deposit is toll and penalties amount or \$250, whichever is less; or b) if person is a non-patron and toll violations all arose out of same operative facts, then deposit shall be tolls plus either \$250 or \$250 plus 10 percent of penalties above \$1000, whichever is greater. OCTA will decrease or waive these deposits in cases where the person can prove economic hardship.

Currently, it is estimated that OCTA has about 17-18 cases each year that move forward with an administrative action. In 89 percent of these cases, the toll violation is upheld. Each of these hearings is completed at an OCTA facility, where a hearing officer must be brought in for the case. On average, the cost for each administrative hearing is \$450.

Without requiring a person challenging a toll penalty to provide some form of payment prior to the hearing, more of an incentive is provided for a person to challenge the penalty until the final stage of the process in order to avoid paying the penalty. This could be especially problematic for repeat offenders. It also can lead to exponentially more people deciding to go to later stages of the appeal process since it does not impact their financial position in any way. This will increase associated costs for OCTA and impact OCTA's ability to enforce toll policies.

Consistent with the 2017-2018 OCTA State Legislative Platform's principles to, "Support efforts to preserve local flexibility in the administration of toll lanes," an OPPOSE position is recommended on AB 344. A copy of the bill and analysis is included as Attachment C. The Transportation Corridor Agencies also have an oppose position on AB 344. The bill is sponsored by the American Civil Liberties Union.

SB 150 (Allen, D-Santa Monica): Regional Transportation Plans

SB 150 (Allen, D-Santa Monica) would amend the process for setting regional greenhouse gas emission targets under SB 375 (Chapter 728, Statutes of 2008), which sets a framework for regions to reduce greenhouse gas emissions through the adoption of a sustainable communities strategy (SCS) as part of the regional transportation plan (RTP) process through a bottoms-up approach. SB 150 amends this process by requiring the California Air Resources Board (ARB), in updating the targets, to also take into account additional state greenhouse gas emission reduction goals, including that in SB 32 (Chapter 249, Statutes of 2016), which set the statewide goal of reducing greenhouse gas emissions 40 percent by 2030. In addition, the bill goes further to specify that these targets are to be set using the latest available climate science and that the reductions are to be met by reductions in vehicle miles traveled (VMT). By specifying VMT, this changes the focus from overall greenhouse gas reductions to a focus on VMT reductions. The ARB would also have to hold two additional public hearings as they revise the greenhouse gas targets.

Under SB 150, each SCS would also have to include an appendix that outlines the region's planning and programming activities to prioritize projects for programming that reduce VMT and maximize co-benefits, including public health, social equity, and conservation. Criteria to be considered in prioritizing projects are to include, but not be limited to, a reduction in per capital carbon dioxide emissions from cars and light trucks, a reduction in VMT by 15 percent by cars and light trucks by 2050, an increase in the average daily time spent walking or bicycling for transportation purposes, and the decrease in the share of low-income or lower middle-income residents' household income consumed by transportation and housing.

By 2022, in the Southern California Associated Governments (SCAG) region, if the region is unable to meet the SB 375 targets, each county transportation commission, such as OCTA, is to prioritize projects for funding pursuant to the appendix developed pursuant to SB 150. This is regardless of whether SCAG develops an alternative planning strategy (APS) pursuant to SB 375, which details how the region could meet the targets if unconstrained by funding limitations and other issues. This requirement applies to no other region in the state.

Beginning in 2018, the ARB is also to monitor each metropolitan planning organization's SCS or APS and prepare a report to the CTC assessing whether each region is on track to reduce VMT 15 percent by 2050. This report is to be provided every four years thereafter.

SB 150 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. This framework does not allow for the regions to balance regional transportation investment strategies to best meet the targets. In addition, it could lead to the prioritization of investments solely on the basis of environmental goals, rather than taking a comprehensive approach that looks at economic benefits, land use changes, housing, demographic changes, and need. Because many of the projects in the RTP and SCS have a multitude of funding sources associated with their implementation, this prioritization process could jeopardize other sources of funding and force local sales tax measures to be implemented in a manner that may not be consistent with voter intent.

While supportive of a robust public process and transparency in the implementation of SB 375, it is unclear how a four-year reporting period will inform the meeting of the reduction goals. ARB already has the opportunity to review the reduction targets at this timeframe, if necessary. This new process may not allow for an accurate portrayal of the actual emission reductions resulting from regional strategies, which often take years to accrue as large transportation capital investments are made and land use changes.

VMT is also an arbitrary measure with which to base greenhouse gas emission reductions, lacking a direct correlation as vehicles become more efficient. Instead many of the strategies to reduce VMT are associated with land use changes, over which local governments maintain control. In addition, the goal of reducing VMT by 15 percent has been clarified by the ARB as an overall state goal, which should not solely be the burden of SB 375. If SB 150 were to focus on greenhouse gas emission reductions, as SB 375 originally intended, strategies should be created which allow for additional funding and planning tools which allow regions to meet the statewide goals. Instead, SB 150 is forcing implementation of SB 375 in a manner that divests control from the regions and arbitrarily prioritizes projects for funding without a clear nexus to greenhouse gas emission reductions. No new funding or implementation tools are offered to help assist in implementation.

Consistent with the 2017-2018 OCTA State Legislative Platform's principles to oppose efforts to link or reprioritize local and state transportation funding to support the state's greenhouse gas reduction initiatives and to support local flexibility in meeting the goals of the state's greenhouse gas reduction initiatives, an OPPOSE position is recommended on SB 150. A copy of the bill and analysis is included as Attachment D. Groups also opposed to SB 150 include the California Councils of Governments, California Building Industry Association, California Chamber of Commerce, and the California Realtors Association.

Groups supporting the bill include a coalition of environmental and equity groups including the Natural Resources Defense Council, TransForm, Sierra Club, Safe Routes to Schools, and the American Lung Association.

SB 264 (Nguyen, R-Garden Grove): High-Occupancy Toll Lanes: Interstate 405 Improvement Project High-Occupancy Toll Lanes

SB 264 (Nguyen, R-Garden Grove) would detail allocation requirements for the net excess toll revenues from the high-occupancy toll lanes on OCTA's Interstate 405 Improvement Project, superseding the process outlined under AB 194 (Chapter 687, Statutes of 2015). Under SB 264, "net excess toll revenues" is defined as the revenues available for transportation improvements after debt service and debt service coverage ratios are met, and operating and major maintenance reserves are fully funded. The excess revenues would then be allocated as follows:

- 20 percent to OCTA
- 70 percent to be equally distributed to project corridor jurisdictions along the project corridor, which is defined to include the cities of Costa Mesa, Fountain Valley, Huntington Beach, Westminster, and Seal Beach. This does not include any unincorporated areas within that region.
- 10 percent to be equally distributed to project corridor jurisdictions not along the project corridor, which is defined to include the cities of Santa Ana, Garden Grove, Stanton, Los Alamitos, and County of Orange.

Expenditures of the net excess toll revenues would be limited to capital improvements, operational improvements, and maintenance to on-ramps, off-ramps, connectors, roadways, and bridges related to the tolled or non-tolled lanes within three miles of the Interstate 405 Improvement Project high-occupancy toll lanes. There is no allowance for these revenues to be included for such things as transit and active transportation, as authorized under AB 194.

Utilizing the authority granted under AB 194 for regional transportation agencies to apply to the CTC to implement locally-controlled toll lanes, OCTA was unanimously granted the authority by the CTC on May 18, 2016, to implement a toll facility on Interstate 405. Also pursuant to AB 194, OCTA has executed a toll operating agreement with Caltrans on terms and conditions related to the facility, including operational management and use of revenues. OCTA is currently in the process of working with the federal government to secure a Transportation Infrastructure Finance and Innovation Act loan for the project, and plans to begin construction on the project at the beginning of 2018.

SB 264 significantly infringes upon the local control granted by AB 194 to regional transportation agencies implementing toll facilities, creating a state mandated process for distributing any excess revenues that may result from the project. This is regardless of the fact that the regional transportation agencies, like OCTA, are taking the risk of investing and operating such a facility and securing associated financing. Instead, SB 264 allocates most excess revenues from the project to entities that do not have any investment or liability associated with the facility. This legislation will signify to agencies seeking to implement these facilities that the state may choose at any time to alter the careful agreements entered into as part of the AB 194 process, likely deterring future implementation. This is despite each project being extensively reviewed and monitored by the CTC, and close involvement by Caltrans.

Under current projections for the Interstate 405 Improvement Project, it remains unclear when excess toll revenues will begin to accrue for the facility, if ever. Much of this depends on agreements negotiated with credit or financing agencies, and the operational and management terms agreed to between OCTA and its vendors. Already, the definition of "net excess toll revenues" is inconsistent with the provisions of AB 194, agreements with Caltrans, and potential financing agreements. The inconsistency introduced by SB 264 would complicate the ability for regional transportation agencies and other sponsoring entities to obtain the needed funding or financing for these projects to ensure that the facilities are implemented in the most cost-effective manner, preserving key operating features for the facilities advocated by local governments. This could include occupancy requirements and other features.

Ignoring OCTA's long-standing successful experience associated with the 91 Express Lanes and the multi-modal investments made from revenues generated from that facility, SB 264 provides that most excess revenues will go to the cities surrounding the newly defined Interstate 405 corridor, limiting the revenues that will be used by OCTA. Without estimates of the excess revenues to be generated, it is unclear how much each city will receive, or OCTA. If the revenues are limited, this will inhibit the ability to provide for any transportation improvements to the corridor or benefits to those driving in the corridor. In addition, the bill prohibits investment in many multi-modal improvements in the corridor, including for transit services and active transportation purposes, preventing efforts to further help alleviate congestion. This is despite statewide environmental standards that agencies must meet related to transportation. Investment limitations and allocation between OCTA and the cities are done in an arbitrary manner that does not take into account the needs surrounding the corridor or improvements that can provide regional benefits to the users of the facility. Furthermore, not all cities that are within a three-mile radius of the corridor are eligible for funding from the project.

Consistent with the 2017-2018 OCTA State Legislative Platform's principles to, "Support efforts to preserve local flexibility in the administration of toll lanes," an OPPOSE position is recommended on SB 264. A copy of the bill and analysis is included as Attachment E.

Cap-and-Trade Litigation

On April 6, 2017, the State Court of Appeals upheld the validity of the cap-and-trade program, rejecting claims by the California Chamber of Commerce that cap-and-trade represented an unlawful tax that did not receive the required two-thirds vote. Instead, the ruling analyzes the cap-and-trade auction as a voluntary program that conveys value in the allocation of allowances and, therefore, is not consistent with the traditional categories of tax or fee and, therefore, not subject to their associated restrictions.

It is expected that this ruling will likely be appealed to the California Supreme Court. In the meantime, because of the lack of legal certainty surrounding the program, revenues generated have exponentially decreased from what was projected. The last auction generated only \$8 million, much less than the \$600 million that would have been raised if all allowances offered were sold. Simultaneously to the litigation, Governor Brown has asked the Legislature to re-affirm the cap-and-trade program by a two-thirds vote this year. Staff will provide details on this effort as it moves forward.

Summary

An update is provided on legislation providing additional transportation funding and a Joint Legislative Audit Committee request related to transit funding. Oppose positions are recommended on bills related to the process for contesting toll violations, regional greenhouse gas emission reduction targets for transportation and land use, and excess toll expenditures. An update is provided on the cap-and-trade program.

Attachments

- A. SB 1 (Beall, D-San Jose) Bill Language
- B. SB 1 (Beall, D-San Jose) City and County Revenue Estimates
- C. AB 344 (Melendez, R-Lake Elsinore) Bill Analysis with Bill Language
- D. SB 150 (Allen, D-Santa Monica) Bill Analysis with Bill Language
- E. SB 264 (Nguyen, R-Garden Grove) Bill Analysis with Bill Language
- F. Orange County Transportation Authority Legislative Matrix

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