



May 18, 2017

To: Legislative and Communications Committee

From: Darrell Johnson, Chief Executive Officer

Subject: State Legislative Status Report

Overview

An oppose position is recommended on one bill related to the required use of zero- and near-zero emission technology in public fleets. A support if amended position is recommended on a bill related to a task force on permit streamlining. A support position is recommended on legislation seeking the expansion of public-private partnership authority. An update is provided on a bill related to safety considerations in public transit bus procurements.

Recommendations

- A. Adopt an OPPOSE position on AB 302 (Gipson, D-Carson), which will create requirements for the use of zero- and near-emission technology in public fleets within the south coast air basin.
- B. Adopt a SUPPORT IF AMENDED position on AB 1282 (Mullin, D-San Mateo), which will create a task force to explore opportunities for permit streamlining for transportation projects.
- C. Adopt SUPPORT positions on AB 1454 (Bloom, D-Santa Monica) and SB 768 (Allen, D-Santa Monica), which seeks to expand the use of public-private partnership authority for state highway projects.

Discussion

AB 302 (Gipson, D-Carson): South Coast Air Quality Management District: Fleets

AB 302 (Gipson, D-Carson) authorizes the Governing Board of the South Coast Air Quality Management District (SCAQMD) to adopt rules or regulations that require operators of public and commercial fleets, consisting of one or more vehicles operating within the south coast region, to purchase zero-emission or

near-zero emission vehicles and require that these vehicles be operated to the maximum extent feasible in the south coast region. "Zero-emission and near-zero emission" within the context of this bill is defined as a vehicle, fuel, and related technology that substantially reduces emissions of oxides of nitrogen (NOx) by 90 percent or greater when compared with engines certified at the 2010 model year baseline emission standard for NOx established by the California Air Resources Board (ARB).

AB 302 removes the requirement that the adoption of this technology take place only when a public entity is adding or replacing vehicles in an existing fleet or purchasing vehicles to a new fleet. AB 302 also exempts certain classes of vehicles from these requirements, including vehicles used by local law enforcement agencies, fire departments or emergency medical services, until the SCAQMD determines that the new technology will not impair the emergency response capabilities of those vehicles. In adopting the rules and regulations under this authority, SCAQMD is to consult with various entities, including the California Department of Transportation (Caltrans), California Highway Patrol, and the transportation commissions within their region, such as the Orange County Transportation Authority (OCTA).

The provisions of AB 302 present significant implications for OCTA's existing transit services and financial plans. OCTA currently operates a transit bus fleet composed almost entirely of natural gas fueled vehicles. In addition, OCTA has embarked on numerous efforts to further reduce emissions, including the integration of low-NOx engines, use of renewable natural gas, and the testing of one zero-emission hydrogen fuel cell bus. Soon, OCTA will also integrate additional zero-emission hydrogen fuel cell buses and related fueling infrastructure to further expand the technology.

While AB 302's definition of "zero-emission and near-zero emission" is expansive enough to include the low-NOx engines that OCTA is integrating within its fleet, the language is phrased in a way that allows the SCAQMD to adopt even more stringent standards, which could force a purchase requirement of zero-emission technologies on transit agencies such as OCTA. There is no requirement that a technology or economic assessment take place before implementing such a requirement under this framework, potentially forcing the integration of new technology without it being proven for use and without consideration of the impacts the technology and costs may have on public services. Furthermore, by deleting the language that the turnover only occur when a public fleet is adding or replacing vehicles, SCAQMD could require OCTA to replace their vehicles with new technology before the vehicles reach their useful life. In order to use federal transit funds to replace buses, the bus must meet a minimum 12-year useful life requirement. Because AB 302 would

allow SCAQMD to require turnover prior to that time period, this could jeopardize the ability for OCTA to use federal funds for transit bus purchases.

Recognizing the cost and technology limitations of existing zero-emission technologies, in 2009 the ARB delayed a zero-emission bus purchase requirement to allow more time to monitor and assess demonstrations of the technology. Since 2009, the California Transit Association and its member agencies, including OCTA, have worked closely with the ARB to explore alternatives to the purchase requirement that still allow for needed emission reductions and integration of new technology. Currently, a performance based measure is under discussion which allows transit agencies discretion on how to reduce emissions, while also continuing to explore newer zero-emission technologies and related incentives.

Instead of allowing discussions to continue with the ARB, AB 302 inserts SCAQMD into the process, potentially allowing SCAQMD to adopt requirements even more stringent than those agreed to with the ARB. This is despite the significant cost implications the technology may have on transit agencies. A conventional compressed natural gas bus costs about \$600,000. Battery electric and hydrogen fuel-cell buses cost between \$900,000 and \$1.5 million, plus the cost of fueling/charging infrastructure. Furthermore, many of the zero-emission buses are unable to meet the range, reliability, and maintenance needs of existing fleets. These issues will have a direct impact on OCTA's ability to provide transit services. Additional costs will also decrease OCTA's available funding to operate its current service, especially as OCTA observes continued fluctuations in existing transit funding streams such as the local transportation fund.

Consistent with the 2017-2018 OCTA State Legislative Platform's principles to, "Support efforts to ensure the availability of proven technology and adequate funding prior to the implementation of zero emission bus regulations" and to "Oppose efforts to create regulations or strengthen existing standards that are not currently economically practicable or technologically feasible," an OPPOSE position is recommended on AB 302. A copy of the bill and an analysis is included as Attachment A.

AB 1282 (Mullin, D-San Mateo): Transportation Permitting Taskforce

AB 1282 (Mullin, D-San Mateo) would require the Secretary of the California State Transportation Agency (CalSTA) by April 1, 2018, in consultation with the Secretary of the California Natural Resources Agency (CNRA), to establish a Transportation Permitting Task Force (Task Force). The Task Force is going to be composed of various state entities, including the Secretary of CalSTA, Chair of the California Transportation Commission (CTC), Secretary for Environmental

Protection, Secretary of the CNRA, and representatives from Caltrans, Department of Fish and Wildlife, Department of Water Resources, California Coastal Commission, and representatives from other relevant state agencies.

The Task Force is to develop a process for early engagement of all parties in the development of transportation projects to reduce permit processing time, establish reasonable deadlines for permit approvals, and provide for greater certainty of permit approval requirements. By December 1, 2018, the Secretary of CalSTA is to submit a report to the Legislature of the findings of the Task Force and analysis of various issues, including analysis of where delay is most likely to occur in the permitting process, the process developed by the Task Force to reduce permitting times and create more certainty, and any legislative or regulatory issues that need to be addressed to implement the Task Force's recommendations.

Whether OCTA, Caltrans, or another entity is the lead agency for a transportation project, a significant amount of time is spent on securing necessary permits for a particular project. There are at least 23 different variations of permits that could be required for a specific project depending on the location, resources impacted, and the mitigation needs of a specific project. Each of these permits is processed through a different entity, adding additional time and cost to a particular project. The inability to obtain a specific permit is one of the primary reasons a project can be delayed.

AB 1282 offers an opportunity to align these processes, ensuring that permits are processed within reasonable time periods, and allow for additional collaboration among many permitting entities, all while continuing to protect environmental and land use impacts. This coordination could potentially allow for streamlined project delivery and a clearer, more consistent process for obtaining needed project permits.

While AB 1282 does include several potentially helpful recommendations, the Task Force created by the proposal does not currently include any representatives from regional transportation agencies or transit agencies, such as OCTA, which may be a lead agency in project delivery and have insight on where existing barriers and delays most often occur. Therefore, it is recommended that amendments be pursued which ensure that regional transportation agencies and transit agencies are included in the Task Force developed under AB 1282.

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 to avoid potentially duplicative and unnecessary analysis, while still maintaining traditional

environmental protections,” a SUPPORT IF AMENDED position is recommended on AB 1282. A copy of the bill and an analysis is included as Attachment B. Also in support of AB 1282 are the CTC, the California Association of Councils of Governments, and the Self-Help Counties Coalition (SHCC).

AB 1454 (Bloom, D-Santa Monica) and SB 768 (Allen, D-Santa Monica): Public-Private Partnerships

AB 1454 (Bloom, D-Santa Monica) and SB 768 (Allen, D-Santa Monica) both seek to extend the authority for Caltrans and regional transportation agencies to enter into public-private partnership (P3) agreements for projects on the state highway system. SB 768 would extend the authority indefinitely, while AB 1454 includes intent language to pursue a similar extension. It is expected that SB 768 will be amended to mirror AB 1454 to allow for additional time to negotiate P3 language among interested stakeholders.

P3s are contractual agreements between public agencies and private entities that allow for greater private participation in the delivery of transportation projects. Typically, this participation involves the private sector taking on additional project risks, including the design, construction, finance, and operations of a project or facility. In California, the authority to enter into these agreements was authorized under a special session bill in 2009, SBX2 4 (Chapter 2, Statutes of 2009), which authorized the use of an unlimited number of P3 projects by either Caltrans or regional transportation agencies for highway, street, rail, or related facilities supplemental to existing facilities currently owned and operated by the department or regional transportation agencies. Unfortunately, this authority expired January 1, 2017.

Under the authority granted by SBX2 4 which is mirrored in SB 768, Caltrans and regional transportation agencies, with approval from the CTC, may enter into P3 agreements with public and private entities, or consortia of these entities, to construct transportation projects that may charge users of the projects a toll or user fee. This authority also limits the types of projects that may utilize this authority to those that are primarily designed to achieve improved mobility, improved operations or safety, and quantifiable air quality benefits, while also subjecting projects to various requirements. Requirements such as delegating project specific roles for Caltrans related to highway projects and mandatory public review and comment periods for lease projects would remain unchanged in the language included in SB 768.

By extending the authority to enter into P3 agreements, OCTA and other regional transportation agencies are provided with a critical tool to deliver transportation projects across the state that meet the mobility and air quality classifications that

are prioritized under existing law. The extension of the authority also has the potential to provide greater private sector design innovation for Orange County's transportation infrastructure.

The provisions of SB 768 are nearly identical to P3 provisions included in AB 1265 (Perea), a bill on which the OCTA Board of Directors adopted a support position in March, 2015. The only minor differences between the two bills are that the provisions of AB 1265 added the Santa Clara Valley Transportation Authority under the definition of "regional transportation agency," and set a sunset date for January 1, 2030, whereas SB 768 would extend this authority indefinitely. It is expected that as discussions occur related to AB 1454 and SB 768, some technical language issues with the P3 authority authorized under SBX2 4 may be fixed. A support position ensures that OCTA is at the table as these discussions occur.

Consistent with the 2017-2018 OCTA State Legislative Platform's principles to, "Support efforts to expand, extend, and preserve new and existing alternative project delivery methods such as public-private partnerships, while allowing the appropriate balance of partnership between the state and local agencies," a SUPPORT position is recommended on AB 1454 and SB 768. Copies of the bills and an analysis are included as Attachment C. Also in support of SB 768 and AB 1454 are the Los Angeles County Metropolitan Transportation Authority, the SHCC, Associated General Contractors, California State Council of Laborers, and California Conference of Carpenters. Opposed to the language currently included in SB 768 are the American Federation of State, County and Municipal Employees, AFL-CIO, and the Professional Engineers in California Government.

AB 673 (Chu, D-San Jose) Public Transit Operators: Bus Procurement: Safety Considerations Update

AB 673 (Chu, D-San Jose) is a bill sponsored by the Amalgamated Transit Union (ATU) on behalf of various transit unions across the state that seeks to address concerns related to the safety of coach operators. Specifically, ATU cited increased assaults on coach operators and blind spots within some buses as the basis for proposing the bill. In its original form, AB 673 would have required transit operators to ensure various features were included in any new bus placed into service including: a transparent, glare-free, accessible partition closure around the bus operating seating area capable of withstanding gun fire; a door or window, at least the same size as a passenger emergency window to the left of the bus operator seating area that allows for safe and rapid emergency egress; and an overall bus operator seating area that eliminates blind spots to the greatest extent feasible. Many of these requirements were highly subjective, which would create potential liabilities for transit operators, and because of the

lack of clarity, potentially add significant costs to the procurement of a bus. Furthermore, some of the requirements were not feasible without significantly altering the construction of a bus. Overall, it was also unclear whether these were features desired by all coach operators, with some concerns of the potential for these requirements to significantly alter the operation of a bus and interaction with customers.

After the introduction of the bill, the California Transit Association (CTA) brought together ATU, select transit operators, including OCTA, and bus manufacturers to discuss the challenges associated with AB 673. After negotiations occurred, ATU decided to significantly amend the bill to only require a public transit operator to take into consideration the recommendations of their union representative related to safety and blind spots prior to putting a bus into service. CTA is continuing to pursue amendments that will allow for additional clarity that nothing in this bill is to be interpreted as requiring a transit operator to implement a specific recommendation provided by the union. Because most transit operators, including OCTA, already discuss many of these factors with their coach operator unions, this is not interpreted as a new requirement. Therefore, it is expected that with the amendments CTA is currently pursuing, AB 673 will not present the significant issues it would have in its original form.

Summary

Positions are recommended on four bills related to zero-emission technology, permit streamlining, and public-private partnership authority. An update is provided on a bill related to safety considerations for transit bus procurements.

Attachments

- A. AB 302 (Gipson, D-Carson) Bill Analysis with Bill Language
- B. AB 1282 (Mullin, D-San Mateo) Bill Analysis with Bill Language
- C. SB 768 (Allen, D-Santa Monica) and AB 1454 (Bloom, D-Santa Monica) Bill Analysis with Bill Language
- D. AB 673 (Chu, D-San Jose) Bill Language
- E. Orange County Transportation Authority Legislative Matrix

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