



*June 15, 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 fair housing requirements for public agencies.

### ***Recommendations***

Adopt an OPPOSE position on AB 686 (Santiago, D-Los Angeles), which would require public agencies to affirmatively further fair housing in their programs and activities.

### ***Discussion***

AB 686 (Santiago, D-Los Angeles): Housing Discrimination: Affirmatively Further Fair Housing

AB 686 (Santiago, D-Los Angeles) would establish an affirmatively furthering fair housing (AFFH) obligation within the California Fair Employment and Housing Act (FEHA), thus requiring public agencies in California to administer their programs and activities relating to housing and community development in a manner that affirmatively furthers fair housing. "Public agency" is defined to include a regional transportation agency. If a public agency fails to meet its AFFH obligation, then that failure would be considered unlawful under the FEHA. The director of the California Department of Fair Employment and Housing may exercise their discretion to investigate, or to bring a civil action, based on a verified complaint that alleges a violation of the duty to AFFH.

AB 686 would also require any public agency required to adopt a housing element or sustainable communities strategy (SCS) to include an analysis of the barriers that restrict access to fair housing opportunities, and a commitment to specific meaningful actions to affirmatively further fair housing.

Under existing law, the California counterpart to the federal Fair Housing Act, FEHA, prohibits housing discrimination, but does not explicitly include an AFFH provision. With the addition of the AFFH requirements, and the applicability to transportation agencies, the requirement is broad enough to include many funding and planning decisions undertaken by agencies such as the Orange County Transportation Authority (OCTA). It is ambiguous which activities OCTA currently undertakes would definitively be included under this requirement, creating a risk that the argument can be made that there is an AFFH requirement on almost any activity. This creates a new legal loophole to challenge transportation planning, programming and construction activities, even when the transportation agency has no jurisdiction over housing and land use decisions. This requirement may also potentially be used to challenge funding allocated to transportation agencies if it is deemed to impact fair housing availability, or access to jobs and other resources. This could potentially conflict with other state goals, including those related to jobs creation, the environment and disadvantaged communities.

AB 686 would require the SCS developed by the Southern California Association of Governments (SCAG) pursuant to SB 375 (Chapter 728, Statutes of 2008), to include “an analysis of barriers that restrict access to opportunity and a commitment to specific meaningful actions to affirmatively further fair housing.” However, SCAG has no land use authority to commit to “specific meaningful actions” for overcoming identified barriers such as the inadequate supply of affordable housing, zoning restrictions, segregated housing, development limitations, and housing that is inaccessible to persons with disabilities. SCAG could recommend general strategies to local jurisdictions, but that is the only authority they have with regards to land use.

AB 686 is sponsored by the National Housing Law Project, Public Advocates and the Western Center on Law and Poverty. Stakeholders opposing the bill include the California Association of Councils of Government, Southern California Association of Governments, and the Riverside County Transportation Commission.

Consistent with the 2017-2018 OCTA State Legislative Platform’s principles to, “Oppose unfunded mandates for transportation agencies, transit providers, and local governments in providing transportation improvements and services,” an OPPOSE position is recommended on AB 686. A copy of the bill and an analysis is included as Attachment A.

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**Summary**

A position is recommended on a bill related to fair housing requirements.

**Attachments**

- A. AB 686 (Santiago, D-Los Angeles) Bill Analysis with Bill Language
- B. Orange County Transportation Authority Legislative Matrix

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