



**April 19, 2018**

**To:** Legislative and Communications Committee

**From:** Darrell Johnson, Chief Executive Officer

**Subject:** State Legislative Status Report

**Overview**

An oppose unless amended position is recommended on a bill related to the board membership of the Metro Gold Line Foothill Extension Construction Authority. An overview is provided of two bills related to the allocation of Bradley-Burns sales tax revenues from online sales, which are being supported consistent with the 2017-2018 Orange County Transportation Authority State Legislative Platform. An overview of a bill is provided related to the use of incentive funding for purchase of zero-emission bus technology that is being supported consistent with the 2017-2018 Orange County Transportation Authority State Legislative Platform. A summary is provided on a legislative hearing on litigation related to local sales tax measures.

**Recommendation**

Adopt an OPPOSE UNLESS AMENDED position on AB 2417 (Rodriguez, D-Pomona), which revises the board membership of the Metro Gold Line Foothill Extension Construction Authority.

**Discussion**

AB 2417 (Rodriguez, D-Pomona): Metro Gold Line Foothill Extension Construction Authority

AB 2417 (Rodriguez, D-Pomona) would increase to six the voting members of the Metro Gold Line Foothill Extension Construction Authority (Construction Authority) Board of Directors by adding one voting member appointed by the City of Montclair. As a result, the Los Angeles County Metropolitan Authority, the San Gabriel Valley Council of Governments, and the Cities of Los Angeles, Montclair, Pasadena, and South Pasadena would each have a voting member on the board of the Construction Authority. However, the number and designation of the nonvoting members appointed by the Governor, the

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San Bernardino County Transportation Authority (SBCTA), and the Cities of Pasadena and South Pasadena would remain unchanged.

While SBCTA is supportive of adding the City of Montclair as a voting member given its role as a regional transit hub, SBCTA has taken an oppose unless amended position on AB 2417. SBCTA's opposition stems from its current status as a nonvoting member. As a planning and funding partner, SBCTA is responsible for providing \$79 million towards the construction of the project, as well as millions of dollars annually for ongoing operations.

The Orange County Transportation Authority (OCTA) supports SBCTA's recommendation to include SBCTA as a voting member as well. Excluding SBCTA would set a concerning precedent, where a board composition could be set in a way to leave off a primary funding and operating partner. This could impact regional participation and empower certain jurisdictions over others without balancing the interests of all the partnering agencies. Thus, taxpayers providing funding for projects through local transportation sales tax measures, such as Measure I in San Bernardino County, deserve representation to ensure that funding is contributed in a manner that is consistent with the transportation sales tax plan.

Stakeholders taking an oppose unless amended position on the bill include the Southern California Association of Governments, Mobility 21, and the Riverside County Transportation Commission. In addition, the Construction Authority is opposing this bill with the notion that the board membership should not be revised until the Gold Line's extension into San Bernardino County is fully funded.

The text of AB 2417 and a comprehensive analysis of the legislation are included as Attachment A. An oppose unless amended position is consistent with OCTA's 2017-18 State Legislative Platform principle to "Oppose efforts to reduce local prerogative over regional program funds."

SB 1466 (Glazer, D-Orinda) and SCA 20 (Glazer, D-Orinda): Local Sales Taxes: Online Sales: Place of Delivery

SB 1466 (Glazer, D-Orinda) and SCA 20 (Glazier, D-Orinda) work in conjunction to specify that revenues generated from online sales under the Bradley-Burns Uniform Local Sales and Use Tax Law are to be allocated based on the place of destination of goods sold. Because the State Constitution currently prohibits changing the method of distributing revenues under the Bradley-Burns Uniform Local Sales and Use Tax Law, SCA 20 is necessary to revise the State Constitution to allow the Legislature to change by statute the method of



distributing revenues, if the sale is of tangible personal property that is completed online.

The Bradley-Burns Uniform Sales and Use Tax Law is a 1.25 percent tax on the retail sales of goods within the State that was first enacted in 1956. Since 1972, 0.25 percent was used for each county's Local Transportation Fund (LTF) to fund transportation programs, primarily focused on transit services. SB 1466 and SCA 20 would apply to the entire 1.25 percent tax, including the portion designated for local governments and the portion provided for the LTF.

Per the direction of the OCTA Board of Directors, and articulated in the 2017-18 State Legislative Platform, on March 3, 2017, Assembly Member Daly (D-Anaheim) and Assembly Member Todd Gloria (D-San Diego) authored a request to the Joint Legislative Audit Committee for the State Auditor to analyze the distribution and assessment of the LTF. OCTA sponsored the audit request after observing that the growth rates for LTF revenues, which have historically funded about 50 percent of OCTA's bus operations, were not keeping pace with local transportation sales taxes such as Measure M in Orange County. Since these taxes are assessed differently, it was believed that an increase in internet sales, and potentially other exclusions, could be impacting these rates. Specifically, the audit request asked the State Auditor to analyze the impact the point-of-sale determination for internet sales is having on LTF revenues and how various exemptions and exclusions may be impacting the fund source.

On November 30, 2017, the State Auditor released an audit on "The Bradley-Burns Tax and Local Transportation Funds." Overall, the audit found the LTF revenue statewide has been steadily increasing, but some counties disproportionately benefit because of existing law, with counties which have more warehouses or distribution centers receiving more revenue. The audit's primary finding was that changing the allocation structure for Bradley-Burns taxes would result in a more equitable distribution of local transportation funding, primarily due to the "point-of-sale" assessment structure and the impact from an increase in internet sales. SB 1466 and SCA 20 were introduced in direct response to this recommendation.

Based on OCTA's most recent forecasts, OCTA is likely receiving about \$2-3 million less in LTF revenues annually because of the current situs rules for LTF and Bradley-Burns as a whole. This directly impacts OCTA's ability to provide sustained transit operations throughout the county. This is the case even though overall purchases from Orange County where the LTF can be assessed, remain stable. If SB 1466 and SCA 20 are successful, OCTA will receive a more equitable share of LTF funding, and extreme fluctuations due to the expected increase in online sales will be mitigated.



Consistent with the principle outlined in the OCTA 2017-18 State Legislative Platform to: "Support efforts to restore equity with regards to the generation and disbursement of sales tax revenues that support the Local Transportation Fund," a SUPPORT position has been taken on SB 1466 and SCA 20. A copy of SB 1466 and letter of support have been included as Attachment B. A copy of SCA 20 and letter of support have been included as Attachment C.

**AB 3201 (Daly, D-Anaheim): California Clean Truck, Bus, and Off-Road Vehicle and Equipment Technology Program**

AB 3201 (Daly, D-Anaheim), sponsored by the California Transit Association (CTA), would make several clarifications to the California Air Resources Board's (ARB) California Clean Truck, Bus and Off-Road Vehicle and Equipment Technology Program (Program) to create added certainty about the availability of incentive funding for future deployments of zero-emission buses and related infrastructure. Specifically, AB 3201 would require the ARB adopt a five-year funding plan for the Program, detailing how the funding will be used for the investment in truck and bus technologies. It would also clarify that funding provided under the program can be used to meet current and future regulatory compliance obligations, and that fueling infrastructure is an eligible investment.

AB 3201 has been introduced in direct response to the ARB's proposed Innovative Clean Transit (ICT) regulation, which will require all transit agencies within the state to convert their fleets to 100 percent zero-emission technology by 2040 through the use of purchase requirements. The proposed ICT regulation has created concern among transit agencies, including OCTA, regarding the cost of meeting this mandate without impacting existing transit services. ARB has also explained that many existing funding sources, including those provided under the Program, will not be available to meet regulatory requirements once the ICT, or similar regulation, is adopted.

AB 3201 is one step towards ensuring added funding certainty and will provide increased data about funding for future years as any regulatory requirement is implemented. As continued discussions take place regarding the ICT, OCTA will work with CTA and its member agencies to also explore the potential for additional funding possibilities to meet new mandates, while seeking to protect funding already dedicated for existing services.

Consistent with the principle outlined in the OCTA 2017-18 State Legislative Platform to: "Support efforts to ensure the availability of proven technology and adequate funding prior to the implementation of zero-emission bus regulations," a SUPPORT position has been taken on AB 3021. A copy of the bill and letter of support have been included as Attachment D.

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Summary of Joint Hearing on California Supreme Court Case Involving the Procedural Rules Governing Ballot Initiatives

On March 7, 2018, the Senate Governance and Finance, Assembly Local Government, and Assembly Revenue and Taxation Committees held a joint hearing entitled “Uproar over *Upland*: Assessing the California Supreme Court’s Decision.” The hearing focused on the effects of the 2016 *Upland* decision on California’s Constitutional initiative power. In *Upland*, the Court held that the procedural rules governing ballot initiatives do not limit citizen-led initiatives, but the Court did not specify which procedural provisions may or may not apply to citizen-led initiatives. As a result, there is uncertainty regarding whether citizen-led initiatives are subject to other Constitutional requirements, such as the two-thirds vote threshold. In reaching this ruling, the Court relied on a definition of “local government” that had not previously been utilized in case law, which also leads to uncertainty about how the procedural limits on ballot initiatives will affect measures pursued by cities or counties.

Witnesses from the Legislative Analyst’s Office and tax firms around California discussed the uncertainty created by the *Upland* decision. The witnesses were split on the implications of the case. Some witnesses argued that only the rules regarding when initiatives appear on the ballot, the specific procedural rule challenged in *Upland*, are affected by the ruling. Other witnesses argued that the ruling invalidated all procedural rules, including the two-thirds vote threshold on tax measures. There was also extensive discussion about how the application of this case could vary depending on the circumstances of future litigation. Witnesses were in agreement that further clarification is needed from the California Supreme Court to resolve this uncertainty, and such cases are expected in coming months as more citizen-led initiatives are being pursued in the wake of the *Upland* decision.



**Summary**

A position is recommended on a bill related to the membership of the Metro Gold Line Foothill Extension Construction Authority Board of Directors. An update is provided on bills supported related to the distribution of Bradley-Burns local sales tax revenue and incentive funding for zero-emission bus technology. A summary of a hearing on voter thresholds for passing local sales tax measures is included.

**Attachments**

- A. AB 2417 (Rodriguez, D-Pomona) Bill Analysis with Bill Language
- B. Letter from the Orange County Transportation Authority to Senator Steve Glazer in support of SB 1466, dated April 10, 2018, with Bill Language
- C. Letter from the Orange County Transportation Authority to Senator Steve Glazer in support of SCA 20, dated April 10, 2018, with Bill Language
- D. Letter from the Orange County Transportation Authority to Assembly Member Tom Daly in support of AB 3201, dated April 5, 2018, with Bill Language
- E. Orange County Transportation Authority Legislative Matrix

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