

BILL: AB 382 (Chávez, R-Oceanside)
Amended May 8, 2018
Amended May 26, 2017
Introduced February 9, 2018

SUBJECT: AB 382 would limit the responsibilities of the Transportation Corridor Agencies to the maintenance, financing and operation of the existing network of toll roads within Orange County.

STATUS: Pending in Senate Transportation and Housing Committee

SUMMARY AS OF MAY 9, 2018:

AB 382 (Chávez, R-Oceanside) seeks to clarify the responsibilities of the Transportation Corridor Agencies (TCA), as a joint powers authority (JPA), to be limited to the maintenance, financing and operation of its toll road system, as it exists in operation on January 1, 2018. To enforce this limitation, AB 382 would prevent the member agencies of the TCA from entering into a JPA to construct any bridge or major thoroughfare beyond the existing system. Furthermore, after January 1, 2018, TCA would be unable to incur bonded indebtedness unless it is to refund bonds issued prior to January 1, 2018 or to finance debt service spikes. In both situations, TCA would be required to demonstrate that the issuance of bonds or other indebtedness meet various requirements in order to proceed.

AB 382 does not revise the existing relationship between TCA and the Orange County Transportation Authority (OCTA), nor does it alter in any way OCTA's existing responsibilities as it pertains to its countywide transportation planning and funding authorities.

EFFECTS ON ORANGE COUNTY:

The TCA was initially formed in 1986 as a JPA to manage, finance, construct and operate a toll road network proposed within Orange County. State legislation granted TCA the authority to issue bonds backed by future toll revenues and development impact fees. With this authority, the TCA began construction in the early 1990s of the proposed toll road network, which consisted of State Route 73, State Route 241 (SR-241), State Route 133 and State Route 261. This system provided not only a travel alternative for Orange County residents, but helped reduce congestion on the existing state highway and interstate system.

The one piece of the originally proposed network that has not been completed is the extension of the SR-241 south. Subject to years of legal challenges from environmental groups, TCA eventually entered into a settlement agreement with those groups, which

precluded the construction of the originally proposed alignment to connect to Interstate 5 (I-5). This led TCA to initiate an effort to explore alternative routes. In developing alternatives, TCA conducted a number of public forums within South Orange County to solicit public input on not only the SR-241 extension, but a host of transportation improvements to the existing highway system, local street and roads, and transit system. Many of these ideas had already been thoroughly vetted by OCTA as the agency responsible for developing the Long-Range Transportation Plan for Orange County, and the programming of related state and federal funds. Among the alternatives suggested by TCA is the addition of a managed-lanes facility within the center of I-5 to the county line and/or to proceed with an alternative SR-241 alignment that could create community impacts that were not anticipated in the initial proposed route. In many of these cases, it is not clear that the congestion levels or demand existed to justify those alternatives.

Through TCA's planning activities, reopening project decisions already made by OCTA, and/or promising new improvements that are not currently planned, confusion was created for the public as to which agency is responsible for this function within the County, and what may take place in the future. It is also questionable whether existing statutory authority permits TCA the ability to undertake any of these activities. The City of San Clemente sponsored AB 382 to provide that clarity.

Nothing in AB 382 seeks to change TCA's role as it relates to the existing system of toll roads. This continues to be an important part of improving mobility within Orange County, and will continue to function as such if AB 382 is enacted. AB 382 also does not change TCA's role as it relates to the maintenance, operation and financing of that system. Those roles will continue as they currently are structured.

AB 382, however, will provide more clarity as it relates to the planning of future mobility improvements within South Orange County. OCTA currently has clear statutory responsibility over the planning and location of future capital development projects within the County. OCTA also is the entity responsible for implementing the local sales tax measure funding provided under Measure M2 and determining which projects on the federal-aid highway system are to be funded. By more clearly defining TCA's role in operating, maintaining and financing its toll road system, AB 382 removes any ambiguity in the respective roles of OCTA and TCA as it relates to the long-term capital project development within Orange County. TCA will continue to be the operator of its existing toll road facility and OCTA will continue to be the consolidated transportation agency for the county and responsible for overall countywide planning and funding functions.

Currently, OCTA has numerous projects underway, and in various stages of development throughout the County, including in the areas surrounding TCA's facility. However, improving transportation and reducing congestion will take a comprehensive approach. OCTA is currently working with stakeholders throughout the County, including TCA, as well as our regional partners in Riverside, San Diego and Los Angeles to ensure a

collaborative approach that actively engages input from the public, and all impacted cities to determine solutions that meet local and regional needs. This is done through a statutory-defined process. AB 382 will continue this process, and prevent the potential for duplicative or conflicting work efforts that may disrupt existing short- and long-term planning and funding decisions.

OCTA POSITION:

Staff recommends: NONE

AMENDED IN SENATE MAY 8, 2018

AMENDED IN ASSEMBLY MAY 26, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 382

Introduced by Assembly Member Voepel Chávez
(Coauthors: Assembly Members Brough, Gallagher, Harper,
Lackey, Mathis, Mayes, Patterson, Steinorth, Waldron, Acosta,
and Chen)
(Coauthors: Senators Anderson, Bates, Berryhill, Nielsen, Wilk, and
Vidak)

February 9, 2017

~~An act to amend Section 8352.6 of the Revenue and Taxation Code,~~
~~relating to fuel taxes. An act to amend Section 66484.3 of the~~
~~Government Code, relating to transportation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 382, as amended, ~~Voepel Chávez. Fuel taxes: State Parks and~~
~~Recreation Fund: Off-Highway Vehicle Trust Fund. County of Orange:~~
~~joint exercise of powers agreements: toll roads.~~

The Joint Exercise of Powers Act generally authorizes 2 or more public agencies, by agreement, to jointly exercise any common power. Existing law authorizes the County of Orange and the cities in that county, by ordinance, to require the payment of fees as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares. Existing law authorizes those entities to form a joint powers agency for specified purposes, including incurring

indebtedness for the construction of bridge facilities or major thoroughfares, pursuant to which various toll roads in the County of Orange were constructed.

This bill would prohibit those entities, on and after January 1, 2018, from forming a new joint powers agency to construct bridge facilities or major thoroughfares under that specific authorization or the general authorization. The bill would prohibit a joint powers agency formed under that specific authorization from incurring new bonded indebtedness, except for specified purposes.

Existing law authorizes a joint powers agency created for these purposes to make certain toll revenues and fees available to specified other joint powers agencies to pay for the cost of construction and toll collection of major thoroughfares other than those for which the toll or fee is charged if specified requirements are met and findings are made.

This bill would delete this provision.

~~Existing law imposes an excise tax on motor vehicle fuel (gasoline). Existing law requires a portion of the moneys attributable to the excise tax on gasoline related to specified off-highway motor vehicles and off-highway vehicle activities to be transferred monthly from the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund, and, commencing November 1, 2017, requires the portion of those moneys from a \$0.12 per gallon increase, and future inflation adjustments from that increase, to be transferred to the State Parks and Recreation Fund, to be used for state parks, off-highway vehicle programs, or boating programs.~~

~~This bill would provide that in the 2017-18 fiscal year up to \$1,000,000 of the revenues transferred to the State Parks and Recreation Fund may be transferred to the Off-Highway Vehicle Trust Fund to be available for specified purposes and would express the intent of the Legislature to make this transfer in the Budget Act of 2017.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 66484.3 of the Government Code is
- 2 amended to read:
- 3 66484.3. (a) Notwithstanding Section 66007, the Board of
- 4 Supervisors of the County of Orange and the city council or

1 councils of any city or cities in that county may, by ordinance,
2 require the payment of a fee as a condition of approval of a final
3 map or as a condition of issuing a building permit for purposes of
4 defraying the actual or estimated cost of constructing bridges over
5 waterways, railways, freeways, and canyons, or constructing major
6 thoroughfares.

7 (b) The local ordinance may require payment of fees pursuant
8 to this section if:

9 (1) The ordinance refers to the circulation element of the general
10 plan and, in the case of bridges, to the transportation provisions
11 or flood control provisions of the general plan ~~which~~ *that* identify
12 railways, freeways, streams, or canyons for which bridge crossings
13 are required on the general plan or local roads, and in the case of
14 major thoroughfares, to the provisions of the circulation element
15 ~~which~~ *that* identify those major thoroughfares whose primary
16 purpose is to carry through traffic and provide a network
17 connecting to or ~~which~~ *that* is part of the state highway system,
18 and the circulation element, transportation provisions, or flood
19 control provisions have been adopted by the local agency 30 days
20 prior to the filing of a map or application for a building permit.
21 Bridges ~~which~~ *that* are part of a major thoroughfare need not be
22 separately identified in the transportation or flood control
23 provisions of the general plan.

24 (2) The ordinance provides that there will be a public hearing
25 held by the governing body for each area benefited. Notice shall
26 be given pursuant to Section 65905. In addition to the requirements
27 of Section 65905, the notice shall contain preliminary information
28 related to the boundaries of the area of benefit, estimated cost, and
29 the method of fee apportionment. The area of benefit may include
30 land or improvements in addition to the land or improvements
31 ~~which~~ *that* are the subject of any map or building permit application
32 considered at the proceedings.

33 (3) The ordinance provides that at the public hearing, the
34 boundaries of the area of benefit, the costs, whether actual or
35 estimated, and a fair method of allocation of costs to the area of
36 benefit and fee apportionment are established. The method of fee
37 apportionment, in the case of major thoroughfares, shall not provide
38 for higher fees on land ~~which~~ *that* abuts the proposed improvement
39 except where the abutting property is provided direct usable access
40 to the major thoroughfare. A description of the boundaries of the

1 area of benefit, the costs, whether actual or estimated, and the
2 method of fee apportionment established at the hearing shall be
3 incorporated in a resolution of the governing body, a certified copy
4 of which shall be recorded by the governing body conducting the
5 hearing with the recorder of the County of Orange. The resolution
6 may subsequently be modified in any respect by the governing
7 body. Modifications shall be adopted in the same manner as the
8 original resolution, except that the resolution of a city or county
9 ~~which~~ *that* has entered into a joint exercise of powers agreement
10 pursuant to subdivision (f), relating to constructing bridges over
11 waterways, railways, freeways, and canyons or constructing major
12 thoroughfares by the joint powers agency, may be modified by the
13 joint powers agency following public notice and a public hearing,
14 if the joint powers agency has complied with all applicable laws,
15 including Chapter 5 (commencing with Section 66000) of Division
16 1. Any modification shall be subject to the protest procedures
17 prescribed by paragraph (6). The resolution may provide for
18 automatic periodic adjustment of fees based upon the California
19 Construction Cost Index prepared and published by the Department
20 of Transportation, without further action of the governing body,
21 including, but not limited to, public notice or hearing. The
22 apportioned fees shall be applicable to all property within the area
23 of benefit and shall be payable as a condition of approval of a final
24 map or as a condition of issuing a building permit for any of the
25 property or portions of the property. Where the area of benefit
26 includes lands not subject to the payment of fees pursuant to this
27 section, the governing body shall make provision for payment of
28 the share of improvement costs apportioned to those lands from
29 other sources, but those sources need not be identified at the time
30 of the adoption of the resolution.

31 (4) The ordinance provides that payment of fees shall not be
32 required unless the major thoroughfares are in addition to, or a
33 reconstruction or widening of, any existing major thoroughfares
34 serving the area at the time of the adoption of the boundaries of
35 the area of benefit.

36 (5) The ordinance provides that payment of fees shall not be
37 required unless the planned bridge facility is an original bridge
38 serving the area or an addition to any existing bridge facility
39 serving the area at the time of the adoption of the boundaries of
40 the area of benefit. Fees imposed pursuant to this section shall not

1 be expended to reimburse the cost of existing bridge facility
2 construction, unless these costs are incurred in connection with
3 the construction of an addition to an existing bridge for which fees
4 may be required.

5 (6) (A) The ordinance provides that if, within the time when
6 protests may be filed under its provisions, there is a written protest,
7 filed with the clerk of the legislative body, by the owners of more
8 than one-half of the area of the property to be benefited by the
9 improvement, and sufficient protests are not withdrawn so as to
10 reduce the area represented to less than one-half of that to be
11 benefited, then the proposed proceedings shall be abandoned, and
12 the legislative body shall not, for one year from the filing of that
13 written protest, commence or carry on any proceedings for the
14 same improvement or acquisition under this section, unless the
15 protests are overruled by an affirmative vote of four-fifths of the
16 legislative body.

17 (B) Nothing in this section shall preclude the processing and
18 recordation of maps in accordance with other provisions of this
19 division if proceedings are abandoned.

20 (C) Any protests may be withdrawn in writing by the owner
21 who filed the protest, at any time prior to the conclusion of a public
22 hearing held pursuant to the ordinance.

23 (D) If any majority protest is directed against only a portion of
24 the improvement then all further proceedings under the provisions
25 of this section to construct that portion of the improvement so
26 protested against shall be barred for a period of one year, but the
27 legislative body shall not be barred from commencing new
28 proceedings not including any part of the improvement or
29 acquisition so protested against. Nothing in this section shall
30 prohibit the legislative body, within the one-year period, from
31 commencing and carrying on new proceedings for the construction
32 of a portion of the improvement so protested against if it finds, by
33 the affirmative vote of four-fifths of its members, that the owners
34 of more than one-half of the area of the property to be benefited
35 are in favor of going forward with that portion of the improvement
36 or acquisition.

37 (E) If the provisions of this paragraph, or provisions
38 implementing this paragraph contained in any ordinance adopted
39 pursuant to this section, are held invalid, that invalidity shall not
40 affect other provisions of this section or of the ordinance adopted

1 pursuant thereto, which can be given effect without the invalid
2 provision, and to this end the provisions of this section and of an
3 ordinance adopted pursuant thereto are severable.

4 (c) Fees paid pursuant to an ordinance adopted pursuant to this
5 section shall be deposited in a planned bridge facility or major
6 thoroughfare fund. A fund shall be established for each planned
7 bridge facility project or each planned major thoroughfare project.
8 If the benefit area is one in which more than one bridge or major
9 thoroughfare is required to be constructed, a fund may be so
10 established covering all of the bridge or major thoroughfare
11 projects in the benefit area. Except as otherwise provided in
12 subdivision ~~(g)~~, *(h)*, moneys in the fund shall be expended solely
13 for the construction or reimbursement for construction of the
14 improvement serving the area to be benefited and from which the
15 fees comprising the fund were collected, or to reimburse the county
16 or a city for the cost of constructing the improvement.

17 (d) An ordinance adopted pursuant to this section may provide
18 for the acceptance of considerations in lieu of the payment of fees.

19 (e) The county or a city imposing fees pursuant to this section
20 may advance money from its general fund or road fund to pay the
21 cost of constructing the improvements and may reimburse the
22 general fund or road fund from planned bridge facilities or major
23 thoroughfares funds established to finance the construction of the
24 improvements.

25 (f) *(1)* The county or a city imposing fees pursuant to this
26 section may incur an interest-bearing indebtedness for the
27 construction of bridge facilities or major thoroughfares. The sole
28 security for repayment of the indebtedness shall be moneys in
29 planned bridge facilities or major thoroughfares funds. A city or
30 county imposing fees pursuant to this section ~~may may, prior to~~
31 *January 1, 2018*, enter into joint exercise of powers agreements
32 with other local agencies imposing fees pursuant to this section,
33 for the purpose of, among others, jointly exercising as a duly
34 authorized original power established by this section, in addition
35 to those through a joint exercise of powers agreement, those powers
36 ~~authorized described in Chapter the El Dorado County Toll Tunnel~~
37 *Authority Act (Chapter 5 (commencing with Section 31100) of*
38 *Division 17 of the Streets and Highways Code Code)* for the
39 purpose of constructing bridge facilities and major thoroughfares
40 in lieu of a tunnel and appurtenant facilities, and, notwithstanding

1 Section 31200 of the Streets and Highways Code, may acquire by
2 dedication, gift, purchase, or eminent domain, any franchise, rights,
3 privileges, easements, or other interest in property, either real or
4 personal, necessary therefor on segments of the state highway
5 system, including, but not limited to, those segments of the state
6 highway system eligible for federal participation pursuant to Title
7 23 of the United States Code. *A county or city imposing fees*
8 *pursuant to this section shall not, on and after January 1, 2018,*
9 *enter into a joint exercise of powers agreement pursuant to this*
10 *section or Article 1 (commencing with Section 6500) of Chapter*
11 *5 of Division 7 of Title 1 to construct bridge facilities or major*
12 *thoroughfares. A joint powers agency created pursuant to this*
13 *section may continue to maintain and operate any bridges or major*
14 *thoroughfares in operation on January 1, 2018.*

15 (2) An entity constructing bridge facilities and major
16 thoroughfares pursuant to this section shall design and construct
17 the bridge facilities and major thoroughfares to the standards and
18 specifications of the Department of Transportation then in effect,
19 and may, at any time, transfer all or a portion of the bridge facilities
20 and major thoroughfares to the state subject to the terms and
21 conditions as shall be satisfactory to the Director of the Department
22 of Transportation. Any of these bridge facilities and major
23 thoroughfares shall be designated as a portion of the state highway
24 system prior to its transfer. The participants in a joint exercise of
25 powers agreement may also exercise as a duly authorized original
26 power established by this section the power to establish and collect
27 toll charges only for paying for the costs of construction of the
28 major thoroughfare for which the toll is charged and for the costs
29 of collecting the tolls, ~~except that a joint powers agency, which is~~
30 ~~the lending agency, may, notwithstanding subdivision (c), make~~
31 ~~toll revenues and fees imposed pursuant to this section available~~
32 ~~to another joint powers agency, which is the borrowing agency,~~
33 ~~established for the purpose of designing, financing, and~~
34 ~~constructing coordinated and interrelated major thoroughfares, in~~
35 ~~the form of a subordinated loan, to pay for the cost of construction~~
36 ~~and toll collection of major thoroughfares other than the major~~
37 ~~thoroughfares for which the toll or fee is charged, if the lending~~
38 ~~agency has complied with all applicable laws, including Chapter~~
39 ~~5 (commencing with Section 66000) of Division 1, and if the~~
40 ~~borrowing agency is required to pay interest on the loan to the~~

1 lending agency at a rate equal to the interest rate charged on funds
2 loaned from the Pooled Money Investment Account. Prior to
3 executing the loan, the lending agency shall make all of the
4 following findings: *tolls*.

5 (1) The major thoroughfare for which the toll or fee is charged
6 will benefit from the construction of the major thoroughfare to be
7 constructed by the borrowing agency or will benefit financially
8 by a sharing of revenues with the borrowing agency.

9 (2) The lending agency will possess adequate financial resources
10 to fund all costs of construction of existing and future projects that
11 it plans to undertake prior to the final maturity of the loan, after
12 funding the loan, and taking into consideration its then existing
13 funds, its present and future obligations, and the revenues and fees
14 it expects to receive.

15 (3) The funding of the loan will not materially impair its
16 financial condition or operations during the term of the loan.

17 (3) Major thoroughfares from for which tolls are charged shall
18 utilize the toll collection equipment most capable of moving
19 vehicles expeditiously and efficiently, and which *that* is best suited
20 for that purpose, as determined by the participants in the joint
21 exercise of powers agreement. However, in no event shall the
22 powers authorized described in Chapter the El Dorado County
23 Toll Tunnel Authority Act (Chapter 5 (commencing with Section
24 31100) of Division 17 of the Streets and Highways Code Code)
25 be exercised *exercised, as authorized in paragraph (1)*, unless a
26 resolution is first adopted by the legislative body of the agency
27 finding that adequate funding for the portion of the cost of
28 constructing those bridge facilities and major thoroughfares not
29 funded by the development fees collected by the agency is not
30 available from any federal, state, or other source. Any major
31 thoroughfare constructed and operated as a toll road pursuant to
32 this section shall only be constructed parallel to other public
33 thoroughfares and highways.

34 (g) *Notwithstanding the powers granted pursuant to subdivision*
35 *(f), a joint powers agency created pursuant to subdivision (f) shall*
36 *not, on or after January 1, 2018, incur bonded indebtedness, except*
37 *that the joint powers agency shall have the authority, rights, and*
38 *powers it held prior to that date for only each of the following*
39 *purposes:*

1 (1) *To issue bonds or otherwise incur indebtedness to refund*
2 *the bonds or other indebtedness incurred prior to January 1, 2018,*
3 *or to provide monetary savings to the joint exercise of powers*
4 *agency, provided that both of the following requirements are met:*

5 (A) *The total interest cost to maturity on the refunding bonds*
6 *or other indebtedness plus the principal amount of the refunding*
7 *bonds or other indebtedness shall not exceed the total remaining*
8 *interest cost to maturity on the bonds or other indebtedness to be*
9 *refunded plus the remaining principal of the bonds or other*
10 *indebtedness to be refunded.*

11 (B) *The principal amount of the refunding bonds or other*
12 *indebtedness shall not exceed the amount required to defease the*
13 *refunded bonds or other indebtedness, to establish customary debt*
14 *service reserves, and to pay related costs of issuance. If the*
15 *foregoing conditions are satisfied, the initial principal amount of*
16 *the refunding bonds or other indebtedness may be greater than*
17 *the outstanding principal amount of the bonds or other*
18 *indebtedness to be refunded. The joint powers agency may pledge*
19 *to the refunding bonds or other indebtedness the revenues pledged*
20 *to the bonds or other indebtedness being refunded, and that pledge,*
21 *when made in connection with the issuance of such refunding*
22 *bonds or other indebtedness, shall have the same lien priority as*
23 *the pledge of the bonds or other obligations to be refunded, and*
24 *shall be valid, binding, and enforceable in accordance with its*
25 *terms.*

26 (2) *To issue bonds or otherwise incur indebtedness to finance*
27 *debt service spikes, including balloon maturities, provided that*
28 *both of the following requirements are met:*

29 (A) *The existing indebtedness is not accelerated, except to the*
30 *extent necessary to achieve substantially level debt service.*

31 (B) *The principal amount of the bonds or other indebtedness*
32 *shall not exceed the amount required to finance the debt service*
33 *spikes, including establishing customary debt service reserves and*
34 *paying related costs of issuance.*

35 ~~(g)~~

36 (h) *The term “construction,” as used in this section, includes*
37 *design, acquisition of rights-of-way, and actual construction,*
38 *including, but not limited to, all direct and indirect environmental,*
39 *engineering, accounting, legal, administration of construction*
40 *contracts, and other services necessary therefor. The term*

1 “construction” also includes reasonable general agency
2 administrative expenses, not exceeding three hundred thousand
3 dollars (\$300,000) in any calendar year after January 1, 1986, as
4 adjusted annually for any increase or decrease in the Consumer
5 Price Index of the Bureau of Labor Statistics of the United States
6 Department of Labor for all Urban Consumers, Los Angeles-Long
7 Beach-Anaheim, California (1967=100), as published by the United
8 States Department of Commerce, by each agency created pursuant
9 to Article 1 (commencing with Section 6500) of Chapter 5 of
10 Division 7 of Title 1 for the purpose of constructing bridges and
11 major thoroughfares. “General agency administrative expenses”
12 means those office, personnel, and other customary and normal
13 expenses associated with the direct management and administration
14 of the agency, but not including costs of construction.

15 ~~(h)~~

16 (i) Fees paid pursuant to an ordinance adopted pursuant to this
17 section may be utilized to defray all direct and indirect financing
18 costs related to the construction of the bridges and major
19 thoroughfares by the joint powers agency. Because the financing
20 costs of bridges and major thoroughfares for which a toll charge
21 shall be established or collected represent a necessary element of
22 the total cost of those bridges and major thoroughfares, the joint
23 powers agency constructing those facilities may include a charge
24 for financing costs in the calculation of the fee rate. The charge
25 shall be based on the estimated financing cost of any eligible
26 portion of the bridges and major thoroughfares for which tolls shall
27 be collected. The eligible portion shall be any or all portions of
28 the major thoroughfare for which a viable financial plan has been
29 adopted by the joint powers agency on the basis of revenues
30 reasonably expected by the joint powers agency to be available to
31 the thoroughfare, after consultation with representatives of the fee
32 payers. For purposes of calculating the charge, financing costs
33 shall include only reasonable allowances for payments and charges
34 for principal, interest, and premium on indebtedness, letter of credit
35 fees and charges, remarketing fees and charges, underwriters’
36 discount, and other costs of issuance, less net earnings on bridge
37 and major thoroughfare funds by the joint powers agency prior to
38 the opening of the facility to traffic after giving effect to any
39 payments from the fund to preserve the federal income tax
40 exemption on the indebtedness. For purposes of calculating the

1 charge for financing costs in the calculation of the fee rate only,
2 financing costs shall not include any allowance for the cost of any
3 interest paid on indebtedness with regard to each eligible portion
4 after the estimated opening of the portion to traffic as established
5 by the joint powers agency. Any and all challenges to any financial
6 plan or financing costs adopted or calculated pursuant to this
7 section shall be governed by subdivision~~(k)~~: (l).

8 ~~(i)~~

9 (j) Nothing in this section shall be construed to preclude the
10 County of Orange or any city within that county from providing
11 funds for the construction of bridge facilities or major
12 thoroughfares to defray costs not allocated to the area of benefit.

13 ~~(j)~~

14 (k) Any city within the County of Orange may require the
15 payment of fees in accordance with this section as to any property
16 in an area of benefit within the city's boundaries, for facilities
17 shown on its general plan or the county's general plan, whether
18 the facilities are situated within or outside the boundaries of the
19 city, and the county may expend fees for facilities or portions
20 thereof located within cities in the county.

21 ~~(k)~~

22 (l) The validity of any fee required pursuant to this section shall
23 not be contested in any action or proceeding unless commenced
24 within 60 days after recordation of the resolution described in
25 paragraph (3) of subdivision (b). The provisions of Chapter 9
26 (commencing with Section 860) of Title 10 of Part 2 of the Code
27 of Civil Procedure shall be applicable to any such action or
28 proceeding. This subdivision shall also apply to modifications of
29 fee programs.

30 ~~(l)~~

31 (m) If the County of Orange and any city within that county
32 have entered into a joint powers agreement for the purpose of
33 constructing the bridges and major thoroughfares referred to in
34 Sections 50029 and 66484, and if a proposed change of
35 organization or reorganization includes any territory of an area of
36 benefit established pursuant to Sections 50029 and 66484, within
37 a successor local agency, the local agency shall not take any action
38 that would impair, delay, frustrate, obstruct, or otherwise impede
39 the construction of the bridges and major thoroughfares referred
40 to in this section.

1 ~~(m)~~

2 ~~(n)~~ Nothing in this section prohibits the succession of all powers,
3 obligations, liabilities, and duties of any joint powers agency
4 created pursuant to subdivision ~~(f)~~ ~~(m)~~ to an entity with
5 comprehensive countywide transportation planning and operating
6 authority ~~which~~ ~~that~~ is statutorily created in the County of Orange
7 and ~~which~~ ~~that~~ is statutorily authorized to assume those powers,
8 obligations, liabilities, and duties.

9 *SEC. 2. The provisions of this act are severable. If any*
10 *provision of this act or its application is held invalid, that invalidity*
11 *shall not affect other provisions or applications that can be given*
12 *effect without the invalid provision or application.*

13 ~~SECTION 1. It is the intent of the Legislature to make the~~
14 ~~transfer described in subparagraph (C) of paragraph (2) of~~
15 ~~subdivision (a) of Section 8352.6 of the Revenue and Taxation~~
16 ~~Code in the Budget Act of 2017.~~

17 ~~SEC. 2. Section 8352.6 of the Revenue and Taxation Code is~~
18 ~~amended to read:~~

19 ~~8352.6. (a) (1) Subject to Section 8352.1, and except as~~
20 ~~otherwise provided in paragraphs (2) and (3), on the first day of~~
21 ~~every month, there shall be transferred from moneys deposited to~~
22 ~~the credit of the Motor Vehicle Fuel Account to the Off-Highway~~
23 ~~Vehicle Trust Fund created by Section 38225 of the Vehicle Code~~
24 ~~an amount attributable to taxes imposed upon distributions of motor~~
25 ~~vehicle fuel used in the operation of motor vehicles off highway~~
26 ~~and for which a refund has not been claimed. Transfers made~~
27 ~~pursuant to this section shall be made prior to transfers pursuant~~
28 ~~to Section 8352.2.~~

29 ~~(2) (A) Commencing July 1, 2012, the revenues attributable to~~
30 ~~the taxes imposed pursuant to subdivision (b) of Section 7360 and~~
31 ~~otherwise to be deposited in the Off-Highway Vehicle Trust Fund~~
32 ~~pursuant to paragraph (1) shall instead be transferred to the General~~
33 ~~Fund.~~

34 ~~(B) Commencing November 1, 2017, the revenues attributable~~
35 ~~to the taxes imposed pursuant to subdivision (c) of Section 7360;~~
36 ~~any adjustment pursuant to subdivision (d) of Section 7360, and~~
37 ~~Section 7361.2, and otherwise to be deposited in the Off-Highway~~
38 ~~Vehicle Trust Fund pursuant to subdivision (a), shall instead be~~
39 ~~transferred to the State Parks and Recreation Fund to be used for~~
40 ~~state parks, off-highway vehicle programs, or boating programs.~~

1 ~~(C) In the 2017-18 fiscal year, up to one million dollars~~
2 ~~(\$1,000,000) of the revenues described in subparagraph (B) may~~
3 ~~be transferred to the Off-Highway Vehicle Trust Fund to be~~
4 ~~available for local assistance grants for law enforcement,~~
5 ~~environmental monitoring, and maintenance grants supporting~~
6 ~~federal off-highway vehicle recreation.~~

7 ~~(3) The Controller shall withhold eight hundred thirty-three~~
8 ~~thousand dollars (\$833,000) from the monthly transfer to the~~
9 ~~Off-Highway Vehicle Trust Fund pursuant to paragraph (1), and~~
10 ~~transfer that amount to the General Fund.~~

11 ~~(b) The amount transferred to the Off-Highway Vehicle Trust~~
12 ~~Fund pursuant to paragraph (1) of subdivision (a), as a percentage~~
13 ~~of the Motor Vehicle Fuel Account, shall be equal to the percentage~~
14 ~~transferred in the 2006-07 fiscal year. Every five years, starting~~
15 ~~in the 2013-14 fiscal year, the percentage transferred may be~~
16 ~~adjusted by the Department of Transportation in cooperation with~~
17 ~~the Department of Parks and Recreation and the Department of~~
18 ~~Motor Vehicles. Adjustments shall be based on, but not limited~~
19 ~~to, the changes in the following factors since the 2006-07 fiscal~~
20 ~~year or the last adjustment, whichever is more recent:~~

21 ~~(1) The number of vehicles registered as off-highway motor~~
22 ~~vehicles as required by Division 16.5 (commencing with Section~~
23 ~~38000) of the Vehicle Code.~~

24 ~~(2) The number of registered street-legal vehicles that are~~
25 ~~anticipated to be used off highway, including four-wheel drive~~
26 ~~vehicles, all-wheel drive vehicles, and dual-sport motorcycles.~~

27 ~~(3) Attendance at the state vehicular recreation areas.~~

28 ~~(4) Off-highway recreation use on federal lands as indicated by~~
29 ~~the United States Forest Service's National Visitor Use Monitoring~~
30 ~~and the United States Bureau of Land Management's Recreation~~
31 ~~Management Information System.~~

32 ~~(c) It is the intent of the Legislature that transfers from the Motor~~
33 ~~Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund~~
34 ~~should reflect the full range of motorized vehicle use off highway~~
35 ~~for both motorized recreation and motorized off-road access to~~
36 ~~other recreation opportunities. Therefore, the Legislature finds that~~
37 ~~the fuel tax baseline established in subdivision (b), attributable to~~
38 ~~off-highway estimates of use as of the 2006-07 fiscal year,~~
39 ~~accounts for the three categories of vehicles that have been found~~
40 ~~over the years to be users of fuel for off-highway motorized~~

1 recreation or motorized access to nonmotorized recreational
2 pursuits. These three categories are registered off-highway
3 motorized vehicles, registered street-legal motorized vehicles used
4 off highway, and unregistered off-highway motorized vehicles.

5 (d) It is the intent of the Legislature that the off-highway motor
6 vehicle recreational use to be determined by the Department of
7 Transportation pursuant to paragraph (2) of subdivision (b) be that
8 usage by vehicles subject to registration under Division 3
9 (commencing with Section 4000) of the Vehicle Code, for
10 recreation or the pursuit of recreation on surfaces where the use
11 of vehicles registered under Division 16.5 (commencing with
12 Section 38000) of the Vehicle Code may occur.

13 (e) In the 2014-15 fiscal year, the Department of Transportation,
14 in consultation with the Department of Parks and Recreation and
15 the Department of Motor Vehicles, shall undertake a study to
16 determine the appropriate adjustment to the amount transferred
17 pursuant to subdivision (b) and to update the estimate of the amount
18 attributable to taxes imposed upon distributions of motor vehicle
19 fuel used in the operation of motor vehicles off highway and for
20 which a refund has not been claimed. The department shall provide
21 a copy of this study to the Legislature no later than January 1,
22 2016.