



**November 15, 2018**

**To:** Legislative and Communications Committee  
**From:** Darrell E. Johnson, Chief Executive Officer  
**Subject:** Status Report of State Legislation Enacted in 2018

### **Overview**

At the conclusion of the 2018 legislative session, 1,016 bills were signed and chaptered by Governor Jerry Brown, while 201 bills were vetoed. A report containing an analysis of legislation relevant to the Orange County Transportation Authority is provided.

### **Recommendation**

Receive and file as an information item.

### **Discussion**

#### **2018 Legislative Session Adjourns**

Following the State Legislature's adjournment, Governor Jerry Brown had until September 30, 2018, to either sign or veto all legislation submitted to his office. Of the 1,217 bills sent to the Governor in 2018, 201 bills were vetoed; about 16.5 percent of the total number of bills presented to his office. This is significantly higher than the 13 percent average veto rate dating back to 1967, and is higher than the 12 percent he vetoed in 2017. This was the highest number of bills he has had to consider as Governor since 2011.

The Orange County Transportation Authority (OCTA) Board of Directors (Board), legislative staff, and advocates were successful in advancing many of OCTA's interests in 2018. A detailed summary of legislation relevant to OCTA is included as Attachment A. Among the bills considered this session were the following transportation proposals:

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**Status of Legislation Considered in 2018 - Bills Signed****AB 686 (Chapter 958, Statutes of 2018): House Discrimination: Further Fair Housing**

Position: Neutral (previously an “oppose” position)

In its original form, AB 686 (Chapter 958, Statutes of 2018), would have required public agencies, including OCTA, to administer programs and activities relating to housing and community development in a manner that would affirmatively further fair housing (AFFH). This would have created a legal loophole to challenge transportation funding, planning, programming, and construction activities, even when the transportation agency has no jurisdiction over housing and land use decisions. This would have also conflicted with other state goals, including those related to job creation, the environment, and disadvantaged communities. Given these concerns, the author had initially pulled the bill in 2017. However, the author, in an effort to address the concerns raised by the California Association of Councils of Governments, OCTA, the Southern California Association of Governments, the Riverside County Transportation Commission, and others, amended the bill this year. The amendments removed regional transportation agencies from the AFFH requirement, which allowed OCTA to go neutral on the bill.

**AB 1759 (Chapter 250, Statutes of 2018): Public Trust Lands: City of Sacramento**

Position: Neutral (previously an “oppose” position)

OCTA initially opposed AB 1759 (Chapter 250, Statutes of 2018), which in its original form would have required Orange County cities and the County of Orange to provide that it has met a minimum housing production goal in its annual report for a given reporting period to be eligible for Local Streets and Roads funding provided under SB 1 (Chapter 5, Statutes of 2017). With the addition of a housing production requirement, this bill would have set a concerning precedent, where other policy priorities could have potentially been linked to transportation funds. This could have impacted transportation planning, programming, and construction activities for cities, counties, and agencies such as OCTA looking to deliver critical infrastructure projects. The regional housing needs assessment requirement would also have reduced local authority over the implementation of funds provided under SB 1 and linked it to other goals without providing the necessary resources. However, AB 1759 was later gut-and-amended to relate to public trust lands in the City of Sacramento, and as a result, OCTA went neutral on the bill.



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AB 1912 (Chapter 909, Statutes of 2018): Public Employees' Retirement: Joint Powers Agreements: Liability

Position: Oppose

AB 1912 (Chapter 909, Statutes of 2018) was introduced to ensure that all joint power authority (JPA) entities can cover their retirement obligations, even if these liabilities were not considered at the time the JPA was formed. The bill in its original form would have held current and former JPA member agencies jointly-and-severally liable for pension obligations. OCTA opposed the bill in this form because it would have adversely affected the agency's financial structure and deter against the future use of JPAs. As such, AB 1912 was later amended in an attempt to give more discretion to member agencies. While some stakeholders viewed the amendments as a compromise, OCTA remained opposed to the bill as the previously mentioned concerns were not adequately addressed.

The final version signed into law by the Governor does not allow a JPA to dissolve without a plan to apportion outstanding pension liabilities between current and former member agencies. Absent an apportionment agreement by member agencies, either the California Public Employees' Retirement System or the appropriate retirement plan, depending on the legal structure of the JPA, has discretion to apportion liability, with any challenges subject to arbitration. As a direct result of AB 1912, OCTA could be subject to significantly more financial liability than was anticipated upon the formation of the Southern California Regional Rail Authority (Metrolink) JPA. In addition, this bill has the potential to place additional burdens on the formation of future JPAs, making it more difficult for OCTA to collaborate with interested partners in Orange County.

AB 3124 (Chapter 22, Statutes of 2018): Vehicles: Length Limitations: Buses: Bicycle Transportation Devices

Position: Support

Sponsored by the California Transit Association (CTA), AB 3124 (Chapter 22, Statutes of 2018) authorizes the use of three-position bicycle racks on 60-foot articulated transit buses, subject to the approval of a route review committee. This legislation expands upon the authority provided by AB 2707 (Chapter 310, Statutes of 2014), which only allowed 40-foot buses to be equipped with three-position bicycle racks. The higher capacity racks on articulated buses will reduce the number of times a bicyclist will be left behind and will make the system more compatible for bicyclists. OCTA will be allowed to start deploying three-position bicycle racks as soon as January 1, 2019, assuming approval from a route review committee, which AB 3124 establishes, and OCTA's internal Configuration Control Committee.

SB 1119 (Chapter 606, Statutes of 2018): Low Carbon Transit Operations Program

Position: Sponsor

Co-sponsored by CTA and supported by a number of transportation agencies, SB 1119 (Chapter 606, Statutes of 2018) will provide system-wide flexibility in the use of Low Carbon Transit Operations Program (LCTOP) funding for new transit pass programs, new or expanded transit service serving disadvantaged communities (DACs) or low-income communities, and the purchase of zero-emission transit buses and supporting infrastructure. With the success of the Santa Ana College student transit pass program using LCTOP funding, this bill will allow OCTA to expand upon this transit pass program and further expand transportation choices for students and residents of DACs. This will have the dual benefit of increasing ridership while simultaneously reducing congestion on local streets and roads.

While the Assembly Appropriations Committee did provide in their analysis that there could be unknown costs for the California Department of Transportation (Caltrans) and the California Air Resources Board (ARB) to conduct administrative functions, it was later clarified by OCTA and CTA that SB 1119 would allow for greater efficiencies in project reviews, compliance with statutory requirements, and other administrative functions associated with LCTOP. As such, SB 1119 passed unanimously out of both the Senate and the Assembly and did not receive a single vote in opposition in any of its committee hearings. Moving forward, OCTA will remain engaged with the ARB and Caltrans as LCTOP guidelines are revised to comply with SB 1119.

SB 502 (Chapter 602, Statutes of 2018): Commuter Rail Systems: Availability of Automated External Defibrillators: Construction Manager/General Contractor Project Delivery Method: Metrolink Commuter Rail Projects

Position: Support (previously an "Oppose" position)

Since last September, SB 502 (Chapter 602, Statutes of 2018) would have only required public entities that operated a commuter rail system to ensure that each train is equipped with an automated external defibrillator. However, on August 23, 2018, amendments were made to SB 502 that added language that provided Construction Manager/General Contractor (CM/GC) authority to Metrolink for commuter rail projects without the consent or oversight of its member agencies, including OCTA. These initial amendments would have subverted OCTA's prerogative to maintain local control over the delivery of transportation projects on the 42 miles of OCTA-owned rail right-of-way in Orange County. As such, OCTA initially communicated an oppose position, but due to OCTA's opposition, Metrolink and the author's office showed a willingness to accept amendments to ensure the use of CM/GC would only be conducted



according to previous precedent. On August 27, 2018, SB 502 was amended to clarify that Metrolink could only use CM/GC authority upon approval from the county transportation commission that has jurisdiction over the project. The bill also provided CM/GC authority for the county transportation commissions, such as OCTA, to construct Metrolink commuter rail projects utilizing CM/GC. These amendments allowed OCTA to remove its opposition to SB 502 and support the bill. This final version signed into law could serve as a tool to expedite the delivery of Metrolink improvement projects throughout Southern California.

### **Additional Bills of Interest that OCTA Opposed – Failed Passage**

#### **AB 302 (Gipson, D-Carson) and AB 327 (Gipson, D-Carson) South Coast Air Quality Management District: Fleets**

AB 302 (Gipson, D-Carson) and AB 327 (Gipson, D-Carson) would have authorized the Governing Board of the South Coast Air Quality Management District (SCAQMD) to create requirements for the use of zero-and near-zero emission technology in public fleets to the maximum extent feasible in the south coast region. While AB 302 and AB 327 would have required the SCAQMD in adopting the regulations to consult with Caltrans, the California Highway Patrol, and the transportation commissions within their region, it would have presented significant implications for OCTA's existing transit services and financial plans. OCTA has embarked on numerous efforts to further reduce emissions through the integration of low-NOx engines, use of renewable natural gas, and the purchase of ten zero-emission hydrogen fuel cell buses. Additional requirements would have decreased OCTA's available funding needed to operate its current service. Due to these concerns, the author pulled AB 302 before it could be heard in a policy committee. Similarly, AB 327 was held in the Senate Transportation and Housing Committee, and thus failed passage.

#### **AB 344 (Melendez, D-Lake Elsinore): Toll Evasion Violations**

AB 344 (Melendez, D-Lake Elsinore) would have required 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 the 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, as owner and operator of the 91 Express Lanes, receives about 5,500 challenges annually to toll violations. If OCTA continues with the enforcement of the toll penalty after the investigative stage of an appeal, the contestant can appeal the results to an administrative hearing, which requires a person to deposit the total amount of the toll violation plus penalties. AB 344 would have provided an incentive to challenge the

penalty and go to later stages of the appeal process without a deposit, which would have increased associated costs for OCTA and impacted OCTA's ability to enforce toll policies. AB 344 was set to be heard in the Senate Transportation and Housing Committee last year, but was ultimately cancelled at the request of the author due to the opposition presented from toll agencies statewide and concerns expressed by committee staff.

AB 1640 (Garcia, D-Coachella): Transportation Funding: Low Income Communities

AB 1640 (Garcia, D-Coachella) would have required the State Transportation Improvement Program and Regional Transportation Improvement Program funding to be prioritized for low income and transportation disadvantaged communities. While addressing the mobility and safety needs of these communities is important and necessary, AB 1640 would have created arbitrary thresholds of prioritization, potentially jeopardizing currently programmed projects and other funding sources associated with those projects. AB 1640 would have also undermined the discretion of regional transportation agencies and the state to determine the projects necessitating investment to meet regional connectivity and maintenance needs. Due to these concerns, the bill was never heard in a policy committee and, as a result, failed passage.

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

AB 2417 (Rodriguez, D-Pomona) would have revised the board membership of the Metro Gold Line Foothill Extension Construction Authority by adding the City of Montclair (Montclair) as a voting member. While OCTA understood the intent of AB 2417, given Montclair's role as a regional transit hub for bus and rail service in San Bernardino County, OCTA supported the San Bernardino County Transportation Authority's (SBCTA) recommendation to also include SBCTA as an additional voting member. Not including SBCTA as a voting member would have set a concerning precedent, where a board composition for a project could be set in a way to leave off a primary funding and operating partner. In addition, AB 2417 would have been inconsistent with voter-approved transportation sales tax measures, such as Measure I in San Bernardino County. AB 2417 was set to be heard in the Assembly Appropriations Committee, but was ultimately cancelled at the request of the author given the concerns raised by SBCTA, OCTA, and other county transportation commissions in southern California.

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

SB 264 (Nguyen, R-Garden Grove) would have detailed 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). Pursuant to AB 194, OCTA has already executed a toll operating agreement with Caltrans on terms and conditions related to the toll facility, including operational management and use of revenues. This bill would have significantly infringed upon the local control granted by AB 194 to regional transportation agencies implementing toll facilities, regardless of the fact that these agencies are taking on the risk of investing and operating such a facility. In addition, the bill would have prohibited investment in many multi-modal improvements in the corridor, including transit services and active transportation purposes to further alleviate congestion. SB 264 was set to be heard in the Senate Transportation and Housing Committee in 2017, but was ultimately cancelled at the request of the author.

SB 268 (Mendoza, D-Artesia): Los Angeles County Metropolitan Transportation Authority (LA Metro)

SB 268 (Mendoza, D-Artesia) would have revised the composition of the Los Angeles County Metropolitan Transportation Authority's (LA Metro) Board of Directors. In its original form, the bill would have created a precedent which would have been concerning for other public agencies, where a board composition could be changed without thorough consultation with the public agency. SB 268, similar to SB 522 (Mendoza, D-Artesia) and SB 1472 (Mendoza, D-Artesia) of 2016, which would have also increased the number of members on LA Metro's board, was pulled by the author from the policy committee in 2017.

**Additional Bills of Interest that OCTA Supported – Failed Passage**

AB 278 (Steinorth, R-Rancho Cucamonga): California Environmental Quality Act (CEQA): Exemption: Transportation

AB 278 (Steinorth, R-Rancho Cucamonga) would have exempted various transportation projects, or the issuance of a permit for those projects, from the California Environmental Quality Act (CEQA) if the project was located within an existing right-of-way. Eligible projects included the inspection, maintenance, repair, rehabilitation, replacement, or removal of existing transportation infrastructure, including, but not limited to, highways, roadways, bridges, transit systems, bikeways, and paths serving pedestrians. While the provisions of AB 278 did not apply to projects that added additional motor vehicle lanes, it could have applied to the addition of auxiliary lanes. The provisions of AB 278 were identical to AB 1569 (Steinorth, R-Rancho Cucamonga) that OCTA supported last session. Neither bill was able to pass out of its initial policy committee, both failing on a party line vote. Committee analysis raised concerns

about expanding CEQA exemptions, believing existing exemptions were broad enough.

AB 1454 (Bloom, D-Santa Monica) and SB 768 (Allen, D-Santa Monica)  
Transportation Projects: Lease Agreements

AB 1454 (Bloom, D-Santa Monica) and SB 768 (Allen, D-Santa Monica) would have extended the authority for Caltrans and regional transportation authorities to enter into public-private-partnership (P3) agreements for projects on the state highway system. SB 2X-4 (Chapter 2, Statutes of 2009) had previously authorized Caltrans and regional transportation agencies to enter into an unlimited number of P3 agreements, but the authority expired on January 1, 2017. Initially, the provisions of AB 1454 and SB 768 were nearly identical, but AB 1454 was later amended to just include intent language. Neither bill moved out of its respective Appropriations Committee in 2017, with strong opposition from the Professional Engineers in California Government.

AB 1905 (Grayson, D-Concord): Environmental Quality: Judicial Review:  
Transportation Projects

AB 1905 (Grayson, D-Concord) would have provided legal certainty for transportation projects that have been adopted as part of a sustainable communities strategy. The primary goal of AB 1905 was to limit injunctive relief awarded in litigation pursued under CEQA against projects that have already undergone California's thorough environmental review process and are part of a plan that has demonstrated overall emission reduction benefits. The bill would have reduced barriers between the conception and completion of transportation projects. The most recent version of AB 1905 also included amendments that would have limited the bill's applicability to projects that reduced vehicle miles traveled. This would have limited the scope of AB 1905, but OCTA remained supportive of the overall bill and was prepared to work with the author and stakeholder to make improvements. AB 1905 was set to be heard in the Assembly Natural Resources Committee, but was ultimately cancelled at the request of the author. In addition to continued opposition from the environmental community, the analysis from the Assembly Natural Resources Committee noted that there wasn't enough justification for the bill.

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

AB 3201 (Daly, D-Anaheim) would have created added certainty about the availability of incentive funding for future deployments of zero-emission buses and related infrastructure by clarifying eligibility parameters. Given concerns about the adequacy of funding availability needed to meet ARB's proposed



Innovative Clean Transit Regulation, which would mandate the purchase of zero-emission buses, AB 3201 would have helped alleviate some of these issues by expanding the eligibility requirements under the California Clean Truck, Bus, and Off-Road Vehicle and Equipment Technology Program. However, AB 3201 was held in the Assembly Appropriations Committee, and thus failed passage. OCTA will continue to seek opportunities to promote an incentive-based approach which will allow testing of all compatible technologies, resulting in a more complete analysis of the cost implications and technology associated with zero-emission buses.

SB 1434 (Leyva, D-Chino): Transportation Electrification: Electricity Rate Design

Sponsored by CTA, SB 1434 (Leyva, D-Chino) would have required the California Public Utilities Commission to initiate a ratemaking proceeding that addresses the cost of electricity as a fuel for transit agencies. The bill would have allowed for a proceeding that brought relevant stakeholders together to deliberate on an appropriate rate structure rather than prescribing a specific rate structure in statute. OCTA estimates that charging an entire fleet of zero-emission buses would require 12 times the amount of energy than it would to charge a fleet of compressed natural gas buses. As such, this bill could have allowed for a more successful statewide transition to zero-emission technologies. Due to cost concerns outlined in the analysis of the Assembly Appropriations Committee, SB 1434 was ultimately held in committee.

SB 1466 (Glazer, D-Orinda) and SCA 20 (Glazer, D-Orinda): Local Sales Tax: Online Sales

SB 1466 (Glazer, D-Orinda) and SCA 20 (Glazer, D-Orinda) would have authorized adjustments in the distribution of revenues generated from the Bradley-Burns Uniform Local Sales and Use Tax Law as they relate to online sales. This would have allowed for a more equitable distribution of revenues provided under the Bradley-Burns taxes by allowing revenues to flow to the destination of goods sold, rather than point-of-sale, as current law provides. If SB 1466 and SCA 20 were signed into law, OCTA could have received a more equitable share of LTF funding, and extreme fluctuations due to the expected increase in online sales could have been mitigated. The provisions of SB 1466 and SCA 20 were nearly identical and, therefore, SB 1466 was integrated into SCA 20 and pulled by the author. Amendments were proposed to implement a phase-in and phase-out approach to mitigate the impact a redistribution would have on agencies; however, SCA 20 was held in the Senate Appropriations Committee over the need for more discussion. OCTA will continue to work with the relevant stakeholders as these discussions continue.

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**Summary**

A summary report on all state legislation enacted in 2018 affecting OCTA is provided for review by the Board.

**Attachment**

- A. Orange County Transportation Authority 2018 End of Year Legislative Report

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