



January 17, 2019

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: State Legislative Status Report

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Overview

An amendment is proposed to the Orange County Transportation Authority's 2019-20 State Legislative Platform to co-sponsor legislation related to toll enforcement policies. An update is provided regarding the Innovative Clean Transit regulation adopted by the California Air Resources Board, which requires transit agencies to purchase zero-emission buses. An overview is provided of a Legislative Analyst Office report and recommendations on addressing climate change in transportation planning and programs. A verbal update will be provided on the Governor's proposed fiscal year 2019-20 state budget.

Recommendation

Amend the 2019-20 Orange County Transportation Authority State Legislative Platform to co-sponsor legislation to clarify roles and responsibilities related to toll enforcement policies to allow for interoperability between toll facilities while affirming user privacy protections.

Discussion

Proposed Sponsor Legislation: Toll Facility Interoperability and Enforcement

Current state statute provides guidance for how toll facility operators, including the Orange County Transportation Authority (OCTA), process toll violations and communicate information with other toll operators and customers. Many of these provisions were first enacted in 2010 with the passage of SB 1268 (Chapter 489, Statutes of 2010) and revised again in 2013 with the passage of AB 179 (Chapter 375, Statutes of 2013). Both bills were introduced to include protections to prevent the selling or otherwise disclosing of personally identifiable information, unless explicitly provided for under statute, while also ensuring that toll operators could efficiently enforce policies on their respective facilities.

Since the passage of these bills, federal law has required toll operators nationwide to develop policies to ensure interoperability between facilities, allowing customers to seamlessly drive between facilities without establishing different accounts. To abide by federal law, toll operators must be able to share necessary information with other toll operators to process tolls and penalties, including the location of the toll collection and license plate information.

While the intent of the Legislature in enacting SB 1268 and AB 179 was to adapt to the newest technology, many of the provisions of the statute do not explicitly reflect more recent technology adaptations, including expanded cashless toll collection systems, toll subscriptions completed online and subsequent use of emails or apps to communicate toll facility usage and issue customer agreements, and the ability to use devices other than transponders for toll collection. Code sections, therefore, need to be updated to reflect the more widespread use of these methods of communication and collection.

Many other common practices and reoccurring issues also need clarification in statute, including the enforcement of toll penalties for rental cars, the use of third-party contractors for toll penalty collections, and the ability for toll operators to notify customers of public safety or travel alerts. As with many bills, there were mistakes in citations that need to be corrected to allow for consistent enforcement practices statewide. This includes the proper citation for toll evasion penalties and the section which is referenced for toll violations.

OCTA is the operator of the 91 Express Lanes and is in the process of constructing a second express lane facility as part of the Interstate 405 Improvement Project. The ability to clarify current statutes is critical for the operations of OCTA's facilities to ensure the enforcement of existing toll policies and interoperability with adjacent facilities, including those operated by the Riverside County Transportation Commission and the Transportation Corridor Agencies. Staff is therefore recommending that the 2019-20 OCTA State Legislative Platform be amended to include a principle to co-sponsor legislation to clarify the roles and responsibilities related to toll enforcement policies to allow for interoperability between toll facilities while affirming customer privacy protections. If approved, OCTA will co-sponsor this legislation with other toll operators within the state, including the Metropolitan Transportation Commission/Bay Area Toll Authority.

California Air Resources Board Adopts Innovative Clean Transit Regulation

In 2000, the California Air Resources Board (ARB) first issued the fleet rules for transit agencies, mandating large transit agencies with over 200 buses to reduce overall nitrous oxides (NOx) and particulate matter emissions based on two different fuel paths: the alternative fuel path or the diesel fuel path. Also put in

place under the initial ARB regulations was a purchase requirement for zero-emission buses (ZEBs), which mandated those transit agencies following the alternative fuel path to have 15 percent of their purchase and lease agreements be ZEB starting in 2012. This same requirement applied to those agencies opting for the diesel fuel path starting in 2011.

In July 2009, the ARB deferred the ZEB purchase requirement with a recommendation to first establish technology performance metrics that could be used to assess the commercial readiness and trigger a future purchase requirement. This deferral largely resulted from the advocacy of the California Transit Association (CTA) and its member agencies, including OCTA.

In December 2017, ARB released the Innovative Clean Transit (ICT) Regulation Discussion Document (ICT Discussion Document), which focused largely on purchase requirements for ZEB technology. The ICT Discussion Document included expedited ZEB purchase requirements on all transit agencies within the state, with the goal of achieving fully zero-emission fleets by 2040. While previous iterations of a ZEB purchase requirement were limited to larger urban buses, the ICT Discussion Document applied requirements to all transit buses, including those used for paratransit service. These requirements were directed at all transit agencies, regardless of size, and all transit buses, including cutaways. After multiple workshops and discussions related to the ICT Discussion Document, in August 2018, the ARB released the Proposed ICT Regulation, which required the following:

- By July 1, 2020, each transit agency must submit a Board of Directors-adopted plan for converting an agency's fleet to 100 percent zero-emission buses by 2040.
- Abide by purchase requirements starting in 2023. In 2023, the requirement would be 25 percent, in 2026 it would be raised to 50 percent, and 100 percent would be required in 2029 and after. The 2023 requirement could be delayed by up to two years if statewide purchase targets are reached.
- The phasing in of cutaway buses and articulated buses starting in 2026, or when the buses complete federally required testing.
- Starting on January 1, 2020, the purchase of renewable fuel when renewing fuel contracts.
- Starting on January 1, 2020, the purchase of low NOx engines, when a new bus is purchased.
- Annual reporting requirements of compliance with the above.

The Proposed ICT Regulation also included scenarios where an agency can request an extension or exemption from the purchase mandates and provisions which allow for early action credit, a multi-agency joint ZEB compliance option, and a zero-emission mobility option where a transit agency can receive credit

through a zero-emission mobility service provided through bicycles or zero-emission vehicles.

Since the Proposed ICT Regulation was released, CTA and its member agencies have continued to advocate for further refinements, focusing on the need for clear technology and economic benchmarks to be included in the regulation to ensure the ZEBs operate to the standards of existing technology, preventing a disruption in transit service. As part of this effort, CTA requested that if the technology does not meet those benchmarks there should be an automatic suspension in the regulatory purchase mandates. In addition, CTA and its member agencies advocated for continued access to ARB incentive funds after the purchase mandates are enforced, while also partnering to seek further funding opportunities by the State Legislature. These requests are outlined in OCTA's comment letter to the ARB dated November 18, 2018 (Attachment A).

On December 14, 2018, the ARB unanimously adopted the ICT Regulation. A summary of the regulation is included as Attachment B. While the regulation did not explicitly include the CTA proposed amendments, it did include several refinements, including an improved definition of "purchase," more realistic statewide purchase goals for 2021 and 2022, and an additional exemption where a transit agency can request a temporary exemption from the purchase mandate due to financial hardship if the transit agency cannot offset the incremental cost of purchasing a ZEB when compared to the cost of a conventional internal combustion engine bus. Most importantly, the ARB also included language within the adopted regulatory resolution that the ARB will complete a technology and cost analysis of the regulation prior to any purchase mandate being enforced. While this does partially address CTA's request for continued benchmark analysis, because this language was not included in the actual regulation, work will need to be continued to ensure future members of the ARB enforce this provision.

Going forward, ARB plans on hosting several workshops to guide implementation of the regulation, including a symposium in February 2019 to discuss technology availability and funding opportunities. CTA is also sponsoring legislation in 2019 to help mitigate any electricity cost increases associated with the regulation and seek further funding for implementation. OCTA staff will be bringing a report to the February 4, 2019, Executive Committee to outline a strategy for the agency's compliance with the regulation, including the development of the required plan for fleet conversion by 2040.

Legislative Analyst's Office Report on California's Climate Policies in the Transportation Sector

On December 21, 2018, the Legislative Analyst's Office (LAO) published a report entitled, "Assessing California's Climate Policies – Transportation." The LAO report, required by AB 398 (Chapter 135, Statutes of 2017), examines the effects of California's greenhouse gas emissions (GHG) policies intended to reduce GHG emissions from the transportation sector. Currently, the transportation sector accounts for 39 percent of GHG emissions, which has increased in recent years due to a range of factors, including, but not limited to, state policies, economic conditions, and an increase in vehicle miles traveled (VMT). These assumptions are also outlined in ARB's SB 150 (Chapter 646, Statutes of 2017) Progress Report published in November 2018. This ARB report analyzes the progress made toward meeting the regional SB 375 (Chapter 728, Statutes of 2018) GHG emissions reduction targets, which found that California is not on track to meet GHG goals given the increase in VMT per capita, vehicle ownership, job opportunities, housing costs, and other economic challenges.

The LAO report provides an overview of the many state policies and programs in effect to increase the use of low carbon fuels, reduce VMT, and reduce emissions from light-duty vehicles and heavy-duty vehicles, including transit buses. Programs such as the Clean Vehicle Rebate Project, the Hybrid and Zero-Emission Truck and Bus Voucher Incentive Program, and the ZEV fueling infrastructure funding programs provide incentives to reduce the costs of adopting lower-emission technologies and are targeted towards the consumers of fuel, while other initiatives such as Clean Car Standards and the Low Carbon Fuel Standard increase the costs of using higher-emission technologies and are targeted towards vehicle manufacturers and fuel producers. However, the report finds that the overall effects of these programs on GHG emissions are largely unclear. It is mentioned that the wide range of programs create coordination challenges, are relatively costly, and result in interactions whereby emissions reductions from one policy could be offset by increases in emissions from other policies.

As a result, the LAO identifies potential areas for future research and issues for the Legislature to consider. Specifically, the LAO provides that the Legislature may want to consider facilitating consistent evaluation of state climate policies, funding additional research on the relationship of state and federal policies, and limiting GHG policies to those that achieve its policy goals most cost effectively. The LAO also recommends that the Legislature might also want to consider whether it is necessary to have multiple programs funding similar types of activities such as the several programs that support charging infrastructure. In addition, regarding SB 375 GHG targets, the LAO mentions that the Legislature could add more incentives or penalties for Metropolitan Planning Organizations

to ensure they achieve their targets, consider changing state law to remove some discretion over local land use decisions that reduce VMT, and potentially consider road congestion pricing. Staff will monitor these recommendations and will provide updates as needed to the OCTA Board of Directors.

Governor's Proposed Fiscal Year 2019-20 State Budget

As required by the state constitution, the Governor's proposed budget for fiscal year 2019-20 is required to be introduced by January 10, 2019. While a memo outlining the proposed budget has been provided to the OCTA Board of Directors, a verbal update will be included as part of the January 17, 2019, meeting of the OCTA Legislative and Communications Committee.

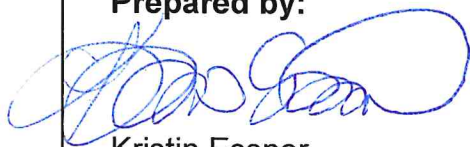
Summary

A recommendation is included to sponsor legislation related to toll enforcement and interoperability policies. An update is provided on a regulation related to zero-emission buses. An overview is provided of a Legislative Analyst's Office report on climate change policies and the transportation sector. A verbal update will be provided on the state budget.

Attachments

- A. Letter from Darrell E. Johnson, Chief Executive Officer, Orange County Transportation Authority, to Ms. Mary Nichols, dated November 26, 2018, Proposed Amendments to the Innovative Clean Transit Regulation
- B. California Air Resources Board: Innovative Clean Transit Regulation Summary
- C. Orange County Transportation Authority Legislative Matrix

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