



March 29, 2019

The Honorable Cottie Petrie-Norris
California State Assembly
Post Office Box 942849
Sacramento, California 94249-0074

Subject: AB 1402 (Petrie-Norris) – SPONSOR

Dear Assembly Member Petrie-Norris:

On behalf of the Orange County Transportation Authority (OCTA) Board of Directors, we are pleased to sponsor AB 1402, legislation to provide more certainty in the distribution of Active Transportation Program (ATP) funding and expedite the delivery of bicycle and pedestrian improvement projects.

Current law consolidates multiple funding sources for bicycle and pedestrian projects into a single program providing more than \$220 million per year. Half of this funding is distributed in a statewide competitive program, and projects not selected through the statewide competitive process can apply for funding through regional calls. As part of the regional calls, 40 percent of total ATP funding is distributed to metropolitan planning organizations (MPOs) in large urban areas for a regional competitive program, and the remaining ten percent of funding goes to a competitive program managed by the state for small urban and rural areas.

Applying for ATP funding has become a burdensome and complex endeavor. In the most recent statewide competitive program, there were 554 applications requesting \$2.2 billion in funding, with only \$440 million available. To remain truly competitive in this environment, applicants routinely spend hundreds of hours in staff time and thousands of dollars on consultants to perfect their applications. As a result, local priorities are often passed over for well-crafted applications. These difficulties have discouraged many localities from applying. In Orange County, the number of applications has decreased from 62 in the first programming cycle to just 41 in the most recent cycle, and yet, project sponsors in Orange County requested more than four times as much funding in the most recent cycle than was requested in the first one.

With half of the funding distributed via the statewide competitive program, regions and agencies can experience large variations in funding levels from

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one programming cycle to another. Furthermore, ATP projects, whether implemented through the statewide competitive program or the regional call, are often delayed because project sponsors must get the state's approval for most programming actions, which adds four to six months to the project delivery process. While such a policy might be beneficial for larger transformative projects, it does not make sense for smaller local projects.

AB 1402 would reduce the complexity of the ATP and prioritize local decision-making without undermining state and federal policy priorities. The legislation would allocate 75 percent of ATP funding to large MPOs, 15 percent to the state's competitive program for small and rural areas, and ten percent in the statewide competitive program. This distribution would provide roughly the same amount of funding most agencies are currently receiving but with more consistency between programming cycles, allowing project sponsors to better plan for future projects. The bill further clarifies that funding should be equitably distributed across the state. AB 1402 would also further streamline the ATP by changing the current project-by-project funding allocations to a lump sum distribution, eliminating the extensive programming process that delays project delivery.

A SPONSOR position is consistent with the OCTA 2019-20 State Legislative Platform's principle to "sponsor legislation to streamline the administration of the Active Transportation Program and increase regional oversight."

If you or your staff have any questions regarding OCTA's position on AB 1402, please contact Kristin Essner, Manager of State and Federal Relations, at (714) 560-5754 or kessner@octa.net.

Sincerely,



Tim Shaw
Chairman

TS:djs

c: Darrell E. Johnson, Chief Executive Officer
Orange County State Legislative Delegation
Platinum Advisors, LLC

AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1402

Introduced by Assembly Member Petrie-Norris

February 22, 2019

~~An act to amend Section 670 of the Streets and Highways Code, relating to state highways.~~ *An act to amend Sections 2380, 2381, 2382, and 2384 of the Streets and Highways Code, relating to transportation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1402, as amended, Petrie-Norris. ~~Department of Transportation: permits.~~ *Active Transportation Program.*

Existing law establishes the Active Transportation Program in the Department of Transportation for the purpose of encouraging increased use of active modes of transportation, such as biking and walking. Existing law requires specified funds for the program to be appropriated to the department in the annual Budget Act and allocated to eligible projects by the California Transportation Commission. Existing law requires the commission to award 50% of available funds to projects statewide, 10% of available funds to projects in small urban and rural regions, and the remaining 40% of available funds to projects by metropolitan planning organizations (MPO), with the funds available for distribution by each MPO based on its relative population. Existing law requires the commission to develop guidelines and procedures, including project selection criteria, for the program in consultation with various agencies and interested parties. To ensure that the MPOs have sufficient discretion to develop regional guidelines, existing law authorizes the commission to adopt separate guidelines for the state and the MPOs with regard to project selection criteria. Existing law

requires the commission to initially adopt a 2-year program of projects for the program, with subsequent 4-year programs thereafter.

This bill would require the department, instead of the commission, to award funds to projects in the statewide and small urban and rural region distribution categories and to adopt a program of projects for those distribution categories. The bill would require that 75% of available funds be awarded to MPO's in urban areas with populations greater than 200,000, in proportion to their relative share of the population, 15% to small urban and rural regions with populations of 200,000 or less, competitively awarded by the department to projects in those regions, and 10% to projects competitively awarded by the department, in consultation with the commission, on a statewide basis. With respect to the funds made available to MPOs, the bill would require the commission to allocate those funds to each MPO as a lump sum for award to projects selected by the applicable MPO. The bill would authorize MPO's to adopt their own guidelines, or use part or all of the guidelines developed by the commission. The bill would also authorize specified county transportation commissions to create their own set of guidelines that govern the funding distribution for their jurisdiction and would require those guidelines to be accepted and incorporated into the MPO guidelines. To the extent the bill imposes additional duties on an MPO, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law provides that the Department of Transportation has full possession and control of all state highways and associated property, and sets forth the powers and duties of the department with respect to the operation, maintenance, and improvement of state highways. Existing law authorizes the department to issue written permits to authorize a permittee to, among other things, install or remove tire chains upon motor vehicles for compensation on a state highway.~~

~~This bill would make a nonsubstantive change to the latter provision.~~

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

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

1 *SECTION 1. Section 2380 of the Streets and Highways Code*
2 *is amended to read:*

3 2380. There is hereby established the Active Transportation
4 Program in the department for the purpose of encouraging increased
5 use of active modes of transportation, such as biking and walking.
6 It is the intent of the Legislature that the program achieve all of
7 the following goals:

8 (a) Increase the proportion of trips accomplished by biking and
9 walking.

10 (b) Increase safety and mobility for nonmotorized users.

11 (c) Advance the active transportation efforts of regional agencies
12 to achieve greenhouse gas reduction goals as established pursuant
13 to Senate Bill 375 (Chapter 728, Statutes of 2008) and Senate Bill
14 391 (Chapter 585, Statutes of 2009).

15 (d) Enhance public health, including reduction of childhood
16 obesity through the use of programs including, but not limited to,
17 projects eligible for Safe Routes to School Program funding.

18 (e) Ensure that disadvantaged communities fully share in the
19 benefits of the program.

20 (f) Provide a broad spectrum of projects to benefit many types
21 of active transportation users.

22 (g) *Provide geographic balance in the selection of projects from*
23 *the statewide competitive portion of the program.*

24 *SEC. 2. Section 2381 of the Streets and Highways Code is*
25 *amended to read:*

26 2381. (a) The Active Transportation Program shall be funded
27 by state and federal funds from appropriations in the annual Budget
28 Act. ~~Funds Notwithstanding subdivision (b) of Section 2032, funds~~
29 for the program shall be appropriated to the department, for
30 ~~allocation by the commission; distribution pursuant to paragraphs~~
31 (1), (2), and (3). The amount to be appropriated *annually* shall
32 include 100 percent of the federal Transportation Alternative
33 Program funds, except for any federal Recreational Trails Program
34 funds appropriated to the Department of Parks and Recreation;
35 twenty-one million dollars (\$21,000,000) of federal Highway

1 Safety Improvement funds or other federal funds; *one hundred*
2 *million dollars (\$100,000,000) from the Road Maintenance and*
3 *Rehabilitation Account pursuant to subdivision (b) of Section 2032;*
4 *and State Highway Account funds. Future funding may be*
5 *augmented if state or federal funds increase, or if other funding*
6 *sources are identified. Funds appropriated for the Active*
7 *Transportation Program shall be distributed as follows:*

8 (1) ~~Forty~~ *Seventy-five* percent to metropolitan planning
9 organizations in urban areas with populations greater than 200,000,
10 in proportion to their relative share of population. Funds ~~allocated~~
11 *awarded* under this paragraph shall be obligated for eligible
12 projects selected through a competitive process by the metropolitan
13 planning organizations ~~in consultation with the department and~~
14 ~~the commission and~~ in accordance with guidelines established
15 pursuant to this chapter. *These funds shall be allocated by the*
16 *commission as a lump sum amount to individual metropolitan*
17 *planning organizations in the same manner as other local*
18 *assistance funds.*

19 (2) ~~Ten~~ *Fifteen* percent to small urban and rural regions with
20 populations of 200,000 or less, with projects competitively awarded
21 by the ~~commission~~ *department* to projects in those regions.

22 (3) ~~Fifty~~ *Ten* percent to projects competitively awarded by the
23 ~~commission~~ *department, in consultation with the commission,* on
24 a statewide basis.

25 (b) For the purpose of paragraph (1) of subdivision (a), the
26 following shall apply in the region served by the ~~multicounty~~
27 ~~designated transportation planning agency described in Section~~
28 ~~130004 of the Public Utilities Code:~~ *Southern California*
29 *Association of Governments.*

30 (1) The ~~multicounty designated transportation planning agency~~
31 *Southern California Association of Governments* shall consult with
32 the county transportation commissions created pursuant to Sections
33 130050, 130050.1, and 132800 of the Public Utilities Code, ~~the~~
34 ~~commission;~~ and the department in the development of competitive
35 selection criteria to be adopted by the ~~multicounty designated~~
36 ~~transportation planning agency;~~ *Southern California Association*
37 *of Governments,* which should include consideration of geographic
38 equity, consistent with program objectives.

39 (2) The ~~multicounty designated transportation planning agency~~
40 *Southern California Association of Governments* shall place

1 priority on projects that are consistent with plans adopted by local
2 and regional governments within the county where the project is
3 located.

4 (3) ~~The multicounty designated transportation planning agency~~
5 *Southern California Association of Governments* shall obtain
6 concurrence from the county transportation commissions, adopt
7 the projects selected in a comprehensive program of projects, and
8 make funds available to selected project recipients.

9 (c) The Legislature finds and declares that the program described
10 in this chapter constitutes a highway purpose under Article XIX
11 of the California Constitution and justifies the expenditure of
12 highway funds therefor, and all expenditures of Article XIX funds
13 under this program shall be consistent with Article XIX.

14 *SEC. 3. Section 2382 of the Streets and Highways Code is*
15 *amended to read:*

16 2382. (a) ~~The~~ *Except as provided in subdivision (l), the*
17 California Transportation Commission shall develop guidelines
18 and project selection criteria for the Active Transportation Program
19 in consultation with the Active Transportation Program Workgroup,
20 which shall be formed for purposes of providing guidance on
21 matters including, but not limited to, development of and
22 subsequent revisions to program guidelines, schedules and
23 procedures, project selection criteria, performance measures, and
24 program evaluation. The workgroup shall include, but not be
25 limited to, representatives of government agencies and active
26 transportation stakeholder organizations with expertise in
27 pedestrian and bicycle issues, including Safe Routes to School
28 programs.

29 (b) The guidelines shall be the complete and full statement of
30 the policies and criteria ~~that the commission intends to~~ *for* use in
31 selecting projects to be included in the program. The guidelines
32 shall address subjects that include, but are not limited to, project
33 eligibility, application timelines, application rating and ranking
34 criteria, project monitoring, reporting, and transparency, and project
35 performance measurement.

36 (c) The guidelines shall include a process to ensure that no less
37 than 25 percent of overall program funds benefit disadvantaged
38 communities during each program cycle. The guidelines shall
39 establish a program definition for disadvantaged communities that
40 may include, but ~~need~~ *shall* not be limited to, the ~~definition~~

1 *description* in Section 39711 of the Health and Safety Code and
2 the definition of low-income schools in paragraph (7) of
3 subdivision (b) of former Section 2333.5, as that section read on
4 January 1, 2013. A project eligible under this subdivision shall
5 clearly demonstrate a benefit to a disadvantaged community or be
6 directly located in a disadvantaged community.

7 (d) The guidelines shall allow streamlining of project delivery
8 by authorizing an implementing agency to seek ~~commission~~
9 approval of a letter of no prejudice that will allow the agency to
10 expend its own funds for a project programmed in a future year
11 of the adopted program of projects, ~~in advance of allocation of~~
12 ~~funds to the project by the commission~~, and to be reimbursed at a
13 later time for eligible expenditures.

14 (e) ~~The California Transportation Commission~~ *commission* shall
15 adopt the guidelines and selection criteria for, and define the types
16 of projects eligible to be funded through, the program following
17 at least two public hearings. Projects funded in this program shall
18 be limited to active transportation *projects, including ancillary*
19 *costs associated with the construction of those* projects. The
20 guidelines shall ensure that eligible projects meet one or more of
21 the goals set forth in Section 2380 and may give increased weight
22 to projects meeting multiple goals.

23 (f) In developing the guidelines with regard to project eligibility,
24 the commission shall include, but need not be limited to, the
25 following project types:

26 (1) Development of new bikeways and walkways, or
27 improvements to existing bikeways and walkways, that improve
28 mobility, access, or safety for nonmotorized users.

29 (2) Secure bicycle parking at employment centers, park and ride
30 lots, rail and transit stations, and ferry docks and landings.

31 (3) Bicycle-carrying facilities on public transit, including rail
32 and ferries.

33 (4) Installation of traffic control devices to improve the safety
34 of pedestrians and bicyclists.

35 (5) Elimination of hazardous conditions on existing bikeways
36 and walkways.

37 (6) Maintenance of bikeways and walkways.

38 (7) Recreational trails and trailheads, park projects that facilitate
39 trail linkages or connectivity to nonmotorized corridors, and
40 conversion of abandoned railroad corridors to trails.

1 (8) Safe Routes to School projects that improve the safety of
2 children walking and bicycling to school, in accordance with
3 Section 1404 of Public Law 109-59.

4 (9) Safe routes to transit projects, which will encourage transit
5 by improving biking and walking routes to mass transportation
6 facilities and schoolbus stops.

7 (10) Educational programs to increase biking and walking, and
8 other noninfrastructure investments that demonstrate effectiveness
9 in increasing active transportation.

10 (g) In developing the guidelines with regard to project selection,
11 the commission shall include, but need not be limited to, the
12 following criteria:

13 (1) Demonstrated needs of the applicant.

14 (2) Potential for reducing pedestrian and bicyclist injuries and
15 fatalities.

16 (3) Potential for encouraging increased walking and bicycling,
17 especially among students.

18 (4) Identification of safety hazards for pedestrians and bicyclists.

19 (5) Identification of walking and bicycling routes to and from
20 schools, transit facilities, and community centers.

21 (6) Identification of the local public participation process that
22 culminated in the project proposal, which may include noticed
23 public meetings and consultation with local stakeholders.

24 (7) Benefit to disadvantaged communities. In developing
25 guidelines relative to this paragraph, the commission shall consider,
26 but ~~need~~ *shall* not be limited to, the definition of disadvantaged
27 communities as applied pursuant to subdivision (c).

28 (8) Cost-effectiveness, defined as maximizing the impact of the
29 funds provided.

30 (9) The adoption by a city or county applicant of a bicycle
31 transportation plan, pursuant to Section 891.2, a pedestrian plan,
32 a safe routes to school plan, or an overall active transportation
33 plan.

34 (10) Use of the California Conservation Corps or a qualified
35 community conservation corps, as defined in Section 14507.5 of
36 the Public Resources Code, as partners to undertake or construct
37 applicable projects in accordance with Section 1524 of Public Law
38 112-141.

39 (11) Other factors, such as potential for reducing congestion,
40 improving air quality, reducing greenhouse gas emissions, and

1 increasing and improving connectivity and mobility of
2 nonmotorized users.

3 (h) For the use of federal Transportation Alternative Program
4 funds, or other federal funds, commission guidelines shall meet
5 all applicable federal requirements.

6 (i) For the use of federal Highway Safety Improvement Program
7 funds for active transportation projects specific to reducing
8 fatalities and serious injuries, the criteria for the selection of
9 projects shall be based on a data-driven process that is aligned
10 with the state's Strategic Highway Safety Plan.

11 (j) The guidelines may include incentives intended to maximize
12 the potential for attracting funds other than program funds for
13 eligible projects.

14 (k) In reviewing and selecting projects funded by federal funds
15 in the Recreational Trails Program, the ~~commission~~ department
16 shall collaborate with the Department of Parks and Recreation to
17 evaluate proposed projects, and to ensure federal requirements are
18 met.

19 (l) To ensure that regional agencies charged with allocating
20 funds to projects pursuant to paragraph (1) of subdivision (a) of
21 Section 2381 have sufficient discretion to develop regional
22 ~~guidelines; guidelines that address the commission may adopt~~
23 ~~separate guidelines for the state and for the regional agencies~~
24 ~~relative to subdivision (g): needs of their region, metropolitan~~
25 ~~planning organizations may adopt their own guidelines, or use~~
26 ~~part or all of the guidelines developed by the commission,~~
27 ~~consistent with the criteria provided under this section. In the area~~
28 ~~covered by the Southern California Association of Governments,~~
29 ~~the county transportation commissions created pursuant to Sections~~
30 ~~130050, 130050.1, and 132800 of the Public Utilities Code, may~~
31 ~~create their own set of guidelines that govern the funding~~
32 ~~distribution for their jurisdiction and those guidelines shall be~~
33 ~~accepted and incorporated into the metropolitan planning~~
34 ~~organization's guidelines.~~

35 SEC. 4. Section 2384 of the Streets and Highways Code is
36 amended to read:

37 2384. The ~~commission~~ department shall adopt a program of
38 projects to receive allocations under this chapter. The guidelines
39 for an initial two-year program of projects shall be adopted within
40 six months of the enactment of the act enacting this section. The

1 commission shall adopt each program by no later than July 1 of
2 each odd-numbered year, but may alternatively elect *funding*
3 *pursuant* to adopt a program annually. Each subsequent program
4 shall cover a *paragraphs (2) and (3) of subdivision (a) of Section*
5 *2381 covering a period of four fiscal years; years* beginning on
6 July 1 of the year of adoption, and shall be a statement of intent
7 by the commission for the allocation or expenditure of funds during
8 those four fiscal years. *adoption*. The commission *department* shall
9 form a multidisciplinary advisory group to assist it in evaluating
10 project applications.

11 *SEC. 5. If the Commission on State Mandates determines that*
12 *this act contains costs mandated by the state, reimbursement to*
13 *local agencies and school districts for those costs shall be made*
14 *pursuant to Part 7 (commencing with Section 17500) of Division*
15 *4 of Title 2 of the Government Code.*

16 SECTION 1.—Section 670 of the Streets and Highways Code
17 is amended to read:

18 670. (a) The department may issue written permits, as provided
19 in this chapter, authorizing the permittee to do any of the following
20 acts:

21 (1) Make an opening or excavation for any purpose in any state
22 highway.

23 (2) Place, change, or renew an encroachment.

24 (3) Place or display in, under, or over any state highway any
25 advertising sign or device. Any advertising sign or device placed
26 or displayed in violation of this section is a public nuisance and
27 the department may immediately remove it. This section does not
28 prohibit the posting of any notice in the manner required by law
29 or by the order of any court.

30 (4) Plant, remove, cut, cut down, injure, or destroy any tree,
31 shrub, plant, or flower growing within any state highway. However,
32 the department shall not issue a permit for, or take any other action
33 to accomplish, the destruction, removal, or topping of any tree,
34 unless the tree is dead or diseased, for the purpose of improving
35 or enhancing the view from the highway of an advertising sign or
36 device or any commercial activity, unless, for any project whose
37 cost is more than five hundred dollars (\$500), the permittee has
38 obtained consent from the city or county in which the tree is
39 located. Nothing in this paragraph limits the department's authority
40 to modify or deny any permittee's request. If the city or county

1 does not respond within 30 days to a request for a permit pursuant
2 to this paragraph, the city or county is deemed to have given
3 consent to the project.

4 ~~(5) Install or remove tire chains upon motor vehicles for~~
5 ~~compensation on any state highway at locations designated in the~~
6 ~~permit, upon any terms and conditions relating to the safe and~~
7 ~~orderly movement of traffic that the department finds necessary.~~
8 ~~The department may issue sufficient permits for the installation~~
9 ~~or removal of tire chains that it finds necessary or desirable to~~
10 ~~accommodate the demand for those services consistent with the~~
11 ~~maximum convenience and safety to traffic. The department, in~~
12 ~~issuing any permit for the installation or removal of tire chains,~~
13 ~~shall not assume any responsibility for the competence or reliability~~
14 ~~of the permittee in performing those services.~~

15 ~~(b) Any person who does any act specified in this section~~
16 ~~without a permit is guilty of a misdemeanor.~~