OCTA

May 16, 2019

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: State Legislative Status Report

Overview

An oppose position is recommended on a bill that would redirect project savings from trade corridor projects. An oppose position is recommended on a bill that would create a new special voting district for the South Coast Air Quality Management District. An overview is provided of a bill related to the allocation of Bradley-Burns sales tax revenues from online sales, which is being supported consistent with the 2019-2020 Orange County Transportation Authority State Legislative Platform. Updates are provided on the Governor's transportation appointments and the budget process.

Recommendation

A. Adopt an OPPOSE position on SB 498 (Hurtado, D-Bakersfield), which would redirect project savings from the Trade Corridor Improvement Fund towards short-line railroads.

B. Adopt an OPPOSE position on SB 732 (Allen, D-Santa Monica), which would create a special voting district in the South Coast Air Quality Management District jurisdiction in order to facilitate a ballot initiative to institute a transactions and use tax to help the region meet state and federal air quality standards.

Discussion

SB 498 (Hurtado, D-Bakersfield): Trade Corridors Improvement Fund: Grant Program: Short-line Railroads

SB 498 would redirect unallocated project savings from Proposition 1B's (2006) Trade Corridors Improvement Fund (TCIF), as of January 1, 2020, to a new competitive grant program for Class III, or short-line, railroads. Under the bill, the California Transportation Commission (CTC) would adopt guidelines for the grant program after a public hearing to gather stakeholder input. The CTC would also select short-line railroad projects for funding in conjunction with the goals of the 2018 California State Rail Plan. The grant program could not be more than 50 percent of the project cost or more than 25 percent of total funding available in a year. For a short-line railroad to be eligible for funding, at least 30 percent of the project's funding must come from nongovernmental sources.

The TCIF program is currently set to expire, with allocation and award deadlines set for June and December 2019, respectively. In anticipation of the program's expiration, transportation agencies in the Southern California Association of Governments (SCAG) region, including the Orange County Transportation Authority (OCTA), sent a letter to the CTC requesting an extension of the program. The letter also noted the agencies' opposition to redirecting TCIF savings or unspent funds towards other transportation programs. Under current CTC guidelines, any TCIF savings or unspent funds are reinvested in the freight corridor by the relevant corridor agencies. As of the writing of this staff report, OCTA had approximately $2.8 million in unspent TCIF funds remaining, although staff expect that these funds will be allocated to another project at the CTC meeting on May 15-16, 2019. Also at this meeting, the CTC is expected to take an item that would extend the TCIF program for one year. If extended, it is possible that OCTA will accrue additional TCIF savings in the coming months. The item extending the TCIF program would also make a policy change allowing agencies with TCIF savings to utilize more of the savings or unspent funds within an existing project. The extension and the policy change are being recommended by CTC staff, and both are expected to be adopted at the May CTC meeting. Unfortunately, SB 498 would contradict this CTC action.

The railroad right-of-way in Orange County is owned and operated by either public agencies or Class I railroads. While Class III railroad projects might provide some benefits for California, there is no foreseeable need to fund short-line rail projects in Orange County. As such, SB 498 would redirect unspent TCIF or savings from their intended use, to the detriment of OCTA and the other regional transportation agencies in Southern California. Specifically, the bill would redirect any future TCIF savings in Orange County to projects that provide benefits largely outside the county. As such, SB 498 would be a concerning precedent that could be used to justify future efforts to take project savings from public agencies that efficiently construct transportation improvements and direct the saving to another, unintended use. Public agencies should be rewarded, not punished, for saving taxpayer money during the construction process.

The text of SB 498 and a comprehensive analysis of the legislation are included as Attachment A. An OPPOSE position on SB 498 is consistent with OCTA's 2019-2020 State Legislative Platform principle to "Oppose efforts to reduce local prerogative over regional program funds." The Alameda Corridor-East Construction Authority and SCAG also oppose SB 498.

SB 732 (Allen, D-Santa Monica): Transactions and Use Tax: South Coast Air Quality Management District

SB 732 would create a special voting district for the South Coast Air Quality Management District (SCAQMD) jurisdiction, which includes all of Orange County, and portions of Los Angeles, Riverside, and San Bernardino counties. This voting district is explicitly intended to facilitate a ballot measure to authorize a transactions and use tax of between 0.25 percent and one percent on all purchases of tangible personal property within the voting district. SB 732 explicitly exempts the tax from the statutory two percent transaction and use tax cap for each county. Should the ballot initiative facilitated by SB 732 be successful, the revenues from this new measure would be used to meet state and federal ambient air quality standards, although the bill does not outline how the funding would be allocated. Under the bill, up to 6.25% of the revenues collected from the new tax could be utilized for administrative purposes.

The ballot initiative envisioned by SB 732 differs significantly from the many successful self-help revenue initiatives utilized by transportation agencies throughout California. The tax proposed in the bill would not be subject to the two percent countywide cap in current law, whereas Orange County's Measure M2 is subject to this limit. The bill does not include any type of citizens oversight effort, whereas Measure M2 provides for multiple oversight committees to adequately protect Orange County taxpayers, as do many self-help initiatives across the state. While SB 732 does not offer an expenditure plan, Measure M2 includes a detailed expenditure plan, as do a large majority of the other self-help transportation initiatives in California. In addition, SB 732 allows for up to 6.25 percent of potential revenues to be used for administrative costs, although it is unclear what types of administrative costs would be subject to this statutory cap

The SCAQMD has indicated that the revenues would be used to execute the 2016 Air Quality Management Plan and that federal transportation dollars will be at-risk if the state does not meet its air quality goals. SB 732 does not provide the type of safeguards necessary to adequately evaluate the benefits of the proposal against the cost levied on Orange County taxpayers, nor has the SCAQMD provided OCTA with this information. For instance, the bill lacks any return-to-source language, which means that the revenues collected from Orange County taxpayers could end up subsidizing air quality improvements outside the county, and since the ballot measure may be a citizen-led initiative, case law dictates that this troubling proposal could be enacted by only a simple majority vote. In addition, the bill directs revenues from a potential ballot measure towards two broad funding categories: near-zero and zero-emission vehicles and alternative fuel charging infrastructure. However, these funds can only be used to "accelerate" implementation of these technologies. The SCAQMD interpretation of this provision makes complying with existing regulations, like the Innovative Clean Transit regulation, an ineligible use of potential revenues.

The text of SB 732 and a comprehensive analysis of the legislation are included as Attachment B. An OPPOSE position on SB 732 is consistent with OCTA's 2019-2020 State Legislative Platform principle to "Oppose levying new and/or increase in gasoline taxes or user fees, including revenue increases on fuel consumption categorized as charges, fees, revenue enhancements, or similar classifications. Consideration of such efforts shall occur when a direct nexus is determined to exist between revenues and transportation projects, and additional revenues are to be controlled by the county transportation commission." At the time of the writing of this staff report, the Orange County Board of Supervisors and the San Bernardino County Transportation Authority are also opposed to SB 732.

ACA 13 (Obernolte, R-Hesperia): Local Sales Taxes: Online Sales

ACA 13 would specify that revenues generated from online sales under the Bradley-Burns Uniform Local Sales and Use Tax Law are to be allocated based on the place of destination of goods sold. Because the State Constitution currently prohibits changing the method of distributing revenues under the Bradley-Burns Uniform Local Sales and Use Tax Law, ACA 13 is necessary to revise the State Constitution to allow the Legislature to change the method of distributing revenue for the sale of tangible personal property online. ACA 13 is nearly identical to legislation introduced in 2018 that OCTA also supported.

The Bradley-Burns Uniform Sales and Use Tax Law is a 1.25 percent tax on the retail sales of goods within the state that was first enacted in 1956. Since 1972, 0.25 percent was used for each county's Local Transportation Fund (LTF) to fund transportation programs, primarily focused on transit services. ACA 13 would apply to the entire 1.25 percent tax, including the portion designated for local governments and the portion provided for the LTF.

On March 3, 2017, Assembly Member Daly (D-Anaheim) and Assembly Member Todd Gloria (D-San Diego) authored a request to the Joint Legislative Audit Committee for the State Auditor to analyze the distribution and assessment of the LTF. Per the direction of the Board of Directors, OCTA sponsored the audit request after observing that the growth rates for LTF revenues, which have historically funded about 50 percent of OCTA's bus operations, were not keeping pace with local transportation sales taxes such as Measure M in Orange County.

Since these taxes are assessed differently, it was believed that an increase in internet sales, and potentially other exclusions, could be impacting these rates. Specifically, the audit request asked the State Auditor to analyze the impact the point-of-sale determination for internet sales is having on LTF revenues and how various exemptions and exclusions may be impacting the fund source.

On November 30, 2017, the State Auditor released an audit entitled "The Bradley-Burns Tax and Local Transportation Funds." The audit found the LTF revenue statewide has been steadily increasing, but that counties with more warehouses or distribution centers disproportionately benefit from the current distribution structure. The audit's primary finding was that changing the allocation structure for Bradley-Burns taxes would result in a more equitable distribution of local transportation funding, primarily due to the "point-of-sale" assessment structure and the impact from an increase in internet sales.

OCTA is likely receiving an estimated $2-3 million less in LTF revenues annually because of the way revenues are distributed, even though purchases in Orange County on which LTF can be assessed remain stable. This revenue shortfall directly impacts OCTA's ability to provide sustained transit operations throughout the county. If ACA 13 is successful, OCTA would receive a more equitable share of LTF funding, and extreme fluctuations due to the expected increase in online sales would be mitigated.

Consistent with the principle outlined in the OCTA 2019-20 State Legislative Platform to: "Support efforts to restore equity with regards to the generation and disbursement of sales tax revenues that support the Local Transportation Fund," a SUPPORT position has been taken on ACA 13. A copy of ACA 13 and letter of support have been included as Attachment C.

California State Transportation Agency Appointment

On April 24, 2019, Governor Gavin Newsom announced the appointment of David S. Kim as secretary of the California State Transportation Agency. Kim has served as vice president of governmental affairs at the Hyundai Motor Company, deputy administrator of the Federal Highway Administration, and deputy executive officer of federal advocacy and governmental relations for the Los Angeles County Metropolitan Transportation Authority, among other positions. The appointment currently awaits confirmation by the California State Senate. If confirmed, Kim would replace Brian C. Annis, who was appointed as chief financial officer of the California High-Speed Rail Authority.

Governor's May Revise

On May 14, 2019, the Governor is expected to release his proposed May Revise for the FY 2019-20 state budget. Staff will provide a verbal update on the proposal at the Legislative and Communications Committee meeting.

Summary

Oppose positions are recommended on two bills creating a new special voting district and another redirecting project savings. An overview is also provided of a bill related to the allocation of Bradley-Burns sales tax revenues from online sales, which is being supported consistent with the 2019-2020 Orange County Transportation Authority State Legislative Platform. Updates are also provided on the Governor's transportation-related appointment and the budget process.

Attachments

A. SB 498 (Hurtado, D-Bakersfield) Bill Analysis with Bill Language
B. SB 732 (Allen, D-Santa Monica) Bill Analysis with Bill Language
C. ACA 13 (Obernolte) Support Letter with Bill Language
D. Orange County Transportation Authority Legislative Matrix

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