



November 21, 2019

To: Legislative and Communications Committee
From: Darrell E. Johnson, Chief Executive Officer
Subject: Status Report of State Legislation Enacted in 2019

Overview

At the conclusion of the 2019 legislative session, 870 bills were signed and chaptered by the Governor, while 172 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

2019 Legislative Session Adjourns

Following the State Legislature's adjournment, Governor Gavin Newsom had until October 13, 2019, to either sign or veto all legislation submitted to his office. Of the 1,042 bills sent to the Governor in 2019, 172 bills were vetoed, or 16.5 percent of the total number of bills presented to his office. Although this veto percentage tracks as the same percentage of former Governor Jerry Brown's final bill disposal in 2018, Governor Gavin Newsom acted on 175 fewer bills this year.

The Orange County Transportation Authority (OCTA) Board of Directors (Board), legislative staff, and advocates were successful in advancing many of OCTA's interests in 2019. A detailed summary of legislation relevant to OCTA is included as Attachment A. Among the bills considered this session were the following transportation proposals:

Status of Legislation Considered in 2019 - Bills SignedAB 147 (Chapter 5, Statutes of 2019): Use Taxes: Collection: Marketplace Facilitators

Position: Support

Sponsored by State Treasurer Fiona Ma and supported by OCTA, AB 147 (Chapter 5, Statutes of 2019) was introduced in response to the U.S. Supreme Court's 2018 ruling in *South Dakota v. Wayfair, Inc.* The Wayfair case overturned previous case law that prevented states from collecting sales and use taxes from retailers without any kind of physical presence in the state or locality. Under AB 147, a retailer selling more than \$500,000 worth of goods statewide in the preceding or current calendar year would be required to collect and remit sales and use taxes, with previously uncollected revenues distributed according to existing law. AB 147 required that businesses meeting this definition, register with the California Department of Tax and Fee Administration by October 1, 2019. AB 147 was chaptered on April 25, 2019 as an urgency measure.

OCTA took a support position on this legislation because it captures sales tax revenue previously uncollected by out-of-state retailers, resulting in two types of funding increases for OCTA. First, there will be an increase in the portion of Bradley-Burns sales tax revenues dedicated to transportation through the Local Transportation Fund (LTF). The increase in LTF revenues will provide additional funding capacity for transit, which have historically funded about half of OCTA's bus operations. There will also be an increase in Measure M2 revenues.

AB 252 (Chapter 160, Statutes of 2019): Department of Transportation: Environmental Review

Position: Support

Sponsored by the Self-Help Counties Coalition (SHCC), of which OCTA is a member, and supported by the California Transportation Commission (CTC) as well as transportation agencies across the state, AB 252 (Chapter 160, Statutes of 2019) removes the 2020 sunset date on the authority for the California Department of Transportation (Caltrans) to carry out the National Environmental Policy Act (NEPA) Assignment Program for highway projects. The NEPA Assignment Program allows states to take on federal responsibility for NEPA actions while also assuming associated risks. This decision-making role increases streamlining and cost savings for transportation projects.

Without this extension, numerous locally-funded OCTA projects that are subject to the traditional NEPA review process would have been delayed resulting in cost increases. The Senate Appropriations Committee analysis estimates Caltrans will save approximately \$13.4 million annually with this authority.

AB 784 (Chapter 684, Statutes of 2019): Sales and Use Taxes: Exemption: California Hybrid and Zero-Emission truck and Bus Voucher Incentive Program: Transit Buses.

Position: Support

OCTA, the California Transit Association, and a wide-range of transit agencies supported AB 784 (Chapter 684, Statutes of 2019) which provides a sales tax exemption for the purchase of zero-emission transit buses until January 1, 2024. AB 784 explicitly lists traditional transit buses, articulated buses, cutaways, shuttles, trolleys, and other types of bus vehicles as eligible for the exemption. AB 784 only applies to sales tax liability and does not extend to use taxes, property taxes, or other dedicated revenue sources. OCTA estimates it will cost an additional \$442 million to convert its current bus fleet to zero-emission technology. AB 784 provides much-needed financial assistance to facilitate the adoption of this new technology, saving OCTA as much as \$80,000 on each zero-emission bus purchase.

AB 1475 (Chapter 289, Statutes of 2019): Construction Method: Transportation Projects

Position: Support

Sponsored by Contra Costa Transportation Authority and supported by OCTA and various labor organizations, AB 1475 (Chapter 289, Statutes of 2019) expands the authorization for regional transportation agencies to use the construction manager/general contractor project-delivery method. This legislation will allow OCTA to take advantage of the cost and time saving benefits this project delivery tool offers for various projects, such as local streets and roads (LSR) improvements, rail fixed-guideways, and bus-rapid transit.

Additional Bills of Interest – Vetoed

SB 127 (Wiener, D-San Francisco): Transportation Funding: Active Transportation: Streets

Position: Neutral (Originally Oppose)

SB 127 (Wiener, D-San Francisco) would have required Caltrans, commencing with the 2022 State Highway Operation and Protection Program (SHOPP), when undertaking a specified capital improvement project on a state highway or a local street crossing a state highway funded through the SHOPP, to include new

pedestrian and bicycle facilities, or improve existing facilities, as part of the project. SB 127 would have also added bicycle and pedestrian performance metrics to the CTC's SHOPP asset management plan. The asset management plan guides the SHOPP project selection process, ensuring that SHOPP projects meet applicable state and federal requirements.

OCTA initially took an oppose position when SB 127 included provisions that reprioritized how transportation funding should be used, required vehicle miles traveled (VMT) reduction metrics to be included in funding decisions, and required analysis of such things as the removal of lanes in future projects. After the author agreed to take all of OCTA's suggested amendments, OCTA's position changed to neutral. Ultimately, Governor Gavin Newsom vetoed the legislation citing concerns about the bill's prescriptive nature and potential for increased costs. The Governor also cited his recent Executive Order N-19-19, which seeks to direct state transportation funds toward efforts to reduce greenhouse gas (GHG) emissions and VMT. The Governor notes his Executive Order will increase and accelerate Caltrans investments in active transportation.

SB 277 (Beall, D-Campbell): Road Maintenance and Rehabilitation Program
Position: Support

Supported by a coalition of transportation agencies including OCTA and the SHCC, SB 277 (Beall, D-Campbell) would have amended the SB 1 (Chapter 5, Statutes of 2017) Local Partnership Program (LPP) funding distribution to better align the program with its original intent of rewarding self-help counties for passing sales tax measures. In its final form, SB 277 would have distributed 85 percent of LPP funding by formula and 15 percent on a competitive basis. This funding structure was developed in close coordination with the SHCC and was agreed to by transportation agencies representing more than 96 percent of the population of California's self-help counties. Of the Southern California share, 75 percent would have been allocated based on the county's population, with the other 25 percent distributed based on the county's share of transportation sales tax revenue in comparison to the total amount of transportation sales tax revenue in southern California.

OCTA and other self-help counties worked closely with all stakeholders involved, including the CTC, to allow for amendments to address technical language concerns and SB 1 accountability goals. This work allowed for the bill to pass unanimously out of both the Senate and the Assembly. Unfortunately, Governor Newsom vetoed the legislation in the final days of his signing deadline. In his veto message, the Governor reaffirmed the current approach to administer the LPP, noting the need to afford flexibility to the CTC in administering the program to achieve state goals.

Additional Bills of Interest – Two-Year Bills

The following bills on which OCTA took a position failed to make it to the Governor for consideration this year, but will have the opportunity to advance in 2020:

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

Position: Support

ACA 13 (Obernolte, R-Big Bear) would allow statutory changes to be pursued that provide for a more equitable distribution of revenues provided under Bradley-Burns taxes by allowing revenues to flow to the place of distribution of goods sold, rather than point-of-sale, as current law provides. OCTA is likely receiving an estimated \$2-3 million less in LTF revenues annually because of the way revenues are currently distributed. 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. ACA 13 is currently pending committee assignment.

AB 1402 (Petrie-Norris, D-Costa Mesa) and SB 152 (Beall, D-Campbell): Active Transportation Program

Position: Sponsor/Support

OCTA co-sponsored AB 1402 (Petrie-Norris, D-Costa Mesa) with the Orange County Business Council and supported SB 152 (Beall, D-Campbell), sponsored by the Metropolitan Transportation Commission, both of which would make reforms to the Active Transportation Program (ATP) to reduce the program's complexity and prioritize local decision-making without undermining existing policy priorities. Both AB 1402 and SB 152 would allocate 75 percent of ATP funding to large metropolitan planning organizations (MPO), 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. Due to opposition from various advocacy groups and concerns raised from the CTC and certain transportation agencies about impacts to rural areas, SB 152 was held in the Senate Appropriations Committee, while AB 1402 was never heard in policy committee. As of the writing of this staff report, there are no plans by either author to move these bills forward next year.

AB 1568 (McCarty, D-Sacramento): Housing Law Compliance: State Grants
Position: Oppose

OCTA took an oppose position on AB 1568 (McCarty, D-Sacramento), which would require the Department of Housing and Community Development (HCD) to review any action or failure to act by a city or county that it determines is inconsistent with an adopted housing element or a specified provision of the Housing Element Law. It prohibits a city or county, found to be in violation of state law, from applying for a state grant, unless the eligibility of the city or county to apply is protected by the California Constitution, or the state grant funds, if awarded to the city or county, would assist in compliance with housing element requirements.

In its initial form, AB 1568 set a concerning precedent, requiring cities and counties to comply with the Housing Element Law to be eligible for funding from the SB 1 LSR funding program. This could have impacted transportation planning, programming, and construction activities for cities, counties, and agencies, such as OCTA, looking to compete for funding and deliver critical infrastructure projects. Even though this bill did not move forward, similar language was ultimately adopted in the primary housing budget trailer bill, AB 101 (Chapter 159, Statutes of 2019). Specifically in AB 101, localities deemed by HCD to have adopted “pro-housing” policies, defined as policies facilitating the planning, approval, or construction of housing, will receive additional points in the scoring of applications for specific state funding programs, including the Affordable Housing and Sustainable Community Strategy, the Transformative Climate Communities Program, and the Infill Grant Program of 2007. The bill also allows other state programs to award additional bonus points for pro-housing policies.

SB 526 (Allen, D-Santa Monica): Regional Transportation Plans: Greenhouse Gas Emissions
Position: Oppose

OCTA opposed SB 526 (Allen, D-Santa Monica), which requires each MPO to submit data to the California Air Resources Board describing how transportation funds have been spent in relation to their sustainable communities strategy and whether that spending has led to an increase or decrease in VMT. SB 526 would also establish an interagency working group, to be administered by the Strategic Growth Council, to develop and implement a State Mobility Action Plan for Health Communities, which would detail various recommendations including an investment strategy to assist local governments with meeting GHG emission reduction targets. The bill would require the working group to submit the plan to the Legislature by December 31, 2020.

While the author took many amendments to SB 526 put forward by OCTA, there is still concern that SB 526 significantly changes the bottoms-up approach envisioned by SB 375 (Chapter 728, Statutes of 2008), which allowed regional flexibility in the meeting of the regional GHG reduction targets, and shifts the focus to project-by-project analysis and VMT reductions. SB 526 is currently in the Assembly Appropriations Committee. The author has pledged to continue to work with OCTA and other stakeholders next year.

SB 664 (Allen, D-Santa Monica): Electronic Toll and Transit Fare Collection Systems

Position: Support

Supported by OCTA and other California toll agencies, SB 664 (Allen, D-Santa Monica) will clarify existing law to ensure toll operators statewide can meet interoperability requirements, enforce toll policies and issue toll violations, without weakening existing privacy protections for the use of personally identifiable information. Without these clarifications, the operation of toll facilities within the state will be jeopardized.

While SB 664 enjoyed bipartisan support with a broad coalition of support from toll operators across the state, opposition did come from various privacy groups, who often included representatives involved in litigation being pursued against toll operators within the state. Due to concerns raised by privacy committee staff at the end of session, the bill was held to allow for further discussions and to take place while the Legislature is out of session. This legislation is currently pending in the Assembly where it has been re-referred to the Assembly Privacy and Consumer Protection Committee and the Assembly Judiciary Committee. Staff will continue to work with stakeholders and the coalition to keep this bill moving forward.

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

SB 732 (Allen, D-Santa Monica) would create a new taxing district, which would facilitate the ability for the South Coast Air Quality Management District (SCAQMD) Board to impose a transactions and use tax within the boundaries of its district. The new special voting district would cover the SCAQMD jurisdiction, which includes all of Orange County and portions of Los Angeles, Riverside, and San Bernardino Counties. SB 732 would authorize the pursuit of a ballot initiative for a new sales tax, as high as one percent, on all purchases of tangible personal property in the district in order to fund air quality improvements.

SB 732 does not include any type of requirement for an expenditure plan or a requirement for equitable distributions of the revenues within the taxing district.

Orange County, it is difficult to properly evaluate the proposal without a detailed expenditure plan outlining the role that county transportation commissions would play in allocating these funds and how much of the funding would benefit each county. It is anticipated that SCAQMD will continue to pursue this bill next year to allow for a ballot measure in 2020. This bill is currently located in the Senate Appropriations Committee.

Summary

A summary report on all state legislation enacted in 2019 affecting OCTA is provided for review by the Board.

Attachment

- A. Orange County Transportation Authority 2019 End of Year Legislative Report

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