



**March 18, 2021**

**To:** Legislative and Communications Committee

**From:** Darrell E. Johnson, Chief Executive Officer

**Subject:** State Legislative Status Report

*For*  
*EBJ*

### **Overview**

The Orange County Transportation Authority provides regular updates to the Legislative and Communications Committee on policy issues directly impacting its overall programs, projects, and operations. Positions are recommended on two legislative proposals including one that will remove the sunset date on existing design-build authority for highway projects and another that seeks to require metropolitan planning organizations to meet vehicle miles traveled reduction targets as part of the regional transportation plan. An update is provided on an audit of the California Air Resources Board and its administration of transportation programs intended to reduce greenhouse gas emissions. As discussions related to post-pandemic recovery continue, an overview of the most recently passed legislative relief package and advocacy efforts regarding vaccine prioritization for public transit workers is given.

### **Recommendations**

- A. Adopt a SUPPORT position on AB 1499 (Daly, D-Anaheim), which would remove the sunset date on existing design-build authority for highway projects.
- B. Adopt an OPPOSE UNLESS AMENDED position on SB 261 (Allen, D-Santa Monica), which would require metropolitan planning organizations to meet vehicle miles traveled reduction targets as part of the regional transportation plan.

### **Discussion**

AB 1499 (Daly): Transportation: Design-Build: Highways

AB 1499 (Daly, D-Anaheim) would remove the sunset date, currently set to expire on January 1, 2024, to indefinitely extend the ability to utilize the design-build procurement method (design-build) on the state highway system. In 2013, Orange County Transportation Authority (OCTA) sponsored AB 401 (Chapter 586, Statutes of 2021), authored by Assembly Member Tom Daly

(D-Anaheim), to expand the use of design-build for highway projects after estimating that this method would create significant time and cost savings for the Interstate 405 (I-405) Improvement Project. Existing authority at the time was very limited and had sunset provisions that did not align with the I-405 Improvement Project timeline. Since the initial authorization, several other entities have used this statewide authority, including the Riverside County Transportation Commission and the California Department of Transportation to successfully implement projects.

Design-build provides for the delivery of public works projects from a single entity, streamlining the traditional design-bid-build process by combining project design, permit, and construction schedules. Utilizing design-build on the I-405 Improvement Project has expedited the project by two years and allowed for associated cost savings. Although at this time OCTA has not identified additional projects to use this authority, extending the design-build authority is imperative for the expedited and streamlined delivery of highway projects and provides a valuable project delivery option moving forward. This will be especially important as the State looks toward post-pandemic recovery and begins discussions regarding economic stimulus, particularly around infrastructure and job creation.

A comprehensive analysis of AB 1499, along with the text of the bill, is included as Attachment A. A SUPPORT position is consistent with OCTA's 2021-22 State Legislative Platform principle to "Support new and existing alternative project delivery methods, such as design-build, public-private partnership authority, and construction manager/general contractor authority, through expanding mode and funding eligibility while also allowing the appropriate balance of partnership between the State and local agencies." AB 1499 is co-sponsored by the Self-Help Counties Coalition and the Professional Engineers in California Government.

#### **SB 261 (Allen): Regional Transportation Plans: Sustainable Communities Strategies**

SB 261 (Allen, D-Santa Monica) is a continuation of the author's previous efforts to expand upon SB 375's (Chapter 728, Statutes of 2008) requirements for a metropolitan planning organization (MPO) to develop a sustainable communities strategy (SCS) as part of their regional transportation plan (RTP), demonstrating the ability to meet regional greenhouse gas (GHG) emission reduction targets. Specifically, SB 261 would extend the SB 375 framework beyond 2035 and require that the SCS meet GHG emission and vehicle miles traveled (VMT) reduction targets in 2045 and 2050. SB 261 is substantially similar to a bill introduced by the same author last year, SB 1363 (Allen, D-Santa Monica) that OCTA opposed unless amended. SB 1363 ultimately did not move forward due to the truncated legislative session in 2020.

Last year's bill, SB 1363, would have required that MPOs meet VMT reduction targets in conjunction with SB 375's GHG emission reduction targets in 2035, 2045, and 2050. Whereas the initial GHG targets for 2020 and 2035 were developed with public input, the new GHG and VMT reduction targets would be set by the California Air Resources Board (CARB), without input from the Regional Targets Advisory Committee established under SB 375. Under SB 1363, the VMT reduction targets could be expressed in miles per capita, percent reduction, or another metric set by CARB. Finally, the bill would have required that cities and counties report every other year to MPOs on housing production near transportation investments consistent with the SCS or applicable alternative planning strategy.

SB 261 contains many of the same provisions as SB 1363, including identical language on VMT targets and target years, the same VMT metric, and similar reporting requirements. There are, however, two important differences. First, SB 261 contains much more detailed language specifying the circumstances under which CARB may reject a draft SCS. SB 261 extends the deadline by which MPOs must submit the draft SCS to CARB from the 60-day timeframe in current law to 90 days, and CARB has the option to comment within 45 days of receiving the draft SCS. CARB may also explicitly reject the SCS if it utilizes a technical methodology that will not yield accurate GHG and VMT estimates, has insufficient data or documentation to support the GHG and VMT estimates, contains GHG and VMT calculations that do not demonstrate the region will meet the targets for all years, or does not include specific strategies that sufficiently demonstrate GHG and VMT reductions to achieve the targets. The second major change is that SB 261 expands the reporting requirements for localities, mandating that cities and counties also report on job growth near transportation investments.

Many of OCTA's concerns with SB 261 mirror issues raised last year, although there are additional concerns with the language new to this year's version of the bill. An overview of OCTA's four recommended changes to improve SB 261 and make it more consistent with the original intent of SB 375 include:

- Clarifying language to ensure that CARB does not prioritize its own reasoning and policy goals over that of the localized, bottoms-up planning approach envisioned by SB 375, resulting in CARB more frequently rejecting a region's SCS and thereby further delaying the transportation planning process.
- Regions would be required to meet new GHG emission and VMT reduction targets in both 2045 and 2050. Instead, the bill should be amended to focus solely on 2050 to allow for sufficient time to pass after the 2035 targets, and more fully see the results of measures implemented since that time.
- The bill fails to ensure adequate public input from MPOs and subregional agencies in the development of VMT targets. The bill should be amended to allow for greater public engagement from MPOs and subregional

agencies, including regional transportation planning agencies, county transportation commissions, and councils of governments, in the development of VMT reduction targets.

- The bill's definition of VMT should be clarified so that it only applies to passenger automobiles and light trucks, excluding electric vehicles, so that the metric more appropriately correlates with GHG emissions. An alternative to requiring specific VMT reduction targets would be to develop a suite of best practices that MPOs can choose from to adopt as part of the RTP, thereby maintaining SB 375's bottoms-up approach.

An analysis of SB 261 and the bill text are included as Attachment B. An OPPOSE UNLESS AMENDED position on SB 261 is consistent with OCTA's 2021-2022 State Legislative Platform principle to "Oppose proposals that reduce the rights and responsibilities of county transportation commissions in planning, funding, and delivering transportation programs."

#### Audit of the California Air Resources Board Overview

At the request of the Joint Legislative Audit Committee, the Office of the California State Auditor conducted an audit of CARB's transportation programs intended to reduce GHG emissions. Overall, the audit found that CARB is not collecting sufficient data to evaluate the actual GHG reduction results as a part of these programs. Specifically, the audit found that CARB has not done enough to formally acknowledge the overlap of reduction benefits that occur between its regulatory and incentive programs. The audit gave the example that CARB does not isolate the benefits between regulatory programs, like the Innovative Clean Transit regulation, and incentive programs that provide financial support to consumers who purchase zero-emission vehicles. Although both of these programs are intended to reach CARB's goal of reducing GHG emissions, the audit concluded that CARB does not do enough to identify the GHG reductions each individual program achieves. The report goes on to say that if CARB was accurately collecting and measuring data, they may find that their incentive programs are augmenting the impact from its regulatory programs.

Another key finding from the audit is that CARB does not accurately measure the effects of their programs on consumer behavior. Of the five incentive programs CARB administers, only the Clean Vehicle Rebate Program collects data on behavioral impacts associated with the program. The audit states that having more information on how each of their programs affect a consumer's choice to purchase a lower emission vehicle, resulting in a reduction in GHG emissions, is crucial to measuring the success of the programs in terms of reaching the State's goals.

Overall, the audit concluded that because CARB does not accurately take into account the effects their regulations have on emissions, CARB overstates the incentive programs' GHG reductions although it is unclear to what degree. This

then impacts the Legislature's ability to make accurate assessments of the success of these programs and whether they should continue to be funded at higher or lower levels.

Other areas where the audit found that CARB fails to correctly measure are the socioeconomic benefits and number of jobs its programs achieve. In agreement with the audit, CARB has agreed to begin taking steps toward reconciling the issues outlined in the report and following its recommendations. Specifically, the audit recommends establishing a program to identify the overlap between incentive and regulatory programs and developing a process to define, collect, and evaluate data on the behavioral changes that result from each of its incentive programs. Staff will continue to monitor how this audit may impact funding programs and regulatory measures affecting OCTA's programs and projects.

#### Update on Vaccination Prioritization Efforts

OCTA has continued to partner with transit agencies across the state and the California Transit Association (CTA) to advocate for the prioritization of essential, frontline transit operators for the federally approved vaccines that prevent coronavirus (COVID-19). In the original vaccine distribution plan, transportation workers were prioritized following seniors over the age of 65 and workers in healthcare, education, emergency response services, childcare, and food and agriculture. In January, the State announced a shift in its vaccine prioritization framework from this blended industry-sector and age-based approach to one that is more focused on age, citing concerns that an approach that singles out industries was causing confusion and delays. Because of this transition, eligibility for transportation workers was eliminated.

However, the State's guidance following the transition detailed which jobs qualified within the education sector includes school bus drivers. On February 24, 2021, CTA submitted a letter to Governor Gavin Newsom arguing that the guidance should be amended to broaden school bus drivers to transit workers overall because they provide millions of trips a year to students across the state. The letter is included as Attachment C. Specifically, the letter references that in Orange County there are approximately 3.7 million student boardings every year. In light of these efforts, on March 11, 2021, the State amended its guidance to reinstate public transit workers in the vaccination prioritization framework. As of writing this staff report, public transit workers will be eligible to receive the vaccine on March 15, 2021, citing that they are at high risk for occupational exposure.

#### Summary of Recent State Stimulus Measures

On February 23, 2021, the Governor signed a legislative package to provide relief related to the COVID-19 pandemic. Included in the agreement is the Golden State Stimulus which will provide \$600 in one-time, direct payments to

households that qualified for the Earned Income Tax Credit in 2020. Additional relief is provided through fee waivers for bars and restaurants and individuals holding barbering or cosmetology license. This legislative package also includes more than \$2 billion in grants for small businesses, \$400 million in new federal funds that will provide stipends for all state-subsidized childcare and preschool providers, \$24 million for financial assistance and services through the Housing for Harvest program, \$100 million in emergency financial aid for qualifying low-income students, and \$6 million to support outreach and application assistance to University of California, California State University, and California Community College students made newly eligible under the CalFresh program.

### **Summary**

A support position is requested regarding a legislative proposal to indefinitely extend existing design-build authority for highway projects. An oppose unless amended position is recommended for a bill related to imposing vehicle miles traveled reduction requirements as a part of regional transportation plans. An overview is provided on a recent audit of the California Air Resources Board. An update is given on efforts related to prioritizing public transit workers for the coronavirus vaccine and recently enacted stimulus measures for post-pandemic recovery.

### **Attachments**

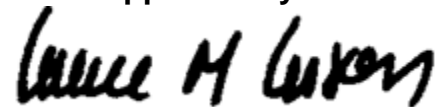
- A. AB 1499 (Daly, D-Anaheim) Bill Analysis with Bill Language
- B. SB 261 (Allen, D-Santa Monica) Bill Analysis with Bill Language
- C. Letter from Michael Pimentel, Executive Director, California Transit Association, to the Honorable Gavin Newsom, Governor, State of California, dated February 24, 2021, re: Transit is Essential to Reopening of Schools – Prioritize Frontline Transit Workers in Vaccine Distribution Plan
- D. Orange County Transportation Authority Legislative Matrix

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