April 15, 2021

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: State Legislative Status Report

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. A position is recommended on legislation that would create a new pilot program for a road usage charge to evaluate actual revenue collection. An update is provided on legislation the Orange County Transportation Authority has supported regarding interoperability of toll operators. Staff has continued to monitor the progress of the High-Speed Rail Project in California and an overview is given regarding its Revised 2020 Business Plan. Finally, an overview is provided on the California Air Resources Board draft regulation to transition all locomotives in California to zero emission.

Recommendation

Adopt a SUPPORT position on SB 339 (Wiener, D-San Francisco), which would extend the operation of the Road User Charge Technical Advisory Committee and create a pilot program to test the collection of revenue for a road charge program.

Discussion

SB 339 (Wiener): Vehicles: road usage charge pilot program.

SB 339 builds on prior legislative efforts to investigate alternatives to the gasoline tax for transportation funding. Previous legislation required the California Transportation Commission to establish the Road Usage Charge Technical Advisory Committee (RUC TAC), which was tasked with designing and implementing a pilot program to study the viability of a mileage-based revenue program for transportation purposes; however, it only simulated the revenue collection. SB 339 extends the RUC TAC responsibilities until January 1, 2027 and, at the recommendation of the first pilot program's next steps, directs the

RUC TAC to design a pilot program to test the actual revenue collection, with an implementation date of January 1, 2023. Specifically, this program is not planned to exceed either the participant's costs of operating the vehicle throughout the duration of the program or the California Transportation Commission's costs to administer the program. This legislation does not require any transition to a new transportation funding mechanism in California. However, the State has set ambitious goals for the transportation sector to transition to zero emission, which will significantly impact traditional sources of transportation funding. Furthermore, the development of such program at the federal level has been a policy supported by various members of Congress, including House Transportation and Infrastructure Ranking Member Sam Graves (R-MO). Therefore, it will be prudent to explore the viability of other funding options that will deliver sustainable revenue sources when fossil fuel consumption decreases.

A comprehensive analysis of SB 339, along with the text of the bill, is included as Attachment A. A SUPPORT position is consistent with the Orange County Transportation Authority's (OCTA) 2020-21 State Legislative Platform principle to "Monitor the study and development of alternative transportation funding proposals, including the State's road charge pilot program and ensure that efforts are made to address concerns related to equity, privacy, and public support of such proposals."

SB 623 (Newman): Electronic Toll and Transit Fare Collection Systems

Current state statute provides guidance for how toll facility operators, including 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, 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. Many other common practices and reoccurring issues also need clarification in statute, including 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. Code sections, therefore, need to be updated to reflect the more widespread use of these methods of communication and collection.

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.

In 2019, OCTA's Board of Directors adopted a co-sponsor position on SB 664 (Allen, D-Santa Monica). SB 664 would have clarified the above referenced statutory provisions, and more clearly improved toll facility interoperability. The bill was supported by toll agencies across the State, but also encountered opposition among various groups including the American Civil Liberties Union of California, Consumer Attorneys of California, and the Western Center on Law and Poverty. SB 664 ultimately stalled in committee due to ongoing negotiations and bill limitations due to the coronavirus (COVID-19) pandemic last legislative session. SB 623 is more limited in its approach than SB 664 to try and ameliorate some concerns by the opposition. SB 623 is currently sponsored by the Transportation Corridor Agencies and is supported by the Bay Area Toll Authority.

Consistent with OCTA's previous co-sponsorship of SB 664 and the principle in OCTA's 2021-22 State Legislative Platform to "support efforts to improve the interoperability of the different toll systems across the State in order to ensure fair and efficient toll operations while affirming user privacy protections," a SUPPORT position has been taken on SB 623. OCTA's letter of support for SB 623 is included as Attachment B. The text of the bill is included as Attachment C.

California High-Speed Rail Authority Revised 2020 Business Plan

On February 9, 2021, the California High-Speed Rail Authority (CHSRA) released its Revised Draft 2020 Business Plan (Business Plan) for a 30-day comment period. The original Business Plan was published in February 2020; however, due to a variety of factors, including the COVID-19 pandemic and legislative inquiries, the Business Plan approval was deferred by nearly a year. CHSRA's Business Plan is an overarching policy document that is used to inform the Legislature, the public, and stakeholders to make decisions regarding the project. The Business Plan is required to be developed every two years and include details on the type of service, timeline, funding, ridership forecasts, and more. Last year, at a legislative oversight hearing, legislators raised concern about the accuracy of the ridership forecasts and the lack of information in the Business Plan discussing how the COVID-19 pandemic will affect the project.

The Business Plan reports delays on right-of-way acquisition, construction progress, and the execution of contracts due to the COVID-19 pandemic. Particularly affected was the bid for the track and systems contract. Bidders were not able to visit the site in a timely manner, which has now delayed the award for this contract until August 2021. As a part of its funding, the CHSRA receives a continuous appropriation from cap-and-trade auctions. However, due to the low auction proceeds in 2020, the CHSRA portion was reduced by $288 million. The CHSRA also extended a variety of comment periods in 2020 to allow for adequate public input on environmental documents.

This Business Plan is consistent with Governor Gavin Newsom's direction to focus on the completion of the Central Valley segment, which includes 119 miles currently under construction from the Madera Amtrak Station to Poplar Avenue. This segment is now expected to be complete by 2023, a one-year delay attributed to impacts from the COVID-19 pandemic. Costs for the Central Valley segment are anticipated to increase by $330 million and this revised Business Plan includes an additional $1 billion in contingency and a new Stage Gate approach for project delivery after conducting a comprehensive risk assessment, bringing the total of the Central Valley segment to $13.8 billion. To complete the entire 171-mile segment from the City of Merced to the City of Bakersfield, it is expected to cost between $21.3 and $22.8 billion. Currently there is no available funding to complete the entire Phase 1 portion, which includes the Northern and Southern California segments. However, these segments are expected to be environmentally cleared by December 2022.

The CHSRA total authorized funding is projected to be between $20.6 to $23.1 billion through 2030, ultimately depending on future cap-and-trade revenues. The Business Plan suggests extending cap-and-trade to 2050, creating a floor minimum, and to allow for financing to create a more predictable funding stream. This estimate also includes the remainder $4.2 billion of the Proposition 1A bond funds, which would need to be authorized by the Legislature. Not included in this funding estimate would be any additional funding from the federal government. With a new Administration, the CHSRA is confident they will benefit from a federal infrastructure package. The CHSRA has already reported on having productive conversations with the Administration about how to advance high-speed rail in California.

At legislative oversight hearings in March 2021, both the Senate and Assembly Transportation and Budget Subcommittees were able to provide input on the Business Plan. At these hearings, there were discussions about how the CHSRA is preparing the Northern and Southern segments, to which CHSRA responded by referencing funding commitments to the Link Union Station project and the Rosecrans/Marquardt Grade Separation project in Los Angeles. Some members expressed a desire to see more investment in the Southern California segment. Additionally, the San Diego Association of Governments testified about how investing in the Los Angeles-San Diego-San Luis Obispo rail corridor in the bookend sections will help achieve CHSRA's goals, noting they have $660 million worth of projects that are shovel ready. The Southern California Regional Rail Authority (Metrolink) also provided input that they have several projects within their Southern California Optimized Rail Expansion program that are shovel ready and shovel worthy, suggesting that they are ready for additional investment in Southern California.

The primary concerns raised by legislators during the hearings were the request for the remaining Proposition 1A bond funds and the current assumption in the Business Plan to utilize a single track for the Central Valley segment. The Legislative Analyst's Office recommended that the Legislature may be inclined to only release a portion of the $4.2 billion of Proposition 1A funds to exercise more oversight of the project. This will be further developed throughout the budget process.

Many legislators had questions on the effectiveness of a single-track option for the Central Valley segment. The CHSRA indicated that utilizing a single track will result in minimal operational delays and create near-term cost savings. If they were to move forward with the double track, it would cost an additional $1.1 billion. However, it was noted that, due to inflation and other factors, the cost of implementing a double track system in the future will be at a higher cost. At the CHSRA Board meeting on March 25, 2021, CHSRA Board Members were highly concerned about moving forward with a single track. CHSRA Chief Executive Officer Brian Kelly confirmed that approving this Business Plan would not lock them into a single-track system. The current bidders for the track and systems contract will be presenting three different cost options for the CHSRA Board to review in the summer before the award is given in August of this year. CHSRA Board Members also struggled with the cost estimates and assumptions, stating that they still have little understanding about what the federal government is going to do and that this budget paints an unrealistic picture. Ultimately, the Business Plan was approved by the CHSRA Board with a vote of six to three. Staff will continue to provide any updates on the CHSRA funding dynamics as part of the development of the state budget.

California Air Resources Board Draft In-Use Locomotive Regulation

The California Air Resources Board (CARB) is currently in the process of creating an In-Use Locomotive Regulation to compel the transition of locomotives operating in California to zero emission. Since late 2019, CARB has organized workshops with stakeholders to discuss the various factors being considered for the regulation. On March 30, 2021, after the release of the draft regulation, CARB held a workshop to receive feedback. At this workshop, CARB staff reviewed the primary goals of this regulation which are to prioritize emission reductions in the most disadvantaged communities, decrease locomotive emissions by increasing turnover to Tier 4 and cleaner locomotives, and to eventually move toward zero-emission locomotives in California.

There are four components associated with this regulation. First, is the Spending Account which is to be established by 2023. As a part of this spending account, operators will be assessed a charge based on locomotive emissions levels and amount of work performed in California. These charges will be held in the individual railroads' trust, with annual public reporting of usage and funds deposited. Railroads will use accumulated charges to purchase cleaner locomotives. Until 2034, usage of zero-emission locomotives will generate a credit used to offset monies owed to the spending account. Second, the regulation would institute a useful life limit by requiring all locomotives 23 years old or older to cease operations in California starting in 2030. Third, the regulation would implement a 30-minute idling limit, which is based on the United States Environmental Protection Agency's requirements. Fourth, and finally, this regulation would require operators to report to CARB annually, starting July 1, 2023, information regarding the locomotive engine, total activity by local air district, and any idling if it is over 30 minutes.

At the workshop on March 30, 2021, CARB also discussed cost assumptions and sought input on whether the costs were aligned with real world purchases. Currently, CARB is taking informal comments on the draft regulation until April 16, 2021. CARB is expecting to present this regulation to their Board in April 2022 for the first of the two hearings required. Right now, CARB continues to request input from stakeholders and for operators to begin tracking information that will be used for the Spending Account. While Metrolink has taken the initiative to plan for integration of zero-emission technology, this regulation could pose significant cost pressures, without the assistance of incentives or funding. Additionally, specific concerns have been raised about the timing of this regulation being premature for the availability of the technology, particularly after the COVID-19 pandemic. OCTA staff will continue to be engaged with SCRRA to provide comprehensive feedback on the regulation.

Summary

A support position is requested regarding a legislative proposal to create a pilot program to test the collection of revenue for a road charge program. An update is given on a legislative proposal related to toll operators' interoperability requirements. An overview is provided on the California High-Speed Rail Authority's Revised 2020 Draft Business Plan. An update is given on the California Air Resources Board's efforts to create a regulation transitioning locomotives in California to zero emission.

Attachments

A. SB 339 (Wiener, D-San Francisco) Bill Analysis with Bill Language
B. Letter from Andrew Do, Chairman, Orange County Transportation Authority, to the Honorable Josh Newman, Senator, California State Senate, dated April 1, 2021, re: SB 623 (Newman) **–** SUPPORT
C. SB 623 (Newman, D-Fullerton) Bill Language
D. Orange County Transportation Authority Legislative Matrix

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