



**June 15, 2023**

**To:** Legislative and Communications Committee  
**From:** Darrell E. Johnson, Chief Executive Officer  
**Subject:** State Legislative Status Report

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**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. This report includes two recommended oppose positions on legislation relating to greenhouse gas emission reduction targets and state transportation planning and funding priorities. These positions are consistent with the Orange County Transportation Authority's Board of Directors'-approved State Legislative Platform for 2023-24. An update is provided on the Governor's proposals to streamline infrastructure delivery and efforts to inform funding for transit operations and a summary related to the California Air Resources Board's In-Use Locomotive Regulation are provided.

**Recommendations**

- A. Adopt an OPPOSE position on AB 6 (Friedman, D-Glendale), which would create new requirements for meeting regional greenhouse gas emission targets for the transportation sector.
- B. Adopt an OPPPOSE position on AB 7 (Friedman, D-Glendale), which would revise statewide transportation planning requirements and add new priorities for state transportation funding, planning and project implementation.

**Discussion**

AB 6 (Friedman, D-Glendale): Transportation Planning: Regional Transportation Plans: Solutions for Congested Corridors Program: Reduction of Greenhouse Gas Emissions

AB 6 revises the SB 375 (Chapter 728, Statutes of 2008) greenhouse gas (GHG) emission reduction target setting process to require regions to not only meet targets for 2020 and 2035, but also for 2045. As part of the process of complying

with SB 375, AB 6 would set forward specific deadlines a metropolitan planning organization (MPO) must meet as they develop their sustainable communities strategy (SCS):

- At least 60 days before the start of the public participation process related to the SCS, the MPO must submit a description of the technical methodology it intends to use to estimate GHG emission reductions. AB 6 would now require this methodology be subject to the California Air Resources Board's (CARB) approval. AB 6 also now requires, rather than encourages, the MPO to work with CARB until CARB concludes the technical methodology is accurate and approves its use.
- Within 120 business days after adoption of the SCS (or alternative planning strategy), the MPO is to submit it to CARB for review. AB 6 would also now require CARB to approve the SCS (or alternative planning strategy). CARB is to complete its review within 180 days.

In addition to the revisions to the process of developing an SCS under SB 375, AB 6 would also revise the criteria for the SB 1 (Chapter 5, Statutes of 2017) Solutions for Congested Corridors Program (SCCP) to require a project application submitted for funding to demonstrate how the project would contribute to achieving the State's GHG emission reduction targets.

AB 6 would add significant oversight from CARB in how a region meets its GHG emission reduction targets. Already CARB must review a region's technical methodology for measuring GHG emission reductions, and a region's final SCS (or alternative planning strategy). However, under existing law this is only subject to feedback and not explicit approval. Further, nothing currently requires an MPO to continue to work with CARB until agreement is reached that the technical methodology is accurate. These new requirements would allow CARB to not only potentially delay the start of the public input process, but also would provide CARB the ability to reject a region's strategies for meeting the GHG emission reduction targets, even when the technical methodology is accurate. This changes the original intent of allowing a bottoms-up approach to these strategies and gives CARB direct oversight over a region's models and strategies.

AB 6 also adds another GHG emission reduction target year without addressing the underlying issues regions may have in meeting the existing targets. This may include the lack of tools to accelerate certain types of projects, insufficient funding to expand services to allow for modal shift, and inaction at the state level to implement various strategies. Rather than setting an additional target, further work should be done to provide regions with what is necessary to meet existing targets.

Finally, AB 6 would revise the criteria put in place by SB 1 for the SCCP. Because the language references the "State's GHG emission reduction targets," it's unclear if this would be the same as the regional targets adopted under

SB 375. Already, projects funded via the SCCP have to demonstrate they are in a regional transportation plan (RTP) with an approved SCS. This new requirement would create uncertainty for future projects as to what goals they must meet and create the precedent of requiring project level GHG emission reductions rather than demonstration of reductions through the regional planning process.

Mobility 21, the Orange County Business Council, Rebuild SoCal, the Riverside County Transportation Commission, and others have adopted oppose positions to this bill. An OPPOSE position is consistent with the Orange County Transportation Authority's (OCTA) 2023-24 State Legislative Platform principle to "Ensure that air quality determinations and policies do not constrain funding availability or otherwise undermine OCTA's ability to deliver transportation improvements." A comprehensive analysis and copy of the text of this legislation are included as Attachment A.

AB 7 (Friedman, D-Glendale): Transportation: Planning: Project Selection Processes

AB 7 adds new requirements for the California Transportation Plan (CTP) and lists priorities which the California State Transportation Agency (CalSTA), the California Department of Transportation (Caltrans), and the California Transportation Commission (CTC) are to incorporate into their processes for transportation project development, selection and implementation, to the extent possible, feasible, applicable and cost effective.

The CTP is a long-range transportation plan developed by Caltrans every five years, pursuant to state statute, to demonstrate how the State will meet its GHG emission reduction goals. Previous iterations of this plan have been critiqued for including proposals that are not financially constrained, as an RTP is required to be, and for including assumptions related to land use and development that are not realistic. AB 7 would require the CTP to include a financial element that summarizes the full cost of the CTP, available revenues through the planning period and what is feasible within the plan if constrained by actual revenues. Further, this element is to evaluate the feasibility of any policy assumptions or scenarios included in the CTP and may discuss tradeoffs within the plan considering fiscal constraints. AB 7 also requires the CTP to include an analysis of how CalSTA, Caltrans, and the CTC are achieving principles outlined in the Climate Action Plan for Transportation Infrastructure (CAPTI), the Infrastructure Investment and Jobs Act (IIJA) and the federal Justice40 initiative, which is from a federal Executive Order that created the goal of having 40 percent of certain federal investments flow to disadvantaged communities.

Both the OCTA Long-Range Transportation Plan and the Southern California Association of Governments' RTP must be financially constrained, based on existing and projected revenues. As currently developed, however, the CTP is not subject to the same restrictions. Therefore, the CTP can propose significantly

higher transit service levels; expansion of transit, rail and active transportation systems; and the location of future land use and housing that are not aligned with available revenues or policies adopted in a RTP. While AB 7's proposed language related to adding a financial element is a step in the right direction to resolve these discrepancies, the currently proposed language does not ensure alignment with assumptions in adopted RTPs. Without consistency, the CTP could include proposals that would require a redirection of existing resources, include new revenues that are not likely to accrue, or projected service levels or pricing assumptions that are not currently planned or feasible.

AB 7's proposed language to require analysis of how the plan aligns with the principles of CAPTI, IIJA and Justice40, is not only unclear but would also put into statute policy documents that could change moving forward or are not statutorily authorized. For instance, CAPTI and Justice40 were both done via Executive Order. These goals are evolving and may change in the future. However, the CTP would continue to have to reference them, not affording an opportunity for the CTP to align with the most current requirements. Further, the IIJA was a federal reauthorization bill that reauthorized several federal transportation funding programs, some of which have existed for decades. Under each funding program there are a host of eligibility parameters and goals. Based on the current language, staff analysis concludes that the CTP would have to show how it's meeting all of these goals, regardless of whether an authorized program is only created for a limited duration or intent. Already part of the intent of the CTP is to show how the State will meet various state goals and objectives; this added language is not only unclear but could complicate the focus of this plan.

AB 7 also requires, on or after January 1, 2025, CalSTA, Caltrans, and the CTC, to the extent possible, feasible, applicable, and cost effective, to incorporate various principles into their processes for transportation project development, selection and implementation. These principles include cross-references to federal statutory sections, selectively choosing certain parameters governing federal funding programs, including short-term discretionary grant programs. For instance, there are principles that cross-reference the National Highway Performance Program and discuss resiliency and safety, a principle that cross-references the Americans with Disabilities Act, and another principle that cross-references the One Federal Decision framework that has not yet been finalized. In addition, principles are included that address other priorities, including promoting compact infill development; reducing vehicle miles traveled, including considering alternatives to general purpose lanes; building an integrated state rail and transit network; making safety improvements to reduce fatalities and severe injuries; strengthening commitment to social and racial equity, including avoiding placing new or exacerbating existing burdens on these communities; and protecting natural and working lands from conversion by supporting local and region conservation.

Overall, the language in AB 7 is ambiguous and could jeopardize transportation funding and planning programs. For example, as currently drafted, AB 7 would apply to any funding program administered by the specified agencies, including formula programs OCTA receives directly like State Transportation Improvement Program and Low Carbon Transit Operations Program. It would also apply to various competitive grant programs including the Transit and Intercity Rail Capital Program and SB 1 (Chapter 5, Statutes of 2017) programs. The bill's reference to project development and implementation also infers that these principles are to apply beyond the funding programs, including potentially in approval processes and permitting.

Of the priorities listed in AB 7, some do not align with the intent of existing funding programs, and they do not encompass all of the priorities of the federal funding programs cited. This could create discrepancies between how state agencies prioritize transportation programs and what is required under federal law. Further, complete discretion is given to CalSTA, Caltrans, and the CTC to determine which priorities are possible, feasible, applicable, and cost-effective for each area, regardless of what statute already requires. This could provide an opportunity to add significant new requirements to SB 1 programs and other transportation funds, rewriting the original intent of those programs. It could also provide authorization to add new requirements to how a project is planned and implemented. This creates significant uncertainty for future transportation funding and planning efforts, impacting projects by OCTA.

Mobility 21, the Orange County Business Council, Rebuild SoCal, the Riverside County Transportation Commission, and others have already adopted oppose positions to this bill. An OPPOSE position is consistent with OCTA's 2023-24 State Legislative Platform principle to "Oppose linking or reprioritizing local and state transportation funding to programs not primarily intended to help the State meet its transportation needs." A comprehensive analysis and copy of the text of this legislation are included as Attachment B.

#### Governor's Plan to Streamline Infrastructure Project Delivery

As previously communicated to the OCTA Board of Directors (Board), on May 19, 2023, the Governor announced proposals to reform infrastructure project permitting, review, and delivery, while also seeking to meet the State's economic, climate and social goals. These proposals were informed by the work of the Governor's Infrastructure Advisor, former Los Angeles Mayor Antonio Villaraigosa, and a nonprofit organization, California Forward, who have met with stakeholders over the last year to gather input on needed reforms, especially with the new investment coming from the federal IIJA and Inflation Reduction Act.

In order to put some of these proposals into action, the Governor signed an Executive Order which requires the Infrastructure Advisor to convene an Infrastructure Strike Team (Strike Team) to work across state agencies, including CalSTA, to maximize state and federal funding opportunities. The Strike Team's responsibilities are to identify projects to focus streamlining efforts; support

coordination between agencies on project review, permitting and approvals; prioritize investments from other sectors in supporting the identified project; and share challenges and best practices across agencies. Individual projects are to be tracked as they move through the process by the Strike Team to identify areas of improvement. Specific working groups are to be formed focused on various sectors including transportation, hydrogen, and zero-emission vehicles.

Separately, the Executive Order also requires CalSTA to establish an interagency Task Force on Third Parties, with participation from Caltrans, California High Speed Rail Authority, the California Department of Water Resources, the California Department of Fish and Wildlife, and other state agencies to assist major infrastructure projects by working with private parties to obtain approvals and facilitate agreements necessary to relocate utilities or mitigate project impacts and allow construction to commence sooner. In addition, the Executive Order directs the Governor's Office of Business and Economic Development, in collaboration with CARB and California Energy Commission, in addition to other state agencies, to identify opportunities to support local permitting of clean energy and zero-emission vehicle infrastructure.

Since the signing of the Executive Order, the Governor has also released several trailer bill proposals to enact most of the reforms recommended by the work of the Infrastructure Advisor. They include the following:

- National Environmental Policy Act Delegation for Transit and Rail Projects: Removes sunset for existing authority and clarifies that CalSTA can also assume such authority for local projects requested by a local or regional agency, including but not limited to cities, counties, special districts, and joint powers authorities. This would require agreement from the federal agencies.
- Streamlined California Environmental Quality Act (CEQA) Judicial Review: Based on similar streamlining provided for select projects, including professional sports stadiums, projects over \$250 million would be eligible. For transportation, up to ten local or regional transportation projects can be selected, with only those that advance and do not conflict with CAPTI goals being eligible. The goal of the authority is to complete judicial challenges within 270 days.
- CEQA Administrative Record Streamlining: Revises the definition of "internal communications" and allows a public agency to prepare the administrative record, even if plaintiff initially offered to do so.
- California Endangered Species Act Reforms: Removes the American peregrine falcon, brown pelican, and thickettail chub from the list of fully protected species.

- Progressive Design-Build Authority: Similar to pending bills OCTA has supported granting this authority for regional agencies and local governments, this proposal would only apply to Caltrans and Department of Water Resources projects. This could only apply to eight projects, and those projects would have to be over \$25 million.
- Job Order Contracting: Would grant this procurement authority to Caltrans for the following types of projects: (1) highway maintenance or safety projects; (2) traffic management and detection system installation, replacement and repair; (3) tree removal; (4) clearing and grubbing; (5) culvert installation and repair; (6) Americans with Disability Act-related facilities; (7) facility repairs, including building maintenance; (8) installation of stormwater pollution control devices; (9) safety barriers.
- Environmental Mitigation Clarification for Caltrans: Would clarify mitigation requirements for habitats related to Caltrans structures, and for authorities related to the purchase of environmental mitigation properties, credits, and associated endowments.
- Public-Private Partnership Authority for Interstate 15 Wildlife Crossings: Authorizes Caltrans to directly contract with Brightline West to construct three wildlife crossings as part of their high-speed rail project.

As of the writing of this staff report, these trailer bill proposals had not yet been approved by the Legislature as part of the state budget process. Staff will provide updates on the status of these initiatives as discussion occurs.

#### Transit Operations Funding Budget Request Update

As detailed to the OCTA Board earlier this year, staff have been engaged with the California Transit Association (CTA) to inform efforts to pursue additional transit operations funding, which resulted in a formal request to the Legislature. The CTA budget request letter includes a variety of strategies to help offset the financial hardship many transit agencies are experiencing following the impacts of the pandemic. OCTA has been heavily involved in the discussions to inform this request and ensure any funding provided will be utilized equitably throughout the State. CTA is requesting \$5.15 billion in multiyear funding for transit operations from a collection of state funding sources that have historically supported transit capital and operations and limit the impact to the State's General Fund. Importantly, the CTA budget request does not divert critical funding from other transportation sources and does not require an increase in taxes or fees of any kind. This budget request is consistent with OCTA's 2023-24 State Legislative Platform Principle to, "Support dedicated funding for transit operations, preferably through an ongoing formulaic approach." The letter describing this request is included as Attachment C. Southern California agencies also submitted a letter on May 15, 2023, to support CTA's budget

request. This letter is included as Attachment D. The following is a high-level breakdown of CTA's budgetary requests:

- An additional appropriation of revenue from sales tax on diesel fuel [\$1.35 billion from FY 2023-24 through FY 2027-28]. With the existing statute, 80 percent of the revenue already flows to transit agencies with the remaining going toward the General Fund.
- An additional appropriation of unallocated cap-and-trade revenues (\$2.5 billion from FY 2023-24 through FY 2027-28). Recent reports indicate cap and trade revenues to be above projections, identified as \$800 million in unallocated revenue. This request would provide \$500 million of that unallocated revenue to transit agencies.
- The conversion of transit capital funding to transit operations funding (\$300 million in FYs 2026-27 and 2027-28). The Transit and Intercity Rail Capital Program (TIRCP) receives \$650 million annually for distribution for transit capital programs. This request would convert a portion of that funding to be available for transit operations purposes without impacting projects with previous, multi-year funding commitments.
- Maintaining the \$4 billion General Fund investment from last year's budget for transit capital projects through TIRCP while creating flexibility to use this transit capital funding for transit operations (up to \$1 billion from FY 2023-24 through FY 2027-28).

Additionally, the Legislature had requested that transit agencies detail certain accountability and reform measures in order to receive such funding. CTA, again through extensive conversation with its Transit Operations Funding Subcommittee, discussed the best approach to respond to the Legislature, with the understanding that no funding would be provided if it were not accompanied with such measures. CTA submitted a letter, included as Attachment E, to the Legislature on May 18, 2023, outlining recommendations for a proposed accountability and reform framework. As proposed, this would require transit agencies to have their governing board pass a resolution prior to receiving the funding that demonstrates the need and strategies that will be used to address operating deficits or to increase ridership. It also would require transit agencies to then submit a transit recovery plan within 18 months of receiving operations funding on specific strategies to enhance its ridership and address its operating deficit.

CTA has had ongoing conversations with the Legislature regarding its proposal and has presented to both Assembly and Senate budget subcommittees several times to demonstrate the need for relief, the funding requests, and associated accountability measures. Since these conversations and the letters, both the Senate and Assembly budget committees have advanced several



recommendations related to transit. This includes maintaining the \$4 billion in population-based TIRCP General Fund dollars with flexibility for operations so long as, not yet specified, accountability and reform requirements are met. It also extends certain flexibilities and relief measures established during the pandemic related to the Transportation Development Act and the State Transit Assistance Program. The Senate's budget proposal also expands the provisions to allow for increased flexibility in the use of funds transit operators receive from the State of Good Repair program and the Low Carbon Transit Operations Program.

Presently, these proposals do not include the remainder of CTA's budget request, such as the unallocated cap and trade funds, remainder of the revenues for the sales tax on diesel, and annual TIRCP funding flexibilities. Instead, the budget committees have increased funding for zero-emission bus and infrastructure with the argument being that many transit agencies are facing cost pressures because of the State's zero-emission mandate and adding more funding to this pot will free up other state and local funds for operations purposes. The identified funding for this could be between \$100 million and \$220 million. With all that, negotiations remain ongoing. The Legislature is required to approve a budget by June 15, 2023. OCTA staff remain engaged with stakeholders and will keep the Board updated as necessary.

#### California Air Resources Board's In-Use Locomotive Regulation

Since late 2019, CARB has organized workshops and meetings with stakeholders to inform the proposed In-Use Locomotive Regulation. The primary goals of this regulation 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. OCTA staff have provided several updates to the Board throughout the rulemaking process, which has now concluded with the CARB Board's approval of the regulation on April 27, 2023.

As a summary, there are four primary components associated with this regulation. First, is the Spending Account, which is to be established by 2024. 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. Rail operators 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.

OCTA collaborated with the Southern California Regional Rail Authority (Metrolink) and CTA on amendments to the regulation that would exempt passenger rail operators, such as Metrolink, from the purchase mandates. Metrolink has already committed to transitioning to zero-emission technology for

locomotives as soon as feasibly possible. As a joint powers authority member of Metrolink, OCTA contributes approximately 29 percent of Metrolink's entire operations budget. Any increases to Metrolink's operating and capital budgets will create a significant financial burden for OCTA and potentially stall other transit projects and programs. Therefore, following significant negotiations with CARB staff and passenger rail operators, CARB included language that would allow locomotive operators to use an Alternative Compliance Plan (ACP) or the Alternative Fleet Milestone Option (AFMO) instead of direct compliance with these requirements. A locomotive operator that submits an AFMO application must commit to, and following approval by CARB, demonstrate, conversion of their fleet to 100 percent Tier 4 locomotives (or cleaner) by 2035 and 100 percent zero emission locomotives by 2047, with intermediate conversion targets in 2035 and 2042. Once approved, a locomotive operator's AFMO is valid in perpetuity unless revoked. A locomotive operator that submits an ACP must commit to an equivalent to or greater reduction of particulate matter, nitrogen oxides, and GHG emissions than would have been achieved during the five-year verification period for which the ACP can be implemented.

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, 2024, depending on which pathway they use to comply with this regulation.

CARB staff indicated in its staff report that they will be undergoing technology assessments in 2027 and 2032. This will include an analysis of the progress made in zero emission technologies and, therein, making subsequent determinations if compliance dates need to be adjusted. Staff will continue to monitor these assessments and conversations related to zero emission transition.

**Summary**

Recommendations for positions are made on legislation related to transportation planning and project priorities. An overview is provided of proposals from the Governor related to infrastructure project streamlining. An update on efforts to inform funding for transit operations and a summary on the finalization of the California Air Resources Board's In-Use Locomotive Regulation are provided.

**Attachments**

- A. AB 6 (Friedman, D-Burbank) Bill Analysis and Bill Language
- B. AB 7 (Friedman, D-Burbank) Bill Analysis and Bill Language
- C. Letter from Michael Pimentel, Executive Director, California Transit Association, dated April 25, 2023, re: California Transit Association's Funding Request and Policy Recommendations to Address Near-Term Operating Deficits
- D. Letter to the Honorable Gavin Newsom, Governor, State of California, the Honorable Toni G. Atkins, Senate President pro Tempore, California State Senate, and the Honorable Anthony Redon, Speaker of the Assembly, California State Assembly, dated May 15, 2023
- E. Letter from Michael Pimentel, Executive Director, California Transit Association, dated May 18, 2023, re: California Transit Association's Proposed Accountability and Reform Framework
- F. Orange County Transportation Authority Legislative Matrix

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