



EXECUTIVE MANAGEMENT AND AUDIT COMMITTEE  
APRIL 17, 2008

**SUBJECT: STATE LEGISLATION**

**ACTION: ADOPT STAFF RECOMMENDED POSITIONS**

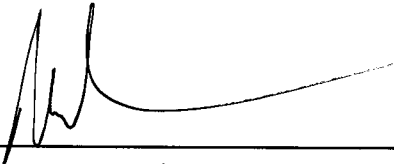
**RECOMMENDATION**

- A. **SB 375 (STEINBERG)** – Would require Regional Transportation Plans (RTP) to address the reduction of greenhouse gases and require transportation funding to be allocated according to those plans. Would authorize modified environmental review procedures for projects conforming to the new plans. **WORK WITH AUTHOR**
- B. **SB 1722 (OROPEZA)** – Would establish a Metro Green Line Construction Authority. **OPPOSE**
- C. **SB 1732 (ROMERO)** – Would prohibit a majority of the members of a legislative body from using a series of communications, directly or through intermediaries, to conduct deliberations, including, but not limited to any communications that advance or clarify a member's understanding of an issue. **NEUTRAL IF AMENDED**
- D. **AB 2650 (CARTER)** – Would extend the limited waiver of sovereign immunity required to participate in the Surface Transportation Project Delivery Pilot Program. **SUPPORT**

**ATTACHMENTS**

- Attachments A-1 Legislative Analysis of SB 375
- A-2 SB 375 Bill language
- B-1 Legislative Analysis of SB 1722
- B-2 AB 1722 Bill language
- C-1 Legislative Analysis of AB 1732
- C-2 AB 1732 Bill language
- D-1 Legislative Analysis of AB 2650
- D-2 AB 2650 Bill Language

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Chief Executive Officer

**BILL:** SB 375

**AUTHOR:** SENATOR DARRELL STEINBERG  
(D-SACRAMENTO)

**SUBJECT:** TRANSPORTATION PLANNING

**STATUS:** ASSEMBLY

**ACTION:** WORK WITH AUTHOR

**RECOMMENDATION**

Adopt a “Work With Author” position on SB 375 (Steinberg), which would require Regional Transportation Plans (RTP) to address the reduction of greenhouse gases and require transportation funding to be allocated according to those plans.

**ISSUE**

Senator Steinberg has introduced SB 375 which proposes a significant restructuring of the RTP process. Specifically SB 375 requires RTP’s to include a Sustainable Communities Strategy (SCS) which addresses the emission of greenhouse gasses. The measure would prohibit the allocation of funds if the project included in the Regional Transportation Improvement Program (RTIP) is not consistent with the adopted RTP. Would require the California Transportation Commission (CTC) to develop guidelines for the use of travel demand models consistent with the revised RTP’s and would authorize modified environmental review procedures for projects conforming to the new plans.

**PROVISIONS**

Existing law requires certain transportation planning activities by the Department of Transportation and by designated regional transportation planning agencies, including development of a regional transportation plan. Existing law authorizes the CTC, in cooperation with the regional agencies, to prescribe study areas for analysis and evaluation.

Specifically, SB 375 would:

- Require the commission, by July 1, 2009, to adopt guidelines for travel demand models used in the development of regional transportation plans by certain transportation planning entities;
- Require the Department of Transportation to assist the commission, on request, in this regard, and would impose other related requirements;

- Require the regional transportation plan for specified regions to include a SCS, as specified, designed to achieve certain goals for the reduction of greenhouse gas emissions from automobiles and light trucks in a region;
- Require the State Air Resources Board, working in consultation with the affected transportation agencies, to provide each affected region with greenhouse gas emission reduction targets from the automobile and light truck sector for 2020 and 2035 by January 1, 2010, and to update the regional targets, as specified, until 2050;
- Require certain transportation planning and programming activities by affected regional agencies to be consistent with the SCS contained in the regional transportation plan, but would state that certain transportation projects programmed for funding on or before December 31, 2011, are not required to be consistent with the SCS. To the extent the sustainable communities strategy is unable to achieve the greenhouse gas emissions reduction targets;
- Require affected regional agencies to prepare a supplement to the sustainable communities strategy that would achieve the targets through alternative development patterns or additional transportation measures;
- Require an affected regional agency to submit a statement to the California Transportation Commission describing the relationship of each project in the regional transportation improvement program to the regional transportation plan and supplement adopted by the regional agency;
- Impose additional duties on local agencies which would impose a state-mandated local program; CEQA requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment;
- Require the environmental document prepared pursuant to CEQA to only examine the significant or potentially significant project specific impacts of a project located in a local jurisdiction that has amended its general plan so that the land use, housing, and open-space elements of the general plan are consistent with the sustainable communities strategy most recently adopted by the transportation planning agency, pursuant to the requirements specified in the bill, if the project meets certain requirements;
- Provide that no additional review is required pursuant to CEQA for a project if the legislative body of a local jurisdiction that has amended its general plan, as provided above, finds, after conducting a public hearing, that the project meets certain criteria and is declared to be a sustainable communities project;
- Authorize the legislative body of a local jurisdiction to adopt traffic mitigation measures for future residential projects that meet specified criteria;
- Exempt such a residential project seeking a land use approval from compliance with additional measures for traffic impacts, if the local jurisdiction has adopted those traffic mitigation measures. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement;

- Provide that the Legislature finds there is no mandate contained in the bill that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to these constitutional and statutory provisions.

## **IMPACT ANALYSIS**

SB 375 is an attempt to revamp the transportation and land use planning process in order to address environmental concerns, chiefly the emission of greenhouse gases. The goals of SB 375 are strongly supported by us in that a coordinated land use and transportation planning process would lead to such reductions. We are in the process of updating its Long Range Transportation Plan (LRTP) and this plan is an important component of the region's efforts to improve air quality. The LRTP is currently developed in close coordination with the Southern California Association of Governments (SCAG) which has the responsibility of ensuring that the RTP meets federally mandated air quality requirements. However, SB 375 would create a very restrictive planning process and would introduce both the State Air Resources Board and the Southern California Association of Governments into the local planning and project selection process.

SB 375 would require the development of a SCS with very specific emission reduction requirements in all RTP (i.e the RTP developed by SCAG). The emission reduction requirements would be set forth by the State Air Resources Board and all transportation projects, approved by local agencies, would have to meet the criteria established by the SCS.

Under the current planning process, SCAG develops the region's Regional Transportation Plan and determines if the plan conforms to the region's ability to meet federal air quality requirements. Introducing a layer of state requirements on top of the federal requirements will significantly complicate an existing process. The introduction of a state and regional entity into the local project selection process is also troubling.

The bill also creates a number of CEQA streamlining incentives for projects consistent with the SCS including infill projects but those benefits would only be available to a region that has implemented the SCS. While these incentives are important to facilitate the development of these projects, their link to the new planning process is of concern.

Overall, staff supports the concept of addressing the linkages between land uses transportation and greenhouse gases. Staff would like to explore the ability to address these issues in transportation planning and the modeling of future projects. We would prefer to see the measure incorporate these objectives into the current planning process as opposed to introducing regional and state entities into what should be a local project selection process.

## **Staff Concerns**

Recent discussions have centered around exempting projects funded from Proposition 1B, projects in specific future programming cycles and projects which have been funded from a local sales tax. Proposed amendments to the bill would address the sales tax exemption by exempting projects approved as of 2006 and specifically included in an expenditure plan. A

number of counties are contemplating placing future sales taxes on the ballot and this amendment would not exempt those locally funded sales taxes from the requirements of this bill. Should Metro decide to move forward on placing a sales tax measure on the ballot, the projects funded by that tax would not be exempted from the bill. Metro's existing sales taxes are also categorical and may not qualify under the current language of the bill. Staff recommends that the exemption language should be broadened to exempt sales taxes passed by at least 2008, and that projects funded from a categorical sales taxes, such as those implemented by Metro, be included.

Additionally, the development and implementation of the SCS in Southern California should be clarified. Currently, SCAG would have the responsibility to develop the SCS and would be granted authority to select projects which meet the SCS. SCAG would then be granted broader authority to select projects eligible for funding superceding the board's authority to program transportation funds. Staff recommends that we seek amendments to SB 375 to clarify that

The bill is co-sponsored by the California League of Conservation Voters and the National Resources Defense Council and is supported by the Southern California Association of Governments.

#### **SUPPORT**

California League of Conservation Voters (co-sponsor)  
Natural Resources Defense Council (co-sponsor)  
Alpine Meadows  
American Farmland Trust  
American Lung Association of California  
Breathe California  
California Coalition for Rural Housing  
California Council of Land Trusts  
California Nurses Association  
Coalition for Clean Air  
Defenders of Wildlife  
Environment California  
Homewood Mountain Resort  
JMA Ventures, LLC  
New Voice of Business  
Planning and Conservation League  
Southern California Association of Governments  
Trust for Public Land

#### **OPPOSE**

Asphalt Pavement Association of California  
Associated General Contractors of California  
California Association of Realtors  
California Building Industry Association  
California Business Properties Association  
California Chamber of Commerce  
California Hotel and Lodging Association

California Major Builders Council  
California Manufacturers and Technology Association  
California Retailers Association  
California State Association of Counties  
Consulting Engineers and Land Surveyors of California  
Contra Costa Transportation Authority  
County of San Diego  
Department of Finance  
Housing California (concerned)  
Inland Empire Transportation Council  
Orange County Business Council  
Orange County Transportation Authority  
Regional Council of Rural Counties  
Resource Landowners Coalition  
Transportation California

BILL NUMBER: SB 375      AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY    MARCH 24, 2008  
AMENDED IN ASSEMBLY    JANUARY 28, 2008  
AMENDED IN ASSEMBLY    SEPTEMBER 12, 2007  
AMENDED IN ASSEMBLY    JULY 17, 2007  
AMENDED IN ASSEMBLY    JUNE 27, 2007  
AMENDED IN SENATE      JUNE 4, 2007  
AMENDED IN SENATE      MAY 2, 2007  
AMENDED IN SENATE      APRIL 17, 2007

INTRODUCED BY    Senator Steinberg  
                  (    Coauthors:    Assembly Members  
                  Jones    and DeSaulnier    )

FEBRUARY 21, 2007

An act to amend Sections 14527, 65080, and 65584.01 of, and to add Sections 14522.1, 14522.2, and 65080.01 to, the Government Code, and to amend Sections 21061.3 and 21094 of, and to add Chapter 4.2 (commencing with Section 21155) to Division 13 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 375, as amended, Steinberg. Transportation planning: travel demand models: sustainable communities strategy: environmental review.

(1) Existing law requires certain transportation planning activities by the Department of Transportation and by designated regional transportation planning agencies, including development of a regional transportation plan. Existing law authorizes the California Transportation Commission, in cooperation with the regional agencies, to prescribe study areas for analysis and evaluation.

This bill would require the commission, by July 1, 2009, to adopt guidelines for travel demand models used in the development of regional transportation plans by certain transportation planning entities. The bill would require the Department of Transportation to assist the commission, on request, in this regard, and would impose other related requirements.

This bill would also require the regional transportation plan for specified regions to include a sustainable communities strategy, as specified, designed to achieve certain goals for the reduction of greenhouse gas emissions from automobiles and light trucks in a region. The bill would require the State Air Resources Board, working in consultation with the affected transportation agencies, to provide each affected region with greenhouse gas emission reduction targets from the automobile and light truck sector for 2020 and 2035 by January 1, 2010, and to update the regional targets, as specified, until 2050. The bill would require certain transportation planning and programming activities by affected regional agencies to be



consistent with the sustainable communities strategy contained in the regional transportation plan, but would state that certain transportation projects programmed for funding on or before December 31, 2011, are not required to be consistent with the sustainable communities strategy. To the extent the sustainable communities strategy is unable to achieve the greenhouse gas emissions reduction targets, the bill would require affected regional agencies to prepare a supplement to the sustainable communities strategy that would achieve the targets through alternative development patterns or additional transportation measures. The bill would also require an affected regional agency to submit a statement to the California Transportation Commission describing the relationship of each project in the regional transportation improvement program to the regional transportation plan and supplement adopted by the regional agency. The bill would enact other related provisions.

Because the bill would impose additional duties on local agencies, it would impose a state-mandated local program.

(2) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would require the environmental document prepared pursuant to CEQA to only examine the significant or potentially significant project specific impacts of a project located in a local jurisdiction that has amended its general plan so that the land use, housing, and open-space elements of the general plan are consistent with the sustainable communities strategy most recently adopted by the transportation planning agency, pursuant to the requirements specified in the bill, if the project meets certain requirements.

The bill would provide that no additional review is required pursuant to CEQA for a project if the legislative body of a local jurisdiction that has amended its general plan, as provided above, finds, after conducting a public hearing, that the project meets certain criteria and is declared to be a sustainable communities project.

The bill would also authorize the legislative body of a local jurisdiction to adopt traffic mitigation measures for future residential projects that meet specified criteria. The bill would exempt such a residential project seeking a land use approval from compliance with additional measures for traffic impacts, if the local jurisdiction has adopted those traffic mitigation measures.

~~— (3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~— This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

(3) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that the Legislature finds there is no mandate contained in the bill that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to these constitutional and statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The transportation sector contributes over 40 percent of the greenhouse gas emissions in the State of California; automobiles and light trucks alone contribute almost 30 percent. The transportation sector is the single largest contributor of greenhouse gases of any sector.

(b) In 2006, the Legislature passed and the Governor signed Assembly Bill 32 (Chapter 488 of the Statutes of 2006; hereafter AB 32), which requires the State of California to reduce its greenhouse gas emissions to 1990 levels no later than 2020. In 1990, greenhouse gas emissions from automobiles and light trucks were approximately 73 million metric tons, but by 2006 these emissions had increased to approximately 100 million metric tons.

(c) Greenhouse gas emissions from automobiles and light trucks can be substantially reduced by new vehicle technology and by the increased use of low carbon fuel. However, even taking these measures into account, it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation. Without significant changes in land use and transportation policy, California will not be able to achieve the goals of AB 32.

(d) In addition, automobiles and light trucks account for 50 percent of air pollution in California and 70 percent of its consumption of petroleum. Changes in land use and transportation policy will provide significant assistance to California's goals to implement the federal and state Clean Air Acts and to reduce its dependence on petroleum.

(e) Current federal law requires regional transportation planning agencies to include a land use allocation in the regional transportation plan. Some regions have engaged in a regional "blueprint" process to prepare the land use allocation. This process has been open and transparent. The Legislature intends, by this act, to build upon that successful process and to take an evolutionary step forward.

(f) The California Environmental Quality Act (CEQA) is California's premier environmental statute. New provisions of CEQA should be enacted so that the statute encourages local governments to make land use decisions that will help the state achieve its climate goals under AB 32, assist in the achievement of state and federal air quality standards, and increase petroleum conservation.

(g) Current planning models and analytical techniques used for

making transportation infrastructure decisions and for air quality planning should be able to assess the effects of policy choices, such as residential development patterns, expanded transit service and accessibility, the walkability of communities, and the use of economic incentives and disincentives.

SEC. 2. Section 14522.1 is added to the Government Code, to read:

14522.1. (a) (1) The commission, in consultation with the State Air Resources Board, shall adopt guidelines for travel demand models used in the development of regional transportation plans by (A) federally designated metropolitan planning organizations, (B) county transportation agencies or commissions in areas that have been designated as nonattainment areas under the federal Clean Air Act, and (C) in the Counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura, the agency described in Section 130004 of the Public Utilities Code.

(2) The preparation of the guidelines shall include the formation of an advisory committee that shall include representatives of the regional transportation planning agencies, the department, organizations knowledgeable in the creation and use of travel demand models, local governments, and organizations concerned with the impacts of transportation investments on communities and the environment. The commission shall hold two workshops on the guidelines, one in northern California and one in southern California. The workshops shall be incorporated into regular commission meetings.

(b) The department shall assist the commission in the preparation of the guidelines, if requested to do so by the commission.

(c) The guidelines shall, at a minimum and to the extent practicable, account for all of the following:

(1) The relationship between land use density and household vehicle ownership and vehicle miles traveled in a way that is consistent with statistical research.

(2) The impact of enhanced transit service levels on household vehicle ownership and vehicle miles traveled.

(3) Induced travel and induced land development resulting from highway or passenger rail expansion.

(4) Mode splitting that allocates trips between automobile, transit, carpool, and bicycle and pedestrian trips. If a travel demand model is unable to forecast bicycle and pedestrian trips, another means may be used to estimate those trips.

(d) The guidelines shall be adopted on or before July 1, 2009.

SEC. 3. Section 14522.2 is added to the Government Code, to read:

14522.2. (a) A regional transportation planning agency shall disseminate the methodology, results, and key assumptions of whichever travel demand model it uses in a way that would be useable and understandable to the public.

(b) Transportation planning agencies other than those identified in paragraph (1) of subdivision (a) of Section 14522.1, cities, counties, and congestion management agencies within multicounty regions are encouraged, but not required, to utilize the guidelines.

SEC. 4. Section 14527 of the Government Code is amended to read:

14527. (a) After consulting with the department, the regional transportation planning agencies and county transportation commissions shall adopt and submit to the commission and the department, not later than December 15, 2001, and December 15 of each odd-numbered year thereafter, a five-year regional transportation improvement program in conformance with Section 65082. In counties

where a county transportation commission has been created pursuant to Chapter 2 (commencing with Section 130050) of Division 12 of the Public Utilities Code, that commission shall adopt and submit the county transportation improvement program, in conformance with Sections 130303 and 130304 of that code, to the multicounty-designated transportation planning agency. For each project included in the program, a statement shall be submitted to the commission describing the relationship of the project to the regional transportation plan and supplement, if any, prepared pursuant to Section 65080. Other information, including a program for expenditure of local or federal funds, may be submitted for information purposes with the program, but only at the discretion of the transportation planning agencies or the county transportation commissions. As used in this section, "county transportation commission" includes a transportation authority created pursuant to Chapter 2 (commencing with Section 130050) of Division 12 of the Public Utilities Code.

(b) The regional transportation improvement program shall include all projects to be funded with the county share under paragraph (2) of subdivision (a) of Section 164 of the Streets and Highways Code. The regional programs shall be limited to projects to be funded in whole or in part with the county share that shall include all projects to receive allocations by the commission during the following five fiscal years. For each project, the total expenditure for each project component and the total amount of commission allocation and the year of allocation shall be stated. The total cost of projects to be funded with the county share shall not exceed the amount specified in the fund estimate made by the commission pursuant to Section 14525.

(c) The regional transportation planning agencies and county transportation commissions may recommend projects to improve state highways with the interregional share pursuant to subdivision (b) of Section 164 of the Streets and Highways Code. The recommendations shall be separate and distinct from the regional transportation improvement program. A project recommended for funding pursuant to this subdivision shall constitute a usable segment and shall not be a condition for inclusion of other projects in the regional transportation improvement program.

(d) The department may nominate or recommend the inclusion of projects in the regional transportation improvement program to improve state highways with the county share pursuant to paragraph (2) of subdivision (a) and subdivision (e) of Section 164 of the Streets and Highways Code. A regional transportation planning agency and a county transportation commission shall have sole authority for determining whether any of the project nominations or recommendations are accepted and included in the regional transportation improvement program adopted and submitted pursuant to this section. This authority provided to a regional transportation planning agency or to a county transportation commission extends only to a project located within its jurisdiction.

(e) Major projects shall include current costs updated as of November 1 of the year of submittal and escalated to the appropriate year, and shall be consistent with, and provide the information required in, subdivision (b) of Section 14529.

(f) The regional transportation improvement program may not change the project delivery milestone date of any project as shown in the prior adopted state transportation improvement program without the

consent of the department or other agency responsible for the project's delivery.

(g) Projects may not be included in the regional transportation improvement program without a complete project study report or, for a project that is not on a state highway, a project study report equivalent or major investment study.

(h) Each transportation planning agency and county transportation commission may request and receive an amount not to exceed 5 percent of its county share for the purposes of project planning, programming, and monitoring.

SEC. 5. Section 65080 of the Government Code is amended to read:

65080. (a) Each transportation planning agency designated under Section 29532 or 29532.1 shall prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services. The plan shall be action-oriented and pragmatic, considering both the short-term and long-term future, and shall present clear, concise policy guidance to local and state officials. The regional transportation plan shall consider factors specified in Section 134 of Title 23 of the United States Code. Each transportation planning agency shall consider and incorporate, as appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

(b) The regional transportation plan shall include all of the following:

(1) A policy element that describes the transportation issues in the region, identifies and quantifies regional needs, and describes the desired short-range and long-range transportation goals, and pragmatic objective and policy statements. The objective and policy statements shall be consistent with the funding estimates of the financial element. The policy element of transportation planning agencies with populations that exceed 200,000 persons may quantify a set of indicators including, but not limited to, all of the following:

(A) Measures of mobility and traffic congestion, including, but not limited to, vehicle hours of delay per capita and vehicle miles traveled per capita.

(B) Measures of road and bridge maintenance and rehabilitation needs, including, but not limited to, roadway pavement and bridge conditions.

(C) Measures of means of travel, including, but not limited to, percentage share of all trips (work and nonwork) made by all of the following:

(i) Single occupant vehicle.

(ii) Multiple occupant vehicle or carpool.

(iii) Public transit including commuter rail and intercity rail.

(iv) Walking.

(v) Bicycling.

(D) Measures of safety and security, including, but not limited to, total injuries and fatalities assigned to each of the modes set forth in subparagraph (C).

(E) Measures of equity and accessibility, including, but not limited to, percentage of the population served by frequent and reliable public transit, with a breakdown by income bracket, and percentage of all jobs accessible by frequent and reliable public

transit service, with a breakdown by income bracket.

(F) The requirements of this section may be met utilizing existing sources of information. No additional traffic counts, household surveys, or other sources of data shall be required.

(2) A sustainable communities strategy prepared as follows:

(A) Within the region under the jurisdiction of each of the agencies described in paragraph (1) of subdivision (a) of Section 14522.1, no later than January 1, 2010, the State Air Resources Board, working in consultation with the affected transportation planning agencies and after at least one public workshop, shall provide each affected region with greenhouse gas emission reduction targets from the automobile and light truck sector for 2020 and 2035, respectively.

(i) The state board shall update the regional targets consistent with each agency's timeframe for updating its regional transportation plan under federal law until 2050.

(ii) In making these determinations, the state board shall consider greenhouse gas emission reductions that will be achieved by improved vehicle emission standards, changes in fuel consumption, and other measures it has approved that will reduce greenhouse gas emissions in the affected regions, and prospective measures the state board plans to adopt to reduce greenhouse gas emissions from other sources.

(B) Each agency described in paragraph (1) of subdivision (a) of Section 14522.1 shall prepare a sustainable communities strategy, consistent with the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, that (i) identifies areas within the region sufficient to house all the population of the region including all economic segments of the population over the course of the planning period taking into account net migration into the region, population growth, household formation and employment growth; (ii) identifies a transportation network to service the transportation needs of the region; (iii) using the best practically available scientific information, identifies significant resource areas and significant farmland; (iv) sets forth a development pattern for the region, a transportation network, and other transportation measures that will reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the targets developed by the board; and (v) will allow the regional transportation plan to comply with Section 176 of the federal Clean Air Act (42 U.S.C. Sec. 7506).

(C) In the multicounty transportation planning agency described in Section 130004 of the Public Utilities Code, a county and the cities within that county may propose the sustainable communities strategy for that county. That sustainable communities strategy may be approved as part of the sustainable communities strategy for the region provided that the strategy for the region complies with the requirements of this section.

(D) A sustainable communities strategy shall be consistent with the state planning priorities specified pursuant to Section 65041.1.

(E) In preparing a sustainable communities strategy, the transportation planning agency shall consider spheres of influence that have been adopted within its region.

(F) Each agency described in paragraph (1) of subdivision (a) of Section 14522.1 and, within the jurisdiction of the Metropolitan Transportation Commission, the Association of Bay Area Governments

shall identify the lands for growth in housing and employment in the sustainable communities strategy in accordance with the following priorities:

(i) Infill and redevelopment in existing urbanized areas, and any lands within spheres of influence as of July 1, 2007.

(ii) Vacant lands or substantially undeveloped lands other than those identified in clause (i) that are adjacent to an existing or reasonably foreseeable planned development area and do not include a significant resource area or significant farmlands.

(iii) If it is not feasible to identify lands for all of the projected growth in jobs and housing on lands in clauses (i) and (ii), then it may identify future development on vacant lands or substantially undeveloped lands adjacent to an existing or reasonably foreseeable planned development or within a city sphere of influence that contain significant resource areas as defined in paragraphs (4), (5), (6), or (7) of subdivision (a) of Section 65080.01 or significant farmland to the extent consistent with other provisions of local, state, or federal law.

(iv) If it is not feasible to identify lands for all of the projected growth in jobs and housing on lands in clauses (i), (ii), and (iii), then it may identify future development on vacant lands or substantially undeveloped lands adjacent to an existing or reasonably foreseeable planned development or within a city sphere of influence that contain significant resource areas as defined in paragraph (3) of subdivision (a) of Section 65080.01 to the extent consistent with other provisions of local, state, or federal law.

(v) If it is not feasible to identify lands for all of the projected growth in jobs and housing on lands in clauses (i), (ii), (iii), and (iv), then it may identify future development on other lands, to the extent consistent with other provisions of local, state, or federal law, but not on significant resource areas defined in paragraph (1) or (2) of subdivision (a) of Section 65080.01.

(vi) If the sustainable communities strategy identifies development on lands in clauses (iii), (iv), or (v) it shall describe feasible measures to mitigate the impact of projected development on those lands.

(G) Prior to adopting a sustainable communities strategy, the regional transportation planning agency and, within the jurisdiction of the Metropolitan Transportation Commission, the Association of Bay Area Governments shall either (i) find that zoning has been enacted within the region for a five-year supply of the housing need identified in the sustainable communities strategy, or (ii) state with specificity why the development pattern set forth in the sustainable communities strategy is the development pattern that is most likely to occur.

(H) If the sustainable communities strategy, prepared in compliance with subparagraph (B), is unable to reduce greenhouse gas emissions to achieve the targets established by the board, the regional transportation planning agency shall prepare a supplement to the sustainable communities strategy that would achieve those greenhouse gas emission targets through alternative development patterns or additional transportation measures. The supplement shall be a separate document and shall not be part of the regional transportation plan.

(I) A sustainable communities strategy does not regulate the use of land, nor shall it be subject to any state approval. Nothing in a sustainable communities strategy shall be interpreted as superseding

or interfering with the exercise of the land use authority of cities and counties within the region. Nothing in this section requires an agency to approve a sustainable communities strategy that would be inconsistent with Part 450 of Title 23 of, or Part 93 of Title 40 of, the Code of Federal Regulations and any administrative guidance under those regulations. Nothing in this section relieves a public or private entity or any person from compliance with any other local, state, or federal law.

(J) Projects programmed for funding on or before December 31, 2011, are not required to be consistent with the sustainable communities strategy if they (i) are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program, (ii) are funded pursuant to Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2, or (iii) were specifically listed in a ballot measure prior to December 31, 2006, approving a sales tax increase for transportation projects.

(3) An action element that describes the programs and actions necessary to implement the plan and assigns implementation responsibilities. The action element may describe all transportation projects proposed for development during the 20-year or greater life of the plan. The action element shall be consistent with the sustainable communities strategy, except as provided in subparagraph (J) of paragraph (2).

The action element shall consider congestion management programming activities carried out within the region.

(4) (A) A financial element that summarizes the cost of plan implementation constrained by a realistic projection of available revenues. The financial element shall also contain recommendations for allocation of funds. A county transportation commission created pursuant to Section 130000 of the Public Utilities Code shall be responsible for recommending projects to be funded with regional improvement funds, if the project is consistent with the regional transportation plan. The first five years of the financial element shall be based on the five-year estimate of funds developed pursuant to Section 14524. The financial element may recommend the development of specified new sources of revenue, consistent with the policy element and action element.

(B) The financial element of transportation planning agencies with populations that exceed 200,000 persons may include a project cost breakdown for all projects proposed for development during the 20-year life of the plan that includes total expenditures and related percentages of total expenditures for all of the following:

- (i) State highway expansion.
- (ii) State highway rehabilitation, maintenance, and operations.
- (iii) Local road and street expansion.
- (iv) Local road and street rehabilitation, maintenance, and operation.
- (v) Mass transit, commuter rail, and intercity rail expansion.
- (vi) Mass transit, commuter rail, and intercity rail rehabilitation, maintenance, and operations.
- (vii) Pedestrian and bicycle facilities.
- (viii) Environmental enhancements and mitigation.
- (ix) Research and planning.
- (x) Other categories.

(c) Each transportation planning agency may also include other factors of local significance as an element of the regional transportation plan, including, but not limited to, issues of



mobility for specific sectors of the community, including, but not limited to, senior citizens.

(d) Except as otherwise provided in this subdivision, each transportation planning agency shall adopt and submit, every four years, an updated regional transportation plan to the California Transportation Commission and the Department of Transportation. A transportation planning agency located in a federally designated air quality attainment area or that does not contain an urbanized area may at its option adopt and submit a regional transportation plan every five years. When applicable, the plan shall be consistent with federal planning and programming requirements and shall conform to the regional transportation plan guidelines adopted by the California Transportation Commission. Prior to adoption of the regional transportation plan, a public hearing shall be held after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061.

SEC. 6. Section 65080.01 is added to the Government Code, to read:

65080.01. The following definitions apply to terms used in Section 65080:

(a) "Significant resource areas" include (1) all publicly owned parks and open space; (2) open space or habitat areas protected by natural community conservation plans, habitat conservation plans, and other adopted natural resource protection plans; (3) habitat for species identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies or protected by the federal Endangered Species Act of 1973, the California Endangered Species Act, or the Native Plant Protection Act; (4) lands subject to conservation or agricultural easements for conservation or agricultural purposes by local governments, special districts, or nonprofit 501(c)(3) organizations, and lands under Williamson Act contracts; (5) areas designated for open-space uses in adopted open-space elements of the local general plan or by local ordinance; (6) habitat blocks, linkages, or watershed units that protect regional populations of native species, including sensitive, endemic, keystone, and umbrella species, and the ecological processes that maintain them; and (7) an area subject to flooding where a development project would not, at the time of development in the judgment of the agency, meet the requirements of the National Flood Insurance Program or where the area is subject to more protective provisions of state law or local ordinance.

(b) "Significant farmland" means farmland that is classified as prime or unique farmland, or farmland of statewide importance and is outside all existing city spheres of influence or city limits as of January 1, 2007.

(c) "Consistent with the sustainable communities strategy" means that the capacity of the transportation projects or improvements does not exceed that which is necessary to provide reasonable service levels for the existing population and the planned growth of the region as set forth in the sustainable communities strategy.

(d) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

SEC. 7. Section 65584.01 of the Government Code is amended to read:

65584.01. (a) For the fourth and subsequent revision of the housing element pursuant to Section 65588, the department, in

consultation with each council of governments, where applicable, shall determine the existing and projected need for housing for each region in the following manner:

(b) The department's determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council

of governments. If the total regional population forecast for the planning period, developed by the council of governments and used for the preparation of the regional transportation plan, is within a range of 3 percent of the total regional population forecast for the planning period over the same time period by the Department of Finance, then the population forecast developed by the council of governments shall be the basis from which the department determines the existing and projected need for housing in the region. If the difference between the total population growth projected by the council of governments and the total population growth projected for the region by the Department of Finance is greater than 3 percent, then the department and the council of governments shall meet to discuss variances in methodology used for population projections and seek agreement on a population projection for the region to be used as a basis for determining the existing and projected housing need for the region. If no agreement is reached, then the population projection for the region shall be the population projection for the region prepared by the Department of Finance as may be modified by the department as a result of discussions with the council of governments.

(c) (1) At least 26 months prior to the scheduled revision pursuant to Section 65588 and prior to developing the existing and projected housing need for a region, the department shall meet and consult with the council of governments regarding the assumptions and methodology to be used by the department to determine the region's housing needs. The council of governments shall provide data assumptions from the council's projections, including, if available, the following data for the region:

(A) Anticipated household growth associated with projected population increases.

(B) Household size data and trends in household size.

(C) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.

(D) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs.

(E) Other characteristics of the composition of the projected population.

(2) The department may accept or reject the information provided by the council of governments or modify its own assumptions or methodology based on this information. After consultation with the council of governments, the department shall make determinations in writing on the assumptions for each of the factors listed in subparagraphs (A) to (E), inclusive, of paragraph (1) and the methodology it shall use and shall provide these determinations to the council of governments.

(d) (1) After consultation with the council of governments, the department shall make a determination of the region's existing and projected housing need based upon the assumptions and methodology determined pursuant to subdivision (c). The region's existing and

projected housing need shall reflect the achievement of a feasible balance between jobs and housing within the region using the regional employment projections in the applicable regional transportation plan. Within 30 days following notice of the determination from the department, the council of governments may file an objection to the department's determination of the region's existing and projected housing need with the department.

(2) The objection shall be based on and substantiate either of the following:

(A) The department failed to base its determination on the population projection for the region established pursuant to subdivision (b), and shall identify the population projection which the council of governments believes should instead be used for the determination and explain the basis for its rationale.

(B) The regional housing need determined by the department is not a reasonable application of the methodology and assumptions determined pursuant to subdivision (c). The objection shall include a proposed alternative determination of its regional housing need based upon the determinations made in subdivision (c), including analysis of why the proposed alternative would be a more reasonable application of the methodology and assumptions determined pursuant to subdivision (c).

(3) If a council of governments files an objection pursuant to this subdivision and includes with the objection a proposed alternative determination of its regional housing need, it shall also include documentation of its basis for the alternative determination. Within 45 days of receiving an objection filed pursuant to this section, the department shall consider the objection and make a final written determination of the region's existing and projected housing need that includes an explanation of the information upon which the determination was made.

SEC. 8. Section 21061.3 of the Public Resources Code is amended to read:

21061.3. "Infill site" means a site in an urbanized area that meets either of the following criteria:

(a) The site has not been previously developed for urban uses and both of the following apply:

(1) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses.

(2) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.

(b) The site has been previously developed for qualified urban uses.

SEC. 9. Section 21094 of the Public Resources Code is amended to read:

21094. (a) Where a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report on the later project need not examine those effects which the lead agency determines were either (1) mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a

result of the prior environmental impact report, or (2) examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(b) This section applies only to a later project which the lead agency determines (1) is consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (2) is consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located, and (3) is not subject to Section 21166.

(c) For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

(d) All public agencies which propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081.

(e) When tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.

(f) If a residential, commercial, or retail project is consistent with a sustainable communities strategy, as modified by a supplement, if any, adopted pursuant to Section 65080 of the Government Code, the environmental analysis of that project may tier the analysis of the climate impacts of greenhouse gas emissions from automobiles and light trucks associated with the project from the environmental impact report prepared for the regional transportation plan. For purposes of this section, "consistent with a sustainable communities strategy" means that the use, density, and intensity of the project are consistent with the use, density, and intensity identified for the project area in the sustainable communities strategy, as modified by a supplement, if any, and any mitigation measures adopted in the environmental impact report on the regional transportation plan have been or will be incorporated into the project. Nothing in this subdivision restricts the use of a tiered environmental impact report as otherwise provided in this division.

SEC. 10. Chapter 4.2 (commencing with Section 21155) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 4.2. IMPLEMENTATION OF THE SUSTAINABLE COMMUNITIES STRATEGY

21155. (a) This chapter applies only within a local jurisdiction that has amended its general plan so that the land use, housing, and open-space elements of the general plan are substantially consistent with the sustainable communities strategy, as modified by a supplement, if any, most recently adopted by the transportation planning agency pursuant to Section 65080 of the Government Code for the region in which the local government is located.

(b) For purposes of this section, the land use, housing, and open-space elements of the general plan are substantially consistent

with the sustainable communities strategy, as modified by a supplement, if any, if the land use and housing elements designate housing, retail, commercial, office, and industrial uses at levels of density and intensity that are substantially consistent with the uses, density, and intensity identified in the sustainable communities strategy, as modified by a supplement, if any, for those locations and if the open space element designates uses for significant farmlands or significant resource areas that are consistent with the protection of all of the resources of those lands or areas.

(c) Notwithstanding subdivision (a), the provisions of Sections 21155.1, 21155.2, and 21155.3 may be utilized for projects within a local jurisdiction if the project is shown only in the supplement to the sustainable communities strategy.

(d) Notwithstanding subdivision (a) or (c), the provisions of Sections 21155.1, 21155.2, and 21155.3 may not be utilized for projects identified for development on lands referenced in clause (v) of subparagraph (F) of paragraph (2) of subdivision (b) of Section 65080.

21155.1. If the legislative body finds, after conducting a public hearing, that a project meets all of the requirements of subdivisions (a) and (b) and one of the requirements of subdivision (c), the project is declared to be a sustainable communities project and shall not be subject to any other provisions of this division.

(a) The project complies with all of the following environmental criteria:

(1) The project and other projects approved prior to the approval of the project but not yet built can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(2) (A) The site of the project does not contain wetlands or riparian areas and does not have significant value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(B) For the purposes of this paragraph, "wetlands" has the same meaning as in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) For the purposes of this paragraph:

(i) "Riparian areas" means those areas transitional between terrestrial and aquatic ecosystems and that are distinguished by gradients in biophysical conditions, ecological processes, and biota. A riparian area is an area through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. A riparian area includes those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems. A riparian area is adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.

(ii) "Wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(iii) Habitat of "significant value" includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code); habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife.

(3) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(4) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(A) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(B) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(5) The project does not have a significant effect on historical resources pursuant to Section 21084.1.

(6) The project site is not subject to any of the following:

(A) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(B) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(C) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(D) Seismic risk as a result of being within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(E) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(7) The project site is not located on developed open space.

(A) For the purposes of this paragraph, "developed open space" means land that meets all of the following criteria:

(i) Is publicly owned, or financed in whole or in part by public funds.

(ii) Is generally open to, and available for use by, the public.

(iii) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(B) For the purposes of this paragraph, "developed open space" includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired with public funds dedicated to the acquisition of land for housing purposes.

(8) The buildings in the project will comply with all green building standards required by the local jurisdiction.

(b) The project meets all of the following land use criteria:

(1) The project is located on an infill site.

(2) The project is a residential project or a residential or mixed use project consisting of residential uses and primarily neighborhood-serving goods, services, or retail uses that do not exceed 25 percent of the total floor area of the project.

(3) The site of the project is not more than eight acres in total area.

(4) The project does not contain more than 200 residential units.

(5) The project density is at least equal to the applicable density level provided in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2 of the Government Code.

(6) The project does not result in any net loss in the number of affordable housing units within the project area.

(7) The project does not include any single level building that exceeds 75,000 square feet.

(8) The project is consistent with the general plan.

(9) Any applicable mitigation measures approved in the final environmental impact reports on the regional transportation plan or the local general plan amendment have been or will be incorporated into the project.

(10) The project is determined not to conflict with nearby operating industrial uses.

(c) The project meets at least one of the following four criteria:

(1) The project meets both of the following:

(A) At least 20 percent of the housing will be sold to families of moderate income, or not less than 10 percent of the housing will be rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(B) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code. Rental units shall be affordable for at least 55 years. Ownership units shall be subject to resale restrictions or equity sharing requirements for at least 30 years.

(2) The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to paragraph (1).

(3) The project is located within one-quarter mile of a major transit stop.

(4) The project provides public open space equal to or greater than five acres per 1,000 residents of the project.

21155.2. (a) A project that meets the following requirements shall be eligible for either the provisions of subdivision (b) or (c):

(1) Environmental impact reports have been certified on the

regional transportation plan containing the sustainable communities strategy and on the applicable general plan provisions.

(2) Any applicable mitigation measures or performance standards or criteria set forth in the prior environmental impact reports, and adopted in findings, have been or will be incorporated into the project.

(3) The project density is at least 10 residential units per net acre.

(4) At least 75 percent of the total building square footage of the project consists of residential buildings.

(b) A project that satisfies the requirements of subdivision (a) may be reviewed through a sustainable communities environmental assessment as follows:

(1) An initial study shall be prepared to identify all significant or potentially significant project-specific impacts of the project. The initial study does not need to evaluate any significant cumulative or growth-inducing effects on the environment that were identified and discussed in the environmental impact reports certified for the regional transportation plan and the general plan.

(2) The sustainable communities environmental assessment shall contain measures that substantially lessen to a level of insignificance or avoid all project-specific impacts of the project.

(3) A draft of the sustainable communities environmental assessment shall be circulated for public comment for a period of not less than 30 days. Notice shall be provided in the same manner as required for an environmental impact report pursuant to Section 21092.

(4) Prior to acting on the sustainable communities environmental assessment, the lead agency shall consider all comments received.

(5) A sustainable communities environmental assessment may be approved by the lead agency after conducting a public hearing, reviewing the comments received, and finding that:

(A) All potentially significant or significant project-specific impacts have been identified and analyzed.

(B) With respect to each significant project-specific impact on the environment, either of the following apply:

(i) Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant effects to a level of insignificance.

(ii) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(6) The legislative body of the lead agency shall conduct the public hearing or a planning commission may conduct the public hearing if local ordinances allow a direct appeal of approval of a document prepared pursuant to this division to the legislative body subject to a fee not to exceed five hundred dollars (\$500).

(7) The lead agency's approval of a sustainable communities environmental assessment shall be reviewed under the substantial evidence standard.

(c) A project that satisfies the requirements of subdivision (a) may be reviewed by an environmental impact report that complies with all of the following:

(1) An initial study shall be prepared to identify all the project-specific impacts of the project that may have a significant effect on the environment based upon substantial evidence in light of the whole record. The initial study does not need to evaluate any



significant cumulative or growth-inducing effects on the environment that were identified and discussed in the environmental impact reports certified for the regional transportation plan and the general plan.

(2) An environmental impact report prepared pursuant to this subdivision need only address the significant or potentially significant impacts on the environment identified pursuant to paragraph (1). It is not required to analyze off-site alternatives to the project. It shall otherwise comply with the requirements of this division.

21155.3. (a) The legislative body of a local jurisdiction may adopt traffic mitigation measures that would apply to future projects described in subdivision (b). These measures shall be adopted or amended after a public hearing and may include requirements for the installation of traffic control improvements, street or road improvements, and contributions to road improvement or transit funds, transit passes for future residents, or other measures that will avoid or substantially lessen the traffic impacts of those future projects.

(b) The traffic mitigation measures adopted pursuant to this section shall apply to projects where the residential density is at least 10 units per net acre and where at least 75 percent of the total building square footage of the project consists of residential buildings.

(c) (1) A project described in subdivision (b) that is seeking a discretionary approval is not required to comply with any additional mitigation measures required by paragraph (1) or (2) of subdivision (a) of Section 21081, for the traffic impacts of that project on intersections, streets, highways, freeways, or mass transit, if the local jurisdiction issuing that discretionary approval has adopted traffic mitigation measures in accordance with this section.

(2) Paragraph (1) does not restrict the authority of a local jurisdiction to adopt feasible mitigation measures with respect to the impacts of a project on public health or on pedestrian or bicycle safety.

(d) The legislative body shall review its traffic mitigation measures and update them as needed at least every five years.

~~SEC. 11. — If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.~~

*SEC. 11. The Legislature finds that there is no mandate contained in this act that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

**BILL:** SB 1722

**AUTHOR:** SENATOR JENNY OROPEZA  
(D-CARSON)

**SUBJECT:** METRO GREEN LINE CONSTRUCTION AUTHORITY

**STATUS:** SENATE TRANSPORTATION & HOUSING COMMITTEE

**ACTION:** OPPOSE

**RECOMMENDATION**

Adopt an “Oppose” position on SB 1722 (Oropeza) that would establish a Metro Green Line Construction Authority.

**ISSUE**

SB 1722 would create a construction authority for a future extension of the Metro Green Line to the airport. Staff is concerned that the creation of a construction authority for this project may be premature and potentially fractious in light of the fact that funding for the construction of the project has not been identified.

**PROVISIONS**

Existing law establishes the Los Angeles County Metropolitan Transportation Authority (LACMTA) as the single successor agency to the Southern California Rapid Transit District and the Los Angeles County Transportation Commission. LACMTA is responsible for most transit guideway projects in Los Angeles County and has specified duties and responsibilities with regard to transportation.

Existing law establishes the Exposition Metro Line Construction Authority for the purpose of awarding and overseeing final design and construction contracts for completion of the Los Angeles-Exposition Metro Line light rail project and the Metro Gold Line Foothill Extension Construction authority for the completion of the Gold Line through the San Gabriel Valley.

Specifically, SB 1722 would:

- Establish the Metro Green Line Construction Authority for the purpose of awarding and overseeing final design and construction contracts for completion of the Los Angeles-Metro Green Line light rail project that would establish an extension of the Metro Green Line to the Los Angeles International Airport, contingent upon the City of Los Angeles' agreement to fund the project's environmental impact reports;

- Upon allocation of federal and local funds by LACMTA for these purposes, require the construction authority to:
  - (1) Conduct the financial studies and the planning and engineering necessary for completion of the project;
  - (2) Adopt an administrative code, including a specified code of conduct for administration of the construction authority in accordance with specified laws;
  - (3) As necessary for final design and construction, complete a detailed management, implementation, safety, and financial plan for the project, and to submit the plan to the Governor, the Legislature, and the California Transportation Commission.
- Require the state to be reimbursed by the City of Los Angeles for specified costs;
- Require that the construction authority be governed by a board consisting of 5 voting members and 2 nonvoting members, and would provide for appointment of alternates;
- Authorize the governing board to appoint an executive director, to serve at the pleasure of the construction authority, who would be authorized to appoint staff or retain consultants as necessary to carry out the duties of the construction authority;
- Require that all contracts approved and awarded by the executive director be awarded in accordance with state and federal laws relating to procurement and would require that the awards be based on price or competitive negotiation, or on both;
- Require LACMTA to identify and expeditiously enter into an agreement with the construction authority to hold in trust with the construction authority all real and personal property, and any other assets, accumulated in the planning, design, and construction of the project, as specified, to outline the design review, construction, and testing process, and to describe the funding sources of the authority, the financial elements, and the approved budget for the project;
- Require the construction authority to enter into a memorandum of understanding with LACMTA that specifically addresses the ability of LACMTA to review any significant changes in the scope of the design or construction, or both, of the project;
- Prohibit the construction authority from encumbering any future farebox revenue anticipated from the operation of the project or from encumbering the project with any obligation that is transferable to LACMTA upon completion of the design and construction of the project, except as specified;
- Require the authority to be dissolved upon completion of the project. LACMTA would assume responsibility for operating the project upon dissolution of the authority;
- Impose a state-mandated local program by placing additional duties upon local governmental entities;
- The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement;
- Provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

## **IMPACT ANALYSIS**

Senator Jenny Oropeza has introduced SB 1722 to establish a Green Line Construction Authority to advance the extension of the Green Line to LAX. The bill would establish the

Construction Authority contingent on the allocation of funds by Metro and the environmental impact reports are paid by the City of Los Angeles.

The measure requires that our agency expeditiously enter into an agreement with the Authority to hold in trust all real and personal property and any other assets and describe the funding sources of the authority, the financial elements and the approved budget for the project. These types of agreements result in significant legal costs for our agency. In the case of the Gold Line Construction Authority, our agency incurred \$190,000 in costs to develop the property trust agreement.

Metro is currently examining a number of corridor projects including the Crenshaw Corridor which would connect LAX to the regional transit system. Additionally, the Board is in the process of updating the Long Range Transportation Plan and this process will determine future transit projects to move forward. In connection with the Green Line, Metro has completed a technical feasibility analysis of the Harbor Subdivision. The analysis showed that it is feasible to operate passenger transit service along this rail right of way with freight service under certain circumstances.

The measure proposes that the Governing Board of the Authority include five voting members, serving a four year term:

- One member appointed by the City of Los Angeles
- One member appointed by the Board of Airport Commissioners
- One member appointed by Metro Board
- One member appointed by the Board of Supervisors
- One at-large member (appointment is yet to be determined)

The Executive Directors of our agency and the Los Angeles World Airports would serve as non-voting ex-officio members on the Board.

Last year, Assemblymember Ted Lieu introduced a similar bill, AB 889. Our Board adopted an Oppose position at the Executive Management & Audit Committee. The full Board did not adopt a position on the bill in an effort to work with Assemblymember Lieu. AB 889 was held in Assembly Appropriations Committee.

The author has submitted amendments to the bill that will be made when the bill is heard in the Senate Transportation and Housing Committee next week. The author is proposing to allow the creation of the Construction Authority without identified funding for the project. The City of Los Angeles would still be required to fund the environmental studies. In contrast, the 2 Construction Authorities in existence had identified funding for their projects before they were established. The current language in the bill would not allow the Authority to exercise certain duties and responsibilities until the City of Los Angeles commits funding for the environmental review and Metro allocates funds for the project. The current amendments would clearly allow the authority to form and begin to take whatever actions it deems necessary to move the project forward.

Given the short falls in federal and state funding, the Board will be challenged with prioritizing funding for projects that bring the most benefit to our region. Extending the

Metro Green Line may be an important component of a comprehensive transit network. However, until that decision is made and funding is identified for the project, staff feels that this effort would be premature.

At this time, creating a construction authority for this line would create another entity that competes for limited transportation funds in Los Angeles County. Metro currently enjoys a cooperative working relationship with the Exposition Construction Authority. Consistent with Metro's Long Range Transportation Plan, Staff is working with the Authority on funding and construction coordination issues. Since future Metro Green Line extensions and funding have not yet been identified, staff is concerned that the creation of another authority would create competition rather than cooperation.

There is no registered support or opposition on this measure at this time. Los Angeles City Councilman Bill Rosendahl is the sponsor of the bill. Staff recommends that the Board of Directors adopt an Oppose position on SB 1722.

BILL NUMBER: SB 1722 AMENDED  
BILL TEXT

AMENDED IN SENATE MARCH 28, 2008

INTRODUCED BY Senator Oropeza

FEBRUARY 22, 2008

~~An act relating to local government.~~ An act to add Chapter 8 (commencing with Section 132700) to Division 12.7 of the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1722, as amended, Oropeza. ~~Local government: budgetary constraints.~~ Metro Green Line Construction Authority.

Existing law establishes the Los Angeles County Metropolitan Transportation Authority (LACMTA) as the single successor agency to the Southern California Rapid Transit District and the Los Angeles County Transportation Commission. LACMTA is responsible for most transit guideway projects in Los Angeles County and has specified duties and responsibilities with regard to transportation.

Existing law establishes the Exposition Metro Line Construction Authority for the purpose of awarding and overseeing final design and construction contracts for completion of the Los Angeles-Exposition Metro Line light rail project from the Metro Rail Station at 7th and Flower Streets in the City of Los Angeles to the downtown area of the City of Santa Monica, as specified.

The bill would establish the Metro Green Line Construction Authority for the purpose of awarding and overseeing final design and construction contracts for completion of the Los Angeles-Metro Green Line light rail project that would establish an extension of the Metro Green Line to the Los Angeles International Airport, contingent upon the City of Los Angeles' agreement to fund the project's environmental impact reports. The bill would, upon allocation of federal and local funds by LACMTA for these purposes, require the construction authority to (1) conduct the financial studies and the planning and engineering necessary for completion of the project, (2) adopt an administrative code, including a specified code of conduct for administration of the construction authority in accordance with specified laws, and (3) as necessary for final design and construction, complete a detailed management, implementation, safety, and financial plan for the project, and to submit the plan to the Governor, the Legislature, and the California Transportation Commission. The bill would also require the state to be reimbursed by the City of Los Angeles for specified costs.

The bill would require that the construction authority be governed by a board consisting of 5 voting members and 2 nonvoting members, and would provide for appointment of alternates. The bill would authorize board members to receive reimbursement for expenses, as

specified.

The bill would authorize the governing board to appoint an executive director, to serve at the pleasure of the construction authority, who would be authorized to appoint staff or retain consultants as necessary to carry out the duties of the construction authority. The bill would require that all contracts approved and awarded by the executive director be awarded in accordance with state and federal laws relating to procurement and would require that the awards be based on price or competitive negotiation, or on both.

The bill would require LACMTA to identify and expeditiously enter into an agreement with the construction authority to hold in trust with the construction authority all real and personal property, and any other assets, accumulated in the planning, design, and construction of the project, as specified, to outline the design review, construction, and testing process, and to describe the funding sources of the authority, the financial elements, and the approved budget for the project.

The bill would require the construction authority to enter into a memorandum of understanding with LACMTA that specifically addresses the ability of LACMTA to review any significant changes in the scope of the design or construction, or both, of the project.

The bill would prohibit the construction authority from encumbering any future farebox revenue anticipated from the operation of the project or from encumbering the project with any obligation that is transferable to LACMTA upon completion of the design and construction of the project, except as specified.

The bill would require the authority to be dissolved upon completion of the project. LACMTA would assume responsibility for operating the project upon dissolution of the authority.

The bill would impose a state-mandated local program by placing additional duties upon local governmental entities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law requires local governments to administer various social service programs to assist the residents of local communities.~~

~~This bill would declare the intent of the Legislature to enact legislation that would promote investigation into how the state can better assist local governments to meet their social services needs within their budgetary constraints.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~  
yes . State-mandated local program: ~~no~~  
yes .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 8 (commencing with Section 132700) is added to Division 12.7 of the Public Utilities Code , to read:

CHAPTER 8. METRO GREEN LINE CONSTRUCTION AUTHORITY

132700. For purposes of this chapter, the following terms have the following meanings:

- (a) "Authority" is the Metro Green Line Construction Authority created under this chapter.
- (b) "Board" is the governing board of the authority.
- (c) "Commission" is the California Transportation Commission.
- (d) "LACMTA" is the Los Angeles County Metropolitan Transportation Authority.
- (e) "Project" is the Los Angeles-Metro Green Line light rail project, which sole purpose is for the extension of the Metro Green Line to the Los Angeles International Airport.

132705. The authority is hereby created for the purpose of awarding and overseeing final design and construction contracts for completion of the project.

132710. (a) The authority has all the powers necessary for planning, acquiring, leasing, developing, jointly developing, owning, controlling, using, jointly using, disposing of, designing, procuring, and building the project, including, but not limited to, all of the following:

- (1) Acceptance of grants, fees, allocations, and transfers of funds from federal, state, and local agencies, and private entities.
- (2) Acquiring, through purchase or through eminent domain proceedings, any property necessary for, incidental to, or convenient for, the exercise of the powers of the authority, provided the authority shall use existing rights-of-way where feasible.
- (3) Incurring indebtedness, secured by pledges of revenue available for project completion.
- (4) Contracting with public and private entities for the planning, design, and construction of the project. These contracts may be assigned separately or may be combined to include any or all tasks necessary for completion of the project.
- (5) Entering into cooperative or joint development agreements with local governments or private entities. These agreements may be entered into for the purpose of sharing costs, selling or leasing land, air, or development rights, providing for the transferring of passengers, making pooling arrangements, or for any other purpose that is necessary for, incidental to, or convenient for the full exercise of the powers granted to the authority. For purposes of this paragraph, "joint development" includes, but is not limited to, an agreement with any person, firm, corporation, association, or organization for the operation of facilities or development of projects adjacent to, or physically or functionally related to, the project.
- (6) Relocation of utilities, as necessary for completion of the project.

(b) The duties of the authority include, but are not limited to, all of the following:

- (1) Conducting financial studies, planning, and engineering necessary for completion of the project.
- (2) (A) Adoption of an administrative code for administration of the authority in accordance with any applicable laws, including, but not limited to, the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), contracting and procurement laws, laws relating to contracting



goals for the participation of disadvantaged businesses, and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(B) (i) The administrative code adopted under subparagraph (A) shall include a code of conduct for employees and board members that is consistent with Sections 84308 and 87103 of the Government Code and prohibits board members and staff from accepting gifts valued at ten dollars (\$10) or more from contractors, potential contractors, or their subcontractors.

(ii) The code shall require the disclosure, on the record, of the proceedings by the officer of the agency who receives a contribution within the preceding 24 months in an amount of more than two hundred fifty dollars (\$250) from a party or participant to a proceeding, and the disclosure by the party or participant.

(iii) The code shall provide that no officer of the agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding, as described in Section 84308 of the Government Code, if the officer has willfully or knowingly received a contribution in the amount of more than two hundred fifty dollars (\$250) within the preceding 24 months from a party or his or her agent, or from any participant or his or her agent, if the participant has a financial interest in the decision.

(iv) Any officer deemed ineligible to participate in a proceeding due to the provisions of this code of conduct may be replaced for the purposes of that proceeding by an appointee chosen by the appropriate appointing authority.

(v) Under the code of conduct, board members shall be deemed to have a financial interest in a decision within the meaning of Section 87100 of the Government Code if the decision involves the donor of, or intermediary or agent for a donor of, a gift or gifts aggregating ten dollars (\$10) or more in value within the 12 months prior to the time the decision was made.

(3) As necessary for final design and construction, completion of a detailed management, implementation, safety, and financial plan for the project and submission of the plan to the Governor, the Legislature, and the commission.

(c) The authority shall make reasonable progress, as determined by the commission, in the final design and construction of the project.

(d) The duties and responsibilities imposed by this chapter shall be contingent upon allocation of federal and local funds by LACMTA for these purposes and upon the City of Los Angeles agreeing to provide full funding for the project's environmental impact report or reports.

(e) The state shall be reimbursed by the City of Los Angeles for any initial administrative expenses associated with the establishment of the authority and board.

132715. (a) The authority shall be governed by a board consisting of five voting members who shall be appointed as follows:

(1) One member shall be appointed by the city council of the City of Los Angeles by a majority vote of the membership of the city council.

(2) One member shall be appointed by the Los Angeles Board of Airport Commissioners.

(3) One member shall be appointed by the Los Angeles County Board of Supervisors.

(4) One member shall be appointed by the board of LACMTA.

(5) One at-large member shall be appointed as to be determined.

(b) All members shall serve a term of not more than four years, with no limit on the number of terms that may be served by any person.

(c) Each appointing authority shall also appoint an alternate to serve in a member's absence. If the position of a member becomes vacant, the alternate shall serve until the position is filled as required pursuant to subdivision (a).

(d) Members of the board shall be subject to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(e) Three members of the board shall constitute a quorum.

(f) The board shall elect a chairperson and a vice chairperson from among the membership of the board.

(g) Each member of the board may be compensated for expenses directly related to the performance of duties imposed by the authority, including, but not limited to, travel and personal expenses.

(h) The chief executive officer of LACMTA and the executive director of Los Angeles World Airports shall serve on the board as ex officio, nonvoting members.

(i) Members appointed to the board may include members or employees of the appointing authorities set forth in subdivision (a).

132720. (a) The board may appoint an executive director to serve at the pleasure of the authority.

(b) The executive director is exempt from all civil service provisions and shall be paid a salary established by the board.

(c) The executive director may appoint staff or retain consultants as necessary to carry out the duties of the authority.

(d) All contracts approved and awarded by the executive director shall be awarded in accordance with state and federal laws relating to procurement. Awards shall be based on price or competitive negotiation, or on both of those things.

132725. LACMTA shall identify and expeditiously enter into an agreement or agreements with the authority to do all of the following:

(a) Hold in trust with the authority all real and personal property, and any other assets accumulated in the planning, design, and construction of the project, including, but not limited to, rights-of-way, documents, third-party agreements, contracts, and design documents, as necessary for completion of the project.

(b) Outline the design review, construction, and testing process that acknowledges LACMTA's direct role in the review of the project to ensure the final project will be compatible, functionally connected, and operative within LACMTA's existing metro rail system.

(c) Describe the various funding sources and the obligations of the authority to assist LACMTA obtain federal, state, and local funds for the project, and the authority's obligations and duties upon receipt of the funds necessary to construct the project.

(d) Describe all financial elements of the project, and the budget approved for the project.

132735. The authority shall enter into a memorandum of understanding with LACMTA that shall specifically address the ability of LACMTA to review any significant changes in the scope of the design or construction, or both design and construction, of the

project. For purposes of this section, the term "significant change" means any change of mode or technology, or any other substantive change that affects the connectivity and operation of the project as part of the overall transit system operated by LACMTA, or any combination of those things. Design and construction of a light rail project that is consistent with the current scope of the project shall not be deemed to be a significant change in the scope of the project and shall not require concurrence by LACMTA.

132740. The authority shall not encumber any future farebox revenue anticipated from the operation of the project.

132745. The authority shall not encumber the project with any obligation that is transferable to LACMTA upon completion of the design and construction of the project. The design and construction to be administered by the authority does not include rolling stock, which is a component of the operation of the project and shall be administered by LACMTA.

132750. The authority shall be dissolved upon completion of construction of the light rail project. LACMTA shall assume responsibility for operating the project upon dissolution of the authority.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SECTION 1. It is the intent of the Legislature to enact legislation that would promote investigation into how the state can better assist local governments to meet their social services needs within their budgetary constraints.~~

**BILL:** SB 1732

**AUTHOR:** SENATOR GLORIA ROMERO  
(D-LOS ANGELES)

**SUBJECT:** RALPH M. BROWN ACT

**STATUS:** ASSEMBLY LOCAL GOVERNMENT COMMITTEE and SENATE  
JUDICIARY COMMITTEE

**POSITION:** NEUTRAL – IF AMENDED

**RECOMMENDATION**

Adopt a “Neutral-if Amended” position on SB 1732 (Romero) that would prohibit a majority of the members of a legislative body from using a series of communications, directly or through intermediaries, to conduct deliberations, including, but not limited to any communications that advance or clarify a member's understanding of an issue.

**ISSUE**

SB 1732 was introduced by Senator Gloria Romero to modify the Brown Act in response to the Wolfe decision. SB 1732 would reestablish the Brown Act’s prohibition on the use of serial communication or deliberations among a majority of a local legislative body. This measure could impact the communication of our agency staff with our Board.

**PROVISIONS**

Existing law, The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The act prohibits any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item, with an exception for an authorized teleconference.

Specifically, SB 1732 would:

- Prohibit a majority of members of a legislative body of a local agency from using, outside a meeting authorized by the *act*, a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body;
- State the Legislature's declaration that it disapproves the holding of the court in the Wolfe case to the extent it construes the prohibition on serial meetings and would state its intention that the changes made by this bill supersede that holding;

- State the Legislature's intention that the changes made by this bill do not prevent a local agency staff official, employee, or individual from engaging in separate conversations or communications, outside of a meeting authorized by the Brown Act, with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, provided that the local agency staff official, employee, or individual does not communicate to members of the legislative body the comments or position of any other member or members of the body;
- Provide that, notwithstanding any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

## IMPACT ANALYSIS

Senator Gloria Romero has introduced SB 1732 to address litigation relating to the Brown Act. The Brown Act requires that the public's business be conducted in the open. Among other things, the Brown Act prohibits the use of direct communications, personal intermediaries, or technological devices by a majority of the legislative body to develop a collective concurrence as to an item to be considered by the legislative body.

In 2006, an appellate court found that meetings between a city manager and individual city council members for the purpose of discussing a policy issue that would be discussed at a future public meeting did not inherently violate the Brown Act's prohibition against serial meetings. [*Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533] The court found that the Brown Act does not expressly prohibit serial meetings and, to constitute a violation of the Act, the serial meetings must amount to "more than mere policy related informational exchanges." SB 1732 revises the Brown Act's prohibition against serial meetings.

SB 1732 was introduced in response to that appellate decision and is intended to prohibit a majority of the members of a legislative body from using a series of communications, directly or through intermediaries, to conduct deliberations, including, but not limited to any communications that advance or clarify a member's understanding of an issue, facilitate an agreement or compromise among members on an issue, or advance the ultimate resolution of an issue. In light of the interaction between our staff and the Board members and their staff, this provision would limit our communication.

Last year Senator Romero introduced a similar bill, SB 964, which was vetoed by the Governor. The Governor's concerns related to the limitations SB 964 would have established for public entities when communicating among officials and agency staff outside of a public meeting.

Senator Romero has included legislative intent language in SB 1732 to address these concerns. The legislative intent language states:

"It would also state the Legislature's intent that the changes made by this bill

do not prevent a local agency staff official, employee, or individual from engaging in separate conversations or communications, outside of a meeting authorized by the Brown Act, with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, provided that the local agency staff official, employee, or individual does not communicate to members of the legislative body the comments or position of any other member or members of the body.”

Our County Counsel believes the intent language addresses our concerns. However, he recommends that the intent language be amended into the bill. Staff will work with Senator Romero’s office to amend the bill. The Board adopted a Neutral position last year. Staff proposes an Neutral-if Amended position.

The California News Publishers Association is the sponsor of the bill.

**SUPPORT**

California Newspaper Publishers Association,  
California Broadcasters Association,  
Los Angeles Unified School District Board Member Monica Garcia  
Upper San Gabriel Valley Municipal Water District  
American Federation of State County and Municipal Employees

**OPPOSE**

Association of California School Administrators  
California School Boards Association  
Chief Executive Officers of the Community Colleges

BILL NUMBER: SB 1732 AMENDED  
BILL TEXT

AMENDED IN SENATE MARCH 25, 2008

INTRODUCED BY Senator Romero  
( Principal coauthor: Assembly Member  
Lieber )  
(Coauthor: Senator McClintock)  
( ~~Coauthors: Assembly Members~~  
~~Lieber~~ -- and  
~~Portantino~~ Coauthor: Assembly Member  
Portantino )

FEBRUARY 22, 2008

An act to amend Section 54952.2 of, and to add Section 6252.7 to,  
the Government Code, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 1732, as amended, Romero. Local agencies.

~~The~~

(1) *The Ralph M. Brown Act*

requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The act prohibits any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item, with an exception for an authorized teleconference. An appellate court in *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533 held that a violation of this prohibition occurs only if a series of meetings by members of a body results in a collective concurrence.

This bill would instead prohibit a majority of members of a legislative body of a local agency from using , outside a meeting authorized by the act, a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. It also would state the Legislature's declaration that it disapproves the holding of the court in the case named above to the extent it construes the prohibition on serial meetings and would state its intention that the changes made by this bill supersede that holding. It would also state the Legislature's intention that the changes made by this bill do not prevent a local agency staff official, employee, or individual from engaging in separate conversations or communications, outside of a meeting authorized by the Brown Act, with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, provided that the local agency staff official, employee, or individual does not communicate to members of the legislative body the comments or position of any

other member or members of the body.

~~The~~

(2) *The California Public Records*

Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless they are exempt from disclosure. The Ralph M. Brown Act provides that, notwithstanding any other provision of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act unless exempt from disclosure under that act. The Ralph M. Brown Act requires that these writings be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

This bill would provide that, notwithstanding any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available ~~, and shall not charge any of those members a fee to inspect or obtain a copy of that writing~~ .

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature hereby declares that it disapproves the court's holding in *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533, 545, fn. 6, to the extent that it construes the prohibition against serial meetings by a legislative body of a local agency, as contained in the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, to require that a series of individual meetings by members of a body actually result in a collective concurrence to violate the prohibition rather than also including the process of developing a collective concurrence as a violation of the prohibition.

(b) It is the intent of the Legislature that the changes made by Section 3 of this act supersede the court's holding described in subdivision (a).

(c) *It is the intent of the Legislature that the changes made by Section 3 of this act do not prevent a local agency staff official, employee, or individual from engaging in separate conversations or communications, outside of a meeting authorized by the Ralph M. Brown Act, with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, provided that the local agency staff official, employee, or individual does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.*

SEC. 2. Section 6252.7 is added to the Government Code, to read:



6252.7. Notwithstanding Section 6252.5 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency, as defined in Section 54951, shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made ~~available, and shall not charge any of those members a fee to inspect or obtain a copy of that writing.~~ available.

SEC. 3. Section 54952.2 of the Government Code is amended to read:

54952.2. (a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b) A majority of the members of a legislative body shall not, *outside a meeting authorized by this act*, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

**BILL:** AB 2650

**AUTHOR:** ASSEMBLY MEMBER WILMER AMINA CARTER  
(D-RIALTO)

**SUBJECT:** SURFACE TRANSPORTATION PROJECT DELIVERY PILOT  
PROGRAM

**STATUS:** ASSEMBLY TRANSPORTATION COMMITTEE

**ACTION:** SUPPORT

**RECOMMENDATION**

Adopt a “Support” position on AB 2650 (Carter) which would extend the limited waiver of sovereign immunity required to participate in the Surface Transportation Project Delivery Pilot Program.

**ISSUE**

Caltrans is required to assume federal responsibilities to participate in the Surface Transportation Project Delivery Pilot Program, requiring the limited waiver of sovereign immunity. The waiver was enacted by AB 1039 (Nunez) in 2006. The waiver ends January 1, 2009. This bill would extend the waiver to August 10, 2011, the length of the pilot program. Under this program, the State may perform the environmental review responsibilities of the federal government on highway projects. In doing so, Caltrans is able to more expeditiously complete the required environmental reviews.

**PROVISIONS**

Existing law gives the Department of Transportation full possession and control of state highways and associated property. Existing federal law requires the United States Secretary of Transportation to carry out a surface transportation project delivery pilot program, as specified. The Secretary has authorized California to participate in that program, and California has agreed to that participation. A 3-year memorandum of understanding was negotiated between the parties for purposes of state assumption of responsibility for categorical exclusions. Under this program Caltrans is able to act on behalf of the federal government in completing required environmental reviews.

Existing law, until January 1, 2009, provides that the State of California consents to the jurisdiction of the federal courts with regard to the compliance, discharge, or enforcement of the responsibilities assumed pursuant to the surface transportation project delivery pilot program. Existing law requires the department to submit a specified report to the Legislature by January 1, 2008, relating to the surface transportation project delivery pilot program.

Specifically, AB 2650 would:

- Require the department to submit that report to the Legislature by January 1, 2009, and again by January 1, 2010;
- Would also extend the operation of the above-described pilot program provisions and instead make those provisions inoperative upon specified circumstances, including, but not limited to, upon program termination or upon the end of the 3-year memorandum of understanding described above.

## **IMPACT ANALYSIS**

Caltrans has been assigned the Secretary of Transportation's responsibilities to complete environmental reviews for highway projects. This authorization was granted in the last reauthorization process at the federal level. Through this assignment, Caltrans is participating in the "Surface Transportation Project Delivery Pilot Program" (also known as NEPA Delegation) under a Memorandum of Understanding (MOU) between Caltrans and the Federal Highway Administration (FHWA), effective July 1, 2007. Caltrans also assumed certain categorical exclusion (CE) responsibilities under Section 6004 through an MOU signed by Caltrans and FHWA on June 7, 2007.

In order to assume these federal responsibilities, Caltrans was required to accept the jurisdiction of the federal courts, requiring the limited waiver of sovereign immunity. Assemblymember Fabian Nunez introduced AB 1039 to allow Caltrans to enact the waiver which became effective November 7, 2006 through the adoption of Proposition 1B by the California electorate. The waiver will be effective until January 1, 2009. Assemblymember Wilmer Amina Carter has introduced AB 2650 to extend the waiver through the period of the Pilot Program, currently scheduled to terminate on August 10, 2011, and through the length of the CE assignment.

In working with Caltrans, staff has identified several projects in the Los Angeles area, including the I-405 Wilmington Ramp in the City of Carson and the Lemon Street Project in the City of Los Angeles that are part of the Pilot Program. The waiver would help to streamline the environmental process by allowing Caltrans to assume NEPA responsibilities. Caltrans has noted that in the first six months of the Pilot Program, draft environmental documents have been approved in 72 percent less time (from a median approval time of 6.1 months prior to the Pilot program to 1.7 months since the Pilot Program) and final environmental documents in 67 percent less time (from a median time of 2.4 months to 0.8 months).

In addition, staff would encourage Caltrans and FHWA to collaborate to reduce the number of duplicative records and forms that burden those who are preparing NEPA documents. These actions could achieve valuable time savings in the process. Therefore, staff recommends a Support position on AB 2650.

Caltrans is the sponsor of the bill. There is no registered opposition for this measure at this time.

ATTACHMENT D-2

BILL NUMBER: AB 2650 INTRODUCED  
BILL TEXT

INTRODUCED BY Assembly Member Carter

FEBRUARY 22, 2008

An act to amend Section 820.1 of the Streets and Highways Code, relating to the transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2650, as introduced, Carter. Department of Transportation: environmental review process: reports.

Existing law gives the Department of Transportation full possession and control of state highways and associated property. Existing federal law requires the United States Secretary of Transportation to carry out a surface transportation project delivery pilot program, as specified. The secretary has authorized California to participate in that program, and California has agreed to that participation. A 3-year memorandum of understanding was negotiated between the parties for purposes of state assumption of responsibility for categorical exclusions.

Existing law, until January 1, 2009, provides that the State of California consents to the jurisdiction of the federal courts with regard to the compliance, discharge, or enforcement of the responsibilities assumed pursuant to the surface transportation project delivery pilot program. Existing law requires the department to submit a specified report to the Legislature by January 1, 2008, relating to the surface transportation project delivery pilot program.

This bill would require the department to submit that report to the Legislature by January 1, 2009, and again by January 1, 2010. The bill would also extend the operation of the above-described pilot program provisions and instead make those provisions inoperative upon specified circumstances, including, but not limited to, upon program termination or upon the end of the 3-year memorandum of understanding described above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 820.1 of the Streets and Highways Code is amended to read:

820.1. (a) The State of California consents to the jurisdiction of the federal courts with regard to the compliance, discharge, or enforcement of the responsibilities assumed by the department pursuant to Section 326 of, and subsection (a) of Section 327 of,

Title 23 of the United States Code.

(b) In any action brought pursuant to the federal laws described in subdivision (a), no immunity from suit may be asserted by the department pursuant to the Eleventh Amendment to the United States Constitution, and any immunity is hereby waived.

(c) The department shall not delegate any of its responsibilities assumed pursuant to the federal laws described in subdivision (a) to any political subdivision of the state or its instrumentalities.

(d) The department shall, no later than January 1, ~~2008~~  
*2009, and again, no later than January 1, 2010* ,

submit a report to the Legislature that includes the following:

(1) A comparative analysis of the environmental review process under the National Environmental Policy Act (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) for the 30 projects, excluding those projects categorically excluded from environmental review, undertaken immediately preceding the enactment of this section that involved the Federal Highway Administration and the environmental review process for all projects , *excluding those projects categorically excluded from environmental review*, undertaken following the enactment of this section that did not involve the Federal Highway Administration. This analysis should address the following:

(A) For each project included in the analysis, the environmental review process under the National Environmental Policy Act, including which state and federal agencies reviewed the environmental documents and the amount of time the documents were reviewed by each agency, shall be described.

(B) The points in the environmental review process under the National Environmental Policy Act when project delays occurred and the nature of the delays.

(C) The time saved in the environmental review process for projects undertaken following the enactment of this section in comparison to the review process for projects undertaken prior to the enactment of this section. The points in the review process when time was saved.

(D) The circumstances when the Federal Highway Administration hindered and facilitated project delivery.

(2) All financial costs incurred by the department to assume the responsibilities pursuant to Section 326 of, and subsection (a) of Section 327 of, Title 23 of the United States Code, including, but not limited to, the following:

(A) Personnel to conduct and review environmental documents and to manage litigation.

(B) Administrative costs.

(C) Litigation.

(3) An explanation of all litigation initiated against the department for the responsibilities assumed pursuant to Section 326 of, and subsection (a) of Section 327 of, Title 23 of the United States Code.

(4) A comparison of all costs and benefits of assuming these responsibilities.

(e) (1) This section shall ~~remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009~~ *become inoperative pursuant to subparagraphs (A) and (B), and as of January 1 next following the later of those two dates is repealed, unless a later enacted statute,*

that is enacted before that date , deletes or extends that date. ~~The~~

(A) This section shall become inoperative, as applied to the assumption of responsibilities under Section 326 of Title 23 of the United States Code, upon termination under subsection (d) of Section 326 of Title 23 of the United States Code, or, if the assumption of responsibilities is not renewed, upon expiration of the three-year memorandum of understanding negotiated pursuant to subsection (c) of Section 326 of Title 23 of the United States Code, whichever first occurs.

(B) This section shall become inoperative, as applied to the assumption of responsibilities under subsection (a) of Section 327 of Title 23 of the United States Code, upon termination under subsection (i) of Section 327 of Section 23 of the United States Code, or on August 10, 2011, whichever first occurs, unless the program is extended by an act of Congress.

(2) The state shall remain liable for any decisions made or responsibilities assumed and exercised, prior to the repeal of this section under this subdivision, pursuant to applicable federal statutes of limitation for filing citizens' suits in federal court.

(f) Nothing in this section affects the obligation of the department to comply with state and federal law.

