



EXECUTIVE MANAGEMENT AND AUDIT COMMITTEE

March 18, 2004

SUBJECT: STATE LEGISLATION

ACTION: APPROVE STAFF RECOMMENDATIONS ON STATE LEGISLATION

RECOMMENDATION

Adopt the following positions:

- A. ACA 24 (Dutra) - Would apply loan repayment provisions to the Transportation Investment Fund similar to those applicable to the State Highway Account. **SUPPORT**
- B. AB 2024 (Bermudez) – Would require the Secretary of the Business, Transportation and Housing Agency to prepare recommendations to implement incentives for port-related cargo during off-peak hours, disincentives for on-peak hours and mandatory hours of operations of port terminals, railroads, trucks, and distribution centers. **NEUTRAL – WORK WITH AUTHOR**
- C. AB 2041 (Lowenthal) – Would create the Port Congestion Management District and require the district to impose a fee on containers shipped by truck in the Ports of Long Beach and Los Angeles between certain hours and days of the week. **NEUTRAL – WORK WITH AUTHOR**
- D. AB 2042 (Lowenthal) – Would require the Ports of Long Beach and Los Angeles to ensure that all future growth at the port will have a zero net increase in air pollution. **NEUTRAL – WORK WITH AUTHOR**
- E. AB 2043 (Lowenthal) – Would establish the Maritime Port Strategic Master Plan Task Force. **NEUTRAL – WORK WITH AUTHOR**
- F. AB 2737 (Dutra) – Would clarify current law relating to the liability of a public agency arising from the location of public facilities. **SUPPORT**
- G. AB 2847 (Oropeza) – Would impose an additional fee of \$0.05 on each gallon of gasoline and diesel fuel sold in the state. **SUPPORT – WORK WITH AUTHOR**

- H. SB 1614 (Torlakson) – Would impose an additional fee of \$0.10 on each gallon of gasoline and diesel fuel sold in the state. **SUPPORT – WORK WITH AUTHOR**

ATTACHMENTS

- A. ACA 24 (Dutra)
- B. AB 2024 (Bermudez)
- C. AB 2041 (Lowenthal)
- D. AB 2042 (Lowenthal)
- E. AB 2043 (Lowenthal)
- F. AB 2737 (Dutra)
- G. AB 2847 (Oropeza)
- H. SB 1614 (Torlakson)

Prepared by: Michael Turner
Manager, State Affairs

Kimnberly Yu
Government Relations Officer, State Affairs



Maria Guerra
Chief of Staff



Roger Snoble
Chief Executive Officer

BILL: ACA 24

AUTHOR: **ASSEMBLY MEMBER JOHN DUTRA
(D-FREEMONT)**

SUBJECT: **TRANSPORTATION INVESTMENT FUND
(PROPOSITION 42) LOANS**

STATUS: **PENDING COMMITTEE ASSIGNMENT**

ACTION: **SUPPORT**

RECOMMENDATION

Staff recommends that the MTA Board of Directors adopt a support position on ACA 24.

PROVISIONS

Current law, Proposition 42, transfers the sales tax from gasoline sales to the Traffic Congestion Relief Program (TCRP). The proceeds from the sales tax are deposited in the Transportation Investment Fund (TIF). Current law also allows for these transfers to be suspended upon proclamation by the Governor and a 2/3 vote of the Legislature. Current law also requires that funds loaned out of the State Highway Account (SHA) be repaid within specific timeframes.

ACA 24 would apply loan repayment provisions to the TIF similar to those applicable to the SHA. Specifically ACA 24 would:

- Authorize the Legislature to enact loans from the TIF to the State General Fund or any other state fund only under one of the following two conditions:
 - That any amount loaned be repaid in full during the same fiscal year in which the loan was made.
 - That any amount loaned be repaid in full with interest at the rate paid on money in the Pooled Money Investment Account within three years from the date the money was loaned.
- The three year loan may only be made if the Governor declares a state of emergency and the aggregate amount of General Fund revenues for the current year is less than in the previous year.

IMPACT ANALYSIS

ACA 24 would strengthen Proposition 42 by placing loan restrictions on the TIF which currently has no such restriction and by requiring that loans may only be made under certain conditions. Proposition 42 dedicated the sales tax on gasoline sales to the TCRP and was passed by 69% of the voters. Under this program, the sales tax is transferred from the General Fund to the TIF and then allocated to a specified list of projects, including the State Transportation Improvement Program (STIP), the Public Transportation Account (PTA) and cities and counties for street and road repair. The transfer from the General Fund to the TIF can be suspended if the Governor issues a proclamation proposing a suspension and the Legislature approves the suspension by a 2/3 vote. There is no provision in current law that requires that Proposition 42 funds may only be loaned to the General Fund.

Proposition 42 funds have faced suspension ever since their inception. The dynamic under current law is that the Legislature is essentially faced with the question of whether to suspend or not suspend the transfer. Previous budget decisions have required that the funds be loaned rather than granted to the General Fund, however this provision is not a requirement of law and is subject to the annual suspension vote by the Legislature. Funds from the SHA, may be loaned only on specific repayment provisions and this has helped to discourage the Legislature and Administration from utilizing these funds to balance the State Budget. Other mechanisms, however, have been found to access SHA so the loan provisions are not an absolute safeguard.

The bill's language on the loan provisions will help to provide more stability to Proposition 42 funds. Unfortunately the loan provisions will not, in and of themselves, prevent the Legislature from utilizing Proposition 42 funds but they will assist in creating stability for the fund.

Staff recommends that the MTA Board of Directors adopt a support position on ACA 24.

BILL: AB 2024

AUTHOR: ASSEMBLY MEMBER RUDY BERMUDEZ
(D-NORWALK)

SUBJECT: PORTS – TRANSPORTATION NETWORK

STATUS: PENDING COMMITTEE ASSIGNMENT

ACTION: NEUTRAL-WORK WITH AUTHOR

RECOMMENDATIONS

Staff recommends that the MTA Board of Directors adopt a neutral-work with author position on AB 2024.

PROVISIONS

AB 2024 would:

- Require the Secretary of the Business, Transportation and Housing Agency to prepare recommendations for necessary statutory changes to implement: incentives for port-related cargo movement during off-peak hours; disincentives for cargo movement during peak hours; and mandatory hours for operation of port terminals, railroads, trucks, and distribution centers.
- Require the recommendations to be submitted to the Legislature within 6 months after the enactment of the bill.
- Require the cost of the report to be borne by assessments on the ports.
- Take effect immediately as an urgency statute.

IMPACT ANALYSIS

AB 2024 has been introduced by Assembly Member Bermudez to address concerns relating to the increasing demands of goods movement and its impact on existing transportation network. AB 2024 is one of a number of bills that have been introduced to address goods movement issues.

In January 2002, State Senator Betty Karnette sponsored the Global Gateways Development Program which conducted a thorough evaluation of goods movement issues statewide. The MTA in coordination with Caltrans and the Southern California Association of Government has completed the Southern California Freight Management Case Study which focused on the impacts of goods movement in Southern California. Additionally, the MTA Board has directed that staff prepare further studies of the impacts of goods movement on specific corridors in Los Angeles County.

Senator Karnette's initiative has resulted in SB 924 which calls for the creation of the Global Gateways Development Advisory Council. This Council would be created within the Business, Transportation and Housing Agency and would be an advisory body to state and local agencies involved in goods movement issues. SB 924 is currently pending on the Assembly floor. Given that Senator Karnette has already proposed one such advisory entity, it is recommended that the various proposals to create an advisory body be incorporated into one unified measure.

Assembly Member Bermudez' measure would ask the secretary of Business, Transportation and Housing to recommend strategies to address the impact of Goods Movement. Assembly Member Lowenthal and Senator Karnette are proposing the creation of new government entities which would be charged with essentially the same function that is being requested in AB 2024.

There are currently a number of initiatives at the state and local level addressing Goods Movement and essentially trying to develop strategies similar to those requested by AB 2024. The entities proposed by Assembly Member Lowenthal and Senator Karnette would also be charged with developing similar recommendations. At this time, a number of group are attempting to address Goods Movement issues and there are a number of proposals to create new entities to accomplish essentially the same goal; a unified comprehensive Goods Movement strategy. Staff suggest that all these efforts should be combined into one, focused effort to develop the unified comprehensive Goods Movement strategy. Staff recommends that the MTA Board of Directors adopt a neutral-work with author position on AB 2024.

BILL: AB 2041

AUTHOR: ASSEMBLY MEMBER ALAN LOWENTHAL
(D-LONG BEACH)

SUBJECT: PORTS CONGESTION

STATUS: PENDING COMMITTEE ASSIGNMENT

ACTION: NEUTRAL- WORK WITH AUTHOR

RECOMMENDATIONS

Staff recommends that the MTA Board of Directors adopt a neutral-work with author position on AB 2041.

PROVISIONS

Current law authorizes two or more harbor agencies to form a joint powers authority for infrastructure funding and financing port or harbor infrastructure.

AB 2041 would:

- Establish the Port Congestion Management District governed by 7 members appointed by the Secretary of Business, Transportation and Housing.
- Require the Board to impose a fee on containers shipped by truck in the Ports of Long Beach and Los Angeles between 8:00 A.M. and 5:00 P.M. Monday through Friday.
- Require the Board to establish a Port Congestion Management Fund.
- Authorize the Board to expend revenues from the Fund on projects that alleviate congestion caused by shipments from commercial motor vehicles during specified hours.

IMPACT ANALYSIS

AB 2041 is introduced by Assembly Member Alan Lowenthal to address the impacts of port related traffic in general and, on the Interstate 710 (Long Beach Freeway) specifically. Assembly Member Lowenthal is especially concerned with the increasing traffic along the I-710 due to escalating commercial motor vehicle traffic generated by businesses from the Ports of Los Angeles and Long Beach. Assembly Member Lowenthal also chairs the Assembly Select Committee on California Ports.

AB 2041 is one of series of bills introduced by Assembly Member Lowenthal related to goods movement. AB 2042 would require that expansion of the ports adhere to a zero net

increase in air pollution and AB 2043 would call for an advisory commission appointed by the Secretary of Business Transportation and Housing.

State Senator Betty Karnette has sponsored the Global Gateways Development Program which conducted a thorough evaluation of goods movement issues in the state. The MTA, in coordination with Caltrans and the Southern California Association of Government, has completed the Southern California Freight Management Case Study which focused on the impacts of Goods Movement in Southern California. Additionally the MTA Board has directed that staff prepare further studies of the impacts of goods movement on specific corridors in Los Angeles County.

Senator Karnette's initiative has resulted in SB 924 which calls for the creation of the Global Gateways Development Advisory Council. This Council would be created within the Business, Transportation and Housing Agency and would be an advisory body to state and local agencies. SB 924 is currently pending on the Assembly floor. Given that Senator Karnette has already proposed one such advisory entity, it is recommend that the various proposals to create an advisory body be incorporated into one unified measure.

AB 2041 would create a new state entity with powers and duties similar to those already held by the MTA. The Port Congestion Management District would be authorized to impose fees, and, plan and fund transportation related improvements in Los Angeles County. The MTA as the county transportation commission is appropriately charged with those duties, except for the imposition of the fee, and has undertaken comprehensive goods movement analyses involving all of the stakeholders.

AB 2041 ultimately seeks to impose a fee on containers leaving the ports between 8:00 AM and 5:00 PM as a disincentive to using the ports during that time. The imposition of a container fee is still a subject of discussion amongst goods movement stakeholders. This proposal to levy a fee is expected to face opposition from a number of entities involved in goods movement.

Staff are concerned that although this measure attempts to address the congestion resulting from goods movement, AB 2041 transfers local responsibility and authority to a state entity. AB 2041 would empower a state agency to determine the priority of improvements to the County's transportation system and allow the state to program funds for transportation improvements outside of the MTA planning process.

Staff recommends that the policies and programs related to goods movement should be derived from a local consensus. A container fee may be one such measure introduced to address port related congestion. Staff suggest that the creation of a special district may have some value as long as the new district is a part of a larger coordinated goods movement strategy, and, respects and incorporates the roles and responsibilities of existing agencies. Staff therefore recommends that the MTA Board of Directors adopt a neutral-work with author position on AB 2041 but work with Assembly Member Lowenthal,

and other stakeholders in the development of a comprehensive solution to goods movement issues.

BILL: AB 2042

AUTHOR: ASSEMBLY MEMBER ALAN LOWENTHAL
(D-LONG BEACH)

SUBJECT: PORT OF LOS ANGELES AND LONG BEACH - AIR POLLUTION

STATUS: PENDING COMMITTEE ASSIGNMENT

ACTION: NEUTRAL-WORK WITH AUTHOR

RECOMMENDATIONS

Staff recommends that the MTA Board of Directors adopt a neutral-work with author position on AB 2042.

PROVISIONS

AB 2042 would:

- Require the Port of Long Beach and Port of Los Angeles to ensure that all future growth at each port will have a zero net increase in air pollution.
- Require each port to establish the baseline for air pollution in consultation with the South Coast Air Quality Management District.

IMPACT ANALYSIS

AB 2042 is introduced by Assembly Member Alan Lowenthal to address concerns relating to ports expansion and their impact on air pollution. In addition, the zero net increase provision is an aggressive measure that may not be able attainable.

A number of efforts have been undertaken at the state and local level related to goods movement. Although this measure seeks to address air pollution concerns, the overall expansion of the ports is subject to long range planning being undertaken at many levels and should also involve goods movement stakeholders in the discussion.

The MTA does not have direct jurisdiction over air quality issues at the port although the development of a comprehensive goods movement strategy will address the air quality impacts of the ports. This item is being presented primarily as information as it is one of three measures introduced by Assembly Member Lowenthal. Therefore, staff recommends that the MTA Board of Directors adopt a neutral, work with author position on AB 2042.

BILL: AB 2043

AUTHOR: ASSEMBLY MEMBER ALAN LOWENTHAL
(D-LONG BEACH)

SUBJECT: MARITIME PORT STRATEGIC MASTER PLAN TASK FORCE

STATUS: PENDING COMMITTEE ASSIGNMENT

ACTION: NEUTRAL-WORK WITH AUTHOR

RECOMMENDATIONS

Staff recommends that the MTA Board of Directors adopt a neutral-work with author position on AB 2043.

PROVISIONS

AB 2043 would:

- Establish the Maritime Port Strategic Master Plan Task Force in state government.
- Require the Task Force to compile specified information related to the growth and congestion of maritime ports.

IMPACT ANALYSIS

AB 2043 is introduced by Assembly Member Alan Lowenthal to address concerns relating to ports expansion and their impact on existing transportation system. In addition, the Assembly Member seeks to study and resolve the impact on air pollution caused by goods movement through the state's maritime ports.

AB 2043 is similar to efforts spearhead by State Senator Betty Karnette's Global Gateways Development Program which conducted a thorough evaluation of goods movement issues in the state. In addition, the MTA in coordination with Caltrans and the Southern California Association of Government has completed the Southern California Freight Management Case Study which focused on the impacts of goods movement in Southern California. Additionally, the MTA Board has directed that staff prepare further studies of the impacts of goods movement on specific corridors in Los Angeles County.

Staff is concerned that this measure could duplicate studies and previous efforts undertaken by state and local agencies to address goods movement. Staff recommends that the MTA Board of Directors adopt a neutral, work with author position on AB 2043.

BILL: AB 2737

AUTHOR: ASSEMBLY MEMBER JOHN DUTRA
(D-FREEMONT)

SUBJECT: GOVERNMENT TORT LIABILITY

STATUS: PENDING COMMITTEE ASSIGNMENT

ACTION: SUPPORT

RECOMMENDATION

Staff recommends that the MTA Board of Directors adopt a support-work with author position on AB 2737.

PROVISIONS

Current state law establishes liabilities for public agencies arising from the location of public facilities.

AB 2737 would:

- Provide that a public entity or a public employee is not liable for an injury caused by the condition of, existing upon, or that occurs on a street, highway, road, sidewalk, or other access to or from the public property unless the public entity owns or controls the street, highway, road or sidewalk.

IMPACT ANALYSIS

AB 2737 has been introduced by Assembly Member Dutra to remove public agencies from liabilities established by the California State Supreme Court's ruling in *Bonanno v. Central Contra Costa Transit Authority (CCCTA)*.

In 2003 the California Supreme Court upheld a lower court decision which ruled that Central Contra Costa Transit Authority was liable for injuries sustained by a pedestrian trying to reach a bus stop. This decision essentially established that a public entity can be liable for injuries occurring due to conditions on adjacent property when the injury does not occur on property which the public entity owns or controls. The plaintiff argued that CCCTA's siting of a bus stop was hazardous due to the proximity of a mid-block crosswalk, and, directly contributed to the injuries. This ruling substantially expands exposure of transit agencies as nearly any bus stop could be argued to be in a hazardous location.

ATTACHMENT F

AB 2737 would establish that a public agency is not liable for the condition of a facility owned and controlled by another public entity.

Staff recommends that the MTA Board of Directors adopt a support- work with author position on AB 2847.

BILL: AB 2847

AUTHOR: **ASSEMBLY MEMBER JENNY OROPEZA**
 (D-LONG BEACH)

SUBJECT: **GASOLINE AND MOTOR VEHICLE FUEL FEE**

STATUS: **PENDING COMMITTEE ASSIGNMENT**

ACTION: **SUPPORT –WORK WITH AUTHOR**

RECOMMENDATION

Staff recommends that the MTA Board of Directors adopt a support-work with author position on AB 2847.

PROVISIONS

Current state law imposes an excise tax on gasoline of \$0.18 per gallon.

AB 2847 would:

- Impose an additional fee of \$0.05 on each gallon of gasoline and diesel fuel sold in the state.
- Require the fee to be levied until January 1, 2008.
- Create the Highway Fee Fund and require that revenues from the fee would be deposited in the Fund.
- Require that the revenues from the Fund may only be expended upon appropriation by the Legislature.
- Require that the funds may only be used for maintenance, operation, improvement and construction of the state highway system, and local street and road system, and, to finance environmental programs that mitigate the air impacts of motor vehicles.

IMPACT ANALYSIS

AB 2847 (Oropeza) and SB 1614 (Torlakson) are measures that would impose a fee on each gallon of gasoline sold in California. AB 2847 would impose a fee of \$0.05 and SB 1614 would impose a fee of \$0.10. Each measure would require the funds to be allocated only upon appropriation by the Legislature. The fee under AB 2847 would sunset in 2008 while the fee imposed by SB 1614 would not expire.

Both measures are attempts to raise transportation revenue by utilizing the “Sinclair Paint” decision. Generally, the Sinclair Paint decision allowed the State to impose a fee by a majority vote rather than 2/3’s vote that would be required to impose a tax.

AB 2847 would generate approximately \$900 million annually statewide. The allocation of these funds would be subject to appropriation by the Legislature so it is not possible to estimate an amount that would accrue to Los Angeles County. If the fees proposed by AB 2847 were imposed, these funds would be in addition to the regular state gas tax and Proposition 42 funds that are subject to annual suspension by the Legislature.

Over the past two years, budget decisions have resulted in the loss of over \$2 billion in transportation funds statewide. This is primarily due to the continual suspension of Proposition 42 that allocates the sales tax on gasoline sales to transportation. Transportation agencies throughout the state have argued for increases in funding for transportation through a variety of proposals including increasing the gas tax and the imposition of fees such as proposed in AB 2847 and SB 1614.

The Legislative Analysts Office (LAO) has recommended a restructuring of transportation funding by repealing Proposition 42, increasing the state gas tax by \$0.06 and then providing for indexing of the state gas tax. At this point, a bill has not been introduced which would incorporate the LAO’s recommendations.

The proposal to impose a fee on gasoline sales is supportive of transportation in that it would raise additional revenue. However, staff are concerned with the way these proposals are currently structured. The primary concern is that the funds would be appropriated at the sole discretion of the Legislature. Existing allocation formulae in state law provide for the allocation of transportation funds by local agencies. Staff suggest that any new revenue should be allocated through formulae already established in state law and that these formulae could be improved to provide an increased benefit to Los Angeles County.

Additionally, AB 2847 does not respond to the need to reform Proposition 42. Transportation agencies are concerned that efforts should be directed to securing existing transportation resources before creating new revenues.

A number of measures have been introduced related to transportation funding in this Legislative Session. It is expected that all of these measures will undergo significant modification as the year progresses. Staff recommends that the Board adopt general principles related to transportation funding to guide the MTA’s advocacy efforts in Sacramento. These principles would be as follows:

- Greater protections should be provided to existing transportation revenues.
- Additional transportation revenues are needed and could come in the form of a gas tax increase, including indexing, or, fees as proposed by AB 2847 and SB 1614.

ATTACHMENT G

- The existing formulae for allocating transportation funds must be improved to provide a more appropriate level of allocation to Los Angeles County, and to provide greater flexibility in the use of those funds.
- New revenues should be allocated through an improved allocation formula.

Staff recommends that the MTA Board of Directors adopt a support- work with author position on AB 2847.

Both measures are attempts to raise transportation revenue by utilizing the “Sinclair Paint” decision. Generally, the Sinclair Paint decision allowed the State to impose a fee by a majority vote rather than 2/3’s vote that would be required to impose a tax.

SB 1614 would generate approximately \$ 1.8 billion annually statewide. As currently written, the funds would be subject to appropriation by the Legislature so it is not possible to estimate an amount that would accrue to Los Angeles County. Senator Torlakson has indicated that he will introduce amendments to allocate the funds in the following manner. Of the \$0.10 fee, \$0.05 will be allocated to address the shortfalls in state transportation programs, \$0.04 will be allocated to cities and counties for street and road repair, and \$0.01 will be allocated to air quality programs. If the fees proposed by SB 1641 were imposed, these funds would be in addition to the regular state gas tax and Proposition 42 funds that are subject to annual suspension by the Legislature.

Senator Torlakson has indicated that SB 1614 will be a part of a broader reform package relative to transportation funding. The Senator has indicated he will also include Proposition 42 reforms to include increasing the vote threshold to suspend Proposition 42 and apply loan repayment provisions.

The Legislative Analysts Office (LAO) has recommended a restructuring of transportation funding by repealing Proposition 42, increasing the state gas tax by \$0.06 and then providing for indexing of the state gas tax. Senator Murray has indicated that he will introduce a bill which would incorporate the LAO’s recommendations.

The proposals to impose a fee on gasoline sales is supportive of transportation in that it would raise additional revenue. However, staff has a few concerns with the way these proposals are currently structured. Existing allocation formulae in state law provide for the allocation of transportation funds by local agencies. Staff suggest that any new revenue should be allocated through formulae already established in state law and that these formulae could be improved to provide an increased benefit to Los Angeles County.

A number of measures have been introduced related to transportation funding in this Legislative Session. It is expected that all of these measures will undergo significant modification as the year progresses. Staff would like to recommend that the Board adopt general principles related to transportation funding to guide the MTA’s advocacy efforts in Sacramento. These principles would be as follows:

- Greater protections should be provided to existing transportation revenues.
- Additional transportation revenues are needed and could come in the form of a gas tax increase, including indexing, or, fees as proposed by SB 1641 and AB 2847.
- The existing formulae for allocating transportation funds must be improved to provide a more appropriate level of allocation to Los Angeles County and to provide greater flexibility in the use of those funds.
- New revenues should be allocated through an improved allocation formula.

Staff recommends that the MTA Board of Directors adopt a support- work with author position on SB 1641.