



EXECUTIVE MANAGEMENT AND AUDIT COMMITTEE

March 17, 2005

SUBJECT: STATE LEGISLATION

ACTION: APPROVE STAFF RECOMMENDATION ON STATE LEGISLATION

RECOMMENDATION

Adopt the following positions:

- A. ACA 4 (Plescia and Harman) A bill proposing to remove the suspension clause from Proposition 42—**SUPPORT**
- B. ACA 10 (Nuñez) A spot bill to protect Proposition 42 funds—**SUPPORT WORK WITH AUTHOR**
- C. SCA 7 (Torlakson) A bill which requires loans of motor vehicle fuel revenues to be repaid with interest if the repayment is not within the next budget year – **SUPPORT**
- D. AB 1010 (Oropeza) A bill which transfers Grade Crossing approvals from the Public Utilities Commission to Caltrans – **SUPPORT WORK WITH AUTHOR**
- E. AB 1067 (Frommer) A bill which expands the amount of Grade Separation violations that can be imposed – **SUPPORT WORK WITH AUTHOR**
- F. SB 851 (Murray) A bill which streamlines LACMTA procurement process – **SUPPORT SEEK AMENDMENT**

ATTACHMENTS

- A. ACA 4 (Plescia and Harman)
- B. ACA 10 (Nunez)
- C. SCA 7 (Torlakson)
- D. AB 1010 (Oropeza)
- E. AB 1067 (Frommer)
- F. SB 851 (Murray)

Prepared by:

Gary Clark
Deputy Executive Officer, Board and Government Relations

Michael Turner
Government Relations Manager, State Affairs

Marisa Yeager
Government Relations Administrator, Federal Affairs

Kimberly Yu
Government Relations Officer State Affairs

Maria A. Guerra

Maria A. Guerra
Chief of Staff

Roger Stoble

Roger Stoble
Chief Executive Officer

BILL: ACA 4

AUTHOR: ASSEMBLY MEMBER GEORGE PLESCIA (R-SAN DIEGO)
ASSEMBLY MEMBER TOM HARMAN (R-HUNTINGTON BEACH)

SUBJECT: PROPOSITION 42

STATUS: PENDING COMMITTEE ASSIGNMENT

ACTION: SUPPORT

RECOMMENDATION

Staff recommends that the Board of Directors adopt a support position on ACA 4.

PROVISIONS

Current law, Proposition 42, requires the sales tax on gasoline sales to be transferred from the State General Fund to the Transportation Investment Fund (TIF) and subsequently to a variety of transportation uses. These allocations may be suspended if the Governor issues a proclamation that the allocation will result in a significant negative fiscal impact on the General Fund, and the Legislature approves the suspension by a two-thirds vote.

ACA 4 removes the suspension clause from Article XIX B which authorizes the Governor and the Legislature to suspend the transfer of revenues from the General Fund to the Transportation Investment Fund.

IMPACT ANALYSIS

In 2001 the Governor signed AB 2928 enacting the Traffic Congestion Relief Program (TCRP). Under this program, funds generated from the sales tax applied to gasoline sales are required to be transferred from the State General Fund to the TCRP. This statute further required that those funds be allocated to a specific list of projects first with the balance to be allocated according to the following formula; 40% to the State Transportation Improvement Program, 40% to cities and counties for street and road repair, and 20% to the Public Transportation Account.

This program was incorporated into the State Constitution, as Article XIX B, by Proposition 42 in March of 2002. Proposition 42 was approved by 69% of the voters. Proposition 42 also allowed for the suspension process requiring a proclamation by the Governor and a two-thirds vote by the Legislature. Since the enactment of Proposition 42, the allocations have been suspended each year and the Governor has proposed suspension of the allocations for 2004 in order to address the State General Fund deficit. It is anticipated that the state will continue to experience General Fund deficits in future years and these deficits will continue to pressure the Governor and Legislature to seek to use transportation resources to balance the state budget.

ATTACHMENT A

In response to these pressures, transportation stakeholders have sought measures to make it more difficult for the Governor and Legislature to utilize transportation funds to balance the General Fund. These proposals include applying loan provisions to Proposition 42 funds similar to those applied to the State Highway Account and increasing the vote threshold to suspend Proposition 42. Previous budget agreements have approved loans of Proposition 42 funds. However, the constitution allows for the full suspension of these funds.

As noted in last month's report on ACA 11 (Oropeza), the State came to an agreement with local governments that allows for the state to use local fund sources to balance the State Budget. A number of other measures have been introduced to protect Proposition 42 funds. Speaker Nunez has introduced ACA 10, a measure stating the Legislature's intent to implement protections for Proposition 42 funds and Senator Torlakson has introduced SCA 7, which is similar to ACA 11 but has fewer details at this drafting.

As the Legislative session moves forward, it is anticipated that Proposition 42 protections will be one of the key issues debated as the state addresses the transportation-funding crisis.

Staff recommends that the Board of Directors adopt a support position on ACA 4.

BILL: ACA 10

AUTHOR: ASSEMBLY MEMBER FABIAN NUÑEZ
(D-LOS ANGELES)

SUBJECT: SPOT BILL – PROPOSITION 42

STATUS: PENDING COMMITTEE ASSIGNMENT

ACTION: SUPPORT WORK WITH AUTHOR

RECOMMENDATION

Staff recommends that the Board of Directors adopt a support work with author position on ACA 10.

PROVISIONS

Current law, Proposition 42, requires the sales tax on gasoline sales to be transferred from the State General Fund to the Transportation Investment Fund (TIF) and subsequently to a variety of transportation uses. These allocations may be suspended if the Governor issues a proclamation that the allocation will result in a significant negative fiscal impact on the General Fund, and the Legislature approves the suspension by a two-thirds vote.

ACA 10 was submitted as a “spot bill”. The intent of the Speaker is to protect Proposition 42 funding. This measure as currently written makes a nonsubstantive changes to Article XIX B of the California Constitution.

IMPACT ANALYSIS

In 2001 the Governor signed AB 2928 enacting the Traffic Congestion Relief Program (TCRP). Under this program, funds generated from the sales tax applied to gasoline sales are required to be transferred from the State General Fund to the TCRP. This statute further required that those funds be allocated to a specific list of projects first with the balance to be allocated according to the following formula: 40% to the State Transportation Improvement Program; 40% to cities and counties for street and road repair; and 20% to the Public Transportation Account.

This program was incorporated into the State Constitution, as Article XIX B, by Proposition 42 in March of 2002. Proposition 42 was approved by 69% of the voters. Proposition 42 also allowed for the suspension process requiring a proclamation by the Governor and a two-thirds vote by the Legislature. Since the enactment of Proposition 42, the allocations have been suspended each year and the Governor has proposed suspension of the allocations for 2004 in order to address the State General Fund deficit. It is anticipated that the state will continue to experience General Fund deficits in future years and these deficits will continue to pressure the Governor and Legislature to seek to use transportation resources to balance the state budget.

In response to these pressures, transportation stakeholders have sought measures to make it more difficult for the Governor and Legislature to utilize transportation funds to balance the General Fund. These proposals include applying loan provisions to Proposition 42 funds similar to those applied to the State Highway Account and increasing the vote threshold to suspend Proposition 42. Previous budget agreements have approved loans of Proposition 42 funds.

The Speaker has indicated that transportation is one of his key legislative issues this year and ACA 10 intends to implement protections for Proposition 42 funds

Staff recommends that the Board of Directors adopt a support work with author position on ACA 10.

BILL: SCA -7

AUTHOR: STATE SENATOR TOM TORLAKSON
(D-ANTIOCH)

SUBJECT: PROPOSITION 42

STATUS: PENDING COMMITTEE ASSIGNMENT

ACTION: SUPPORT

RECOMMENDATION

Staff recommends that the Board of Directors adopt a support position on SCA 7.

PROVISIONS

Current law, Proposition 42, requires the sales tax on gasoline sales to be transferred from the State General Fund to the Transportation Investment Fund (TIF) and subsequently to a variety of transportation uses. These allocations may be suspended if the Governor issues a proclamation that the allocation will result in a significant negative fiscal impact on the General Fund, and the Legislature approves the suspension by a two-thirds vote.

Specifically SCA 7 would:

- Require any loan of motor vehicle fuel and vehicle-related revenues and trust funds that is not repaid within the same fiscal year or by the next subsequent fiscal year, to be repaid with interest at a specific rate within three years
- Require that a loan of these same funds may also be made to other state funds or accounts under the condition of loans to the General Fund

IMPACT ANALYSIS

In 2001 the Governor signed AB 2928 enacting the Traffic Congestion Relief Program (TCRP). Under this program, funds generated from the sales tax applied to gasoline sales are required to be transferred from the State General Fund to the TCRP. This statute further required that those funds be allocated to a specific list of projects first with the balance to be allocated according to the following formula: 40% to the State Transportation Improvement Program, 40% to cities and counties for street and road repair, and 20% to the Public Transportation Account.

This program was incorporated into the State Constitution, as Article XIX B, by Proposition 42 in March of 2002. Proposition 42 was approved by 69% of the voters. Proposition 42 also allowed for the suspension process requiring a proclamation by the Governor and a two-thirds vote by the Legislature. Since the enactment of Proposition 42, the allocations have been suspended each year and the Governor has proposed suspension of the allocations for 2004 in order to address the State General Fund deficit. It is anticipated

that the state will continue to experience General Fund deficits in future years and these deficits will continue to pressure the Governor and Legislature to seek to use transportation resources to balance the state budget.

In response to these pressures, transportation stakeholders have sought measures to make it more difficult for the Governor and Legislature to utilize transportation funds to balance the General Fund. These proposals include applying loan provisions to Proposition 42 funds similar to those applied to the State Highway Account and increasing the vote threshold to suspend Proposition 42. Previous budget agreements have approved loans of Proposition 42 funds. However, the constitution allows for the full suspension of these funds. Under this framework there is requirement that Proposition 42 funds may only be loaned to the General Fund.

SCA 7 is similar to the ACA 11 (OROPEZA) legislation. A number of other measures have been introduced to protect Proposition 42 funds. Speaker Nunez has introduced ACA 10, a measure stating the Legislature's intent to implement protections for Proposition 42 funds. Additionally, Assembly Members Plescia and Harmon have introduced ACA 4, which would remove the suspension clause in its entirety.

As the Legislative session moves forward, it is anticipated that Proposition 42 protections will be one of the key issues debated as the state addresses the transportation-funding crisis. While ACA 4 would completely remove the State's ability to use Proposition 42 funds, it is important to note that even traditional State Highway Account funds may be loaned to the General Fund with repayment required over a three-year period.

Staff recommends that the Board of Directors adopt a support position on SCA 7.

BILL: AB 1010

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

SUBJECT: TRANSFER OF GRADE CROSSING APPROVALS FROM THE PUBLIC
UTILITIES COMMISSION TO CALTRANS

STATUS: PENDING COMMITTEE ASSIGNMENT

ACTION: SUPPORT WORK WITH AUTHOR

RECOMMENDATION

Staff recommends that the Board of Directors adopt a support-work with author position on AB 1010 and adopt principles related to rail safety legislation.

PROVISIONS

Existing law provides that all public transit guideway, including the approval of grade crossings, is subject to the regulation of the Public Utilities Commission (PUC).

AB 1010 would, after 2007, transfer this authority to the Department of Transportation (Caltrans) and empower Caltrans to adopt rules and regulations for public transit guideway systems.

IMPACT ANALYSIS

AB 1010 will transfer jurisdiction of public transit guideways from the Public Utilities Commission to Caltrans.

Currently, the PUC has jurisdiction over public transit guideways including approval of grade crossings. This includes the authority to require that a particular crossing be grade separated. Transit agencies have been concerned that the PUC is not necessarily the most appropriate agency to have oversight. For example, the PUC approval process is similar to a court proceeding which involves the filing of a number of legal documents and extensive reviews of project design. These projects are also subject to the California Environmental Quality Act review process, which many times duplicates the review requirements of the PUC.

AB 1010 is one of a number of measures introduced this year to address the issue of safety at rails crossings. These measures are expected to evolve as the year progresses due to continuing examinations of the causes of accidents and ways in which the law can be improved.

Currently the Legislative program includes support for clarification of the oversight responsibilities of the PUC with respect to grade crossings, and support for increased

funding for rail safety measures including grade separations. In addition, the Board recently approved amending the Legislative program to prioritize funding for grade separation projects. Staff recommends that the board reiterate those principles and include support for increased penalties for grade crossing violations.

The lobbying strategy would then be guided by the following principles:

- Support efforts to clarify the oversight responsibilities of the PUC with respect to grade crossings.
- Support increased penalties for grade crossing violations.
- Support increased funding for grade separation projects.

Staff therefore recommends that the Board of Directors adopt a support work with author position on AB 1010.

BILL: AB 1067

AUTHOR: ASSEMBLY MEMBER DARIO FROMMER
(D-GLENDALE)

SUBJECT: GRADE CROSSING VIOLATIONS

STATUS: PENDING COMMITTEE ASSIGNMENT

ACTION: SUPPORT WORK WITH AUTHOR

RECOMMENDATION

Staff recommends that the Board of Directors adopt a support-work with author position on AB 1067 and adopt principles related to rail safety legislation.

PROVISIONS

Existing laws provides for increased penalties to be assessed on certain grade crossing violations. AB 1067 would expand the number of violations for which increased fines could be assessed.

Existing law authorizes a court to require persons convicted of certain grade crossing violations to attend a traffic school with a curriculum that includes rail transit safety programs. AB 1067 would expand the number of violations for which this requirement can be imposed.

IMPACT ANALYSIS

In its current form, AB 1067 will expand the number of violations for which increased fines may be assessed and expand the court's ability to order attendance at traffic schools whose curricula include a rail safety program. It is expected that this measure will be expanded to include additional rail safety proposals.

Under current law, it is unlawful for a vehicle to enter a grade crossing without the ability to move completely through the crossing and for a vehicle to not stop at a limit line. However, these two violations are not subject to the higher fine levels that can be imposed on other grade crossing violations.

Additionally, the use of rail safety education has proven to be an effective methodology to raise awareness of grade crossing dangers. AB 1067 will expand the court's ability to require persons convicted of grade crossing violations to attend a traffic schools which have a rail safety element as a part of their curricula.

AB 1067 is one of a number of measures introduced this year to address the issue of safety at rails crossings. These measures are expected to evolve as the year progresses due to

continuing examinations of the causes of accidents and ways in which the law can be improved.

Currently the Legislative program includes support for clarification of the oversight responsibilities of the Public Utilities Commission (PUC) with respect to grade crossings, and support for increased funding for rail safety measures including grade separations. In addition, the Board recently approved amending the Legislative Program to prioritize increased funding for grade separation projects. Staff recommends that the board reiterate those principles and include support for increased penalties for grade crossing violations.

The lobbying strategy would then be guided by the following principles:

- Support efforts to clarify the oversight responsibilities of the PUC with respect to grade crossings.
- Support for increased penalties for grade crossing violations.
- Support for increased funding for grade separation projects.

Staff therefore recommends that the Board of Directors adopt a support work with author position on AB 1067.

BILL: SB 851

AUTHOR: STATE SENATOR KEVIN MURRAY
(D-CULVER CITY)

SUBJECT: LACMTA PROCUREMENT PROCESS

STATUS: PENDING COMMITTEE ASSIGNMENT

ACTION: SUPPORT-SEEK AMENDMENT

RECOMMENDATION

Staff recommends that the Board of Directors adopt a support-see amendment position on SB 851.

PROVISIONS

SB 851 is the measure introduced by Senator Murray to streamline the LACMTA's procurement processes. This measure will soon be amended to include the language approved in concert by the Board. Construction staff have expressed the desire to address the restrictions on the change order approval process in this measure as an amendment to SB 851.

Existing law requires that all change orders above \$100,000 be subjected to an audit. Staff recommends that the Board approve the repeal of the requirement to audit change orders.

IMPACT ANALYSIS

The report by Manatt, Phelps and Phillips consultant Steve Polan addressed a number of issues related to the LACMTA's procurement processes. These measures were addressed in the January 2005 Board report which proposed language specific to the procurement process. In addition, the Manatt report also identified that the requirement to audit change orders over a relatively low level, as currently required, should be modified.

The report identified that this requirement can be modified in one of two ways. The first and recommended modification is to support the repeal of the change order audit.

The second alternative would be to increase the threshold to \$500,000. Change orders under \$500,000 typically involve matters which are fairly straight forward and are subject to little discretion. Conducting any audit adds time to the processing of a change order and increased costs due to additional audit staff time that is needed. The value of conducting an audit on a lower value change order does not appear to justify the costs and delay associated with conducting that audit.

Staff therefore recommends that the Board approve the removal of requirement to conduct an audit for change orders.