

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1273 (Brough) – As Amended March 25, 2019

SUBJECT: County of Orange: joint exercise of powers agreements: toll roads.

SUMMARY: Makes various changes to the powers and duties of the Transportation Corridor Agency (TCA). Specifically, **this bill:**

- 1) Specifies that the Board of Supervisors of Orange County and city councils of any cities may only require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing or financing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares completed on or before January 1, 2020, and in service on January 1, 2020.
- 2) Provides that the local ordinance to require the payment of a fee shall include all of the following information:
 - a) The ordinance provides that the bridges and major thoroughfares are designed and approved as landscaped, grade separated scenic toll highway corridors that include four to six general purpose travel lanes with medians or other areas wide enough to accommodate any necessary high-occupancy vehicle or special transit requirements and are not part of an interstate freeway or local arterial;
 - b) The ordinance limits the expenditure of the fee to maintenance, operation, or financing of a completed facility that is in service on January 1, 2020, and for which indebtedness was incurred;
 - c) The ordinance provides that payment of fees shall not be required, unless the major thoroughfares are in addition to, or reconstruction or widening of, any existing major thoroughfares serving the area on January 1, 2020; and,
 - d) The ordinance provides that payment of fees shall not be required, unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area on January 1, 2020.
- 3) Specifies that a county or a city imposing a fee described in 1), above, shall not, on or after January 1, 2020, enter into a joint exercise of powers agreement to construct bridge facilities or major thoroughfares.
- 4) Authorizes specified joint powers authorities (JPAs), created before January 1, 2020, to continue to maintain, operate, and pay debt service on any bridges or major thoroughfares in service on January 1, 2020, but prohibits them from designing, planning, developing, or constructing any facilities on or after January 1, 2020.

- 5) Deletes provisions that allow specified JPAs to lend or make available toll revenues and development fees to another JPA for purposes of designing, financing, and constructing major thoroughfares and toll collection facilities.
- 6) Requires that after any indebtedness incurred for the construction of specified bridge facilities or major thoroughfares that is operated as a toll road has been repaid, the bridge facility or major thoroughfare shall be transferred to the state, subject to terms and conditions as shall be satisfactory to the Director of Transportation.
- 7) Provides that any of these specified bridge facilities and major thoroughfares shall be designated as a portion of the state highway system before its transfer and, after its transfer to the state, a toll shall not be imposed for the use of these facilities.
- 8) Prohibits, after January 1, 2020, specified JPAs from incurring bonded indebtedness, except that these JPAs shall have the authority, rights, and powers they held before that date for both of the following purposes:
 - a) To issue bonds or otherwise incur indebtedness to refund bonds or other indebtedness incurred before January 1, 2020, or to provide monetary savings to the JPA, if specified requirements are met; and,
 - b) To issue bonds or otherwise incur indebtedness to finance debt service spikes, including balloon maturities, if specified requirements are met.

EXISTING LAW:

- 1) Establishes the Joint Exercise of Powers Act (Act), which generally allows two or more public agencies to jointly use their powers in common through a joint powers agreement. Many times, a joint powers agreement creates a new, separate governmental agency called a JPA.
- 2) Allows public agencies to use the Act and the related Marks-Roos Local Bond Pooling Act to form bond pools to finance public works, working capital, insurance needs, and other public benefit projects.
- 3) Authorizes the County of Orange and the cities within the County of Orange to form a JPA and incur indebtedness for certain purposes, including the construction of bridge facilities or major thoroughfares by which toll roads may be constructed, as specified.
- 4) Authorizes the County of Orange and the cities within the County of Orange to impose developer fees as a condition of approving development plans or building permits for purposes of defraying the cost of constructing infrastructure projects, including, but not limited to, bridges, railways, and freeways.
- 5) Authorizes a JPA created by the abovementioned authority to make toll revenues and developer fees available to other JPAs to pay for the cost of constructing and operating separate toll facilities, as specified.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Joint Powers Authorities.** JPAs have existed in California for nearly 100 years, and were originally created to allow multiple local governments in a region to pool resources to meet common needs. The Act authorizes state and local public agencies to create and use a joint powers agreement, which is a legal document that allows the contracting parties to exercise powers that are common to all of the contracting parties. A joint powers agreement can be administered by one of the contracting agencies, or it can be carried out by a new, separate public entity. Joint powers agreements are an attractive tool for local governments because they facilitate more efficient service provision through collaboration.
- 2) **Transportation Corridor Agencies.** The TCA consists of two JPAs formed under statute enacted by the Legislature in 1986 to plan, finance, construct, and operate toll roads in Orange County:
 - a) The San Joaquin Hills Transportation Corridor Agency, which oversees the San Joaquin Hills Toll Road State Route 73 (SR-73), stretches 15 miles from Newport Beach to San Juan Capistrano in southwest Orange County.
 - b) The Foothill/Eastern Transportation Corridor Agency, which runs both the Foothill Toll Road and the Eastern Toll Road, includes State Routes 133, 241, and 261, linking State Route 91 (SR-91) near the Orange County/Riverside County border to Interstate 5 (I-5) in Irvine and also to communities in South Orange County.

The TCA has constructed and currently operates approximately 51 miles of toll roads primarily in south Orange County and presently employs a staff of 68 agency employees. The Boards of Directors for both the San Joaquin and Foothill/Eastern agencies are comprised of local elected officials in Orange County. Total average weekday ridership is an estimated 320,000 combined for all TCA's routes and, depending on the distance traveled, toll rates range anywhere from \$2 to slightly over \$10.

The toll roads maintained by TCA are financed with tax exempt nonrecourse toll revenue bonds on a stand-alone basis; taxpayers are not responsible for repaying TCA debt, rather toll revenue and developer fees cover debt service obligations. Recent figures show debt obligations for the Foothill/Eastern system at an estimated \$2.4 billion in outstanding principal and totaling an estimated \$6.5 billion in principal and interest from 2018-2053. For the San Joaquin Hills system, debt obligations are at an estimated \$2.1 billion in outstanding principal and totaling an estimated \$5.1 billion in principal and interest from 2018-2050.

- 3) **SR-241 Foothill South Extension.** Known as the "Foothill-South" extension, this extension was planned as the last segment of the SR-241 tollway connecting South Orange County to north San Diego County at I-5. The extension and connection had been the subject of regional planning efforts for more than 20 years.

The point of controversy with the Foothill-South was the final four miles of the proposed tollway extension, which was planned to be located on Camp Pendleton Marine Base, through a section of the San Onofre State Park, which is leased from the United States Marine Corps. The Marine Corps reserved the right to grant easements for rights of way when the lease with the California Department of Parks and Recreation was signed in 1971.

The Foothill-South extension was opposed by many conservationists, environmental groups, and residents of San Clemente because of threats to water quality and damage to Trestles, a world-famous surfing spot, by the extension. Another concern was a non-compete clause which the California Department of Transportation (Caltrans) signed with TCA. The clause required Caltrans to compensate TCA for lost revenue caused by any highway improvements undertaken by Caltrans that reduce toll revenue because of competition with the tollways.

Strong opposition to the proposed extension resulted in multiple lawsuits and involvement of both the state and federal government. Ultimately, TCA withdrew the proposed Foothill-South extension and brokered an agreement with opposition groups. The agreement allows TCA to continue to evaluate transportation alternatives in South Orange County, including connecting SR-241 to I-5, while protecting sensitive lands and cultural resources. The agreement also required TCA to establish a \$28 million conservation fund to help protect and restore San Mateo Creek and its watersheds.

- 4) **Current Alternatives.** TCA is currently in the process of evaluating a number of alternatives that aim to provide traffic congestion relief in South Orange County. The initial process started in 2015 with public outreach efforts, which resulted in approximately 20 potential transportation ideas/proposals that were announced in early 2017. From these 20 ideas/proposals, TCA carried out an initial screening based on traffic relief performance and selected seven that will move forward for additional evaluation in a project study report presently being prepared in collaboration with Caltrans. The project study report will provide recommendations on a smaller number of alternatives (including a “no build” alternative) that will be evaluated in a Project Report/Environmental Document which will ultimately provide a “preferred alternative” for TCA.

The proposed alternatives, however, have not avoided opposition in their own right. In May 2017, the *OC Register* wrote that developers of Rancho Mission Viejo could not support any of the proposed alternatives identified by TCA. Developers of Rancho Mission Viejo, which is a development of 14,000 homes on nearly 23,000 acres, including 17,000 acres being preserved as open space east of San Juan Capistrano, stated, “Regrettably, there appears to be no viable option which doesn’t impact Rancho Mission Viejo residents or our South County neighbors. Therefore, we are not in support of the alternatives as currently proposed.” Additionally, both residents and City officials from the City of San Clemente have expressed opposition to alternatives extending SR-241; asserting that many of the alternatives will not provide significant congestion relief as claimed by TCA. Furthermore, San Clemente officials and residents argue that these costly alternatives will unnecessarily add to TCA’s existing bond debt burden, while the regional transportation agency, the Orange County Transportation Authority (OCTA), should be the appropriate entity carrying out congestion relief projects in South Orange County.

- 5) **Bill Summary.** Existing law allows Orange County and the cities within the County to form a JPA and incur indebtedness for certain purposes, including the construction of bridge facilities or major thoroughfares by which toll roads may be constructed. This bill prohibits the formation of a JPA under this authority after January 1, 2020. This bill also limits the authority of such a JPA to charge development fees and incur bonded indebtedness and restricts the use of toll revenue. Lastly, this bill requires that when any debt incurred by such a JPA for building these bridge facilities or major thoroughfares is paid off, the bridge

facilities and major thoroughfares are to be transferred to the State of California. The author is the sponsor of this bill.

- 6) **Author's Statement.** According to the author, "TCA's planning and development authority is duplicative and redundant. OCTA serves as Orange County's transportation commission, which gives it the power to plan, design, construct, and operate highways in partnership with the State, the County of Orange, and cities throughout Orange County. TCA's plans and studies are frequently inconsistent with the priorities and master planning of OCTA, the County of Orange, and Orange County cities. These redundancies and inconsistencies harm regional planning, destabilize real estate markets, endanger schools, and threaten open space and other natural resources that have been set aside by developers and local agencies as public amenities

"My bill, AB 1273, establishes regional planning authority and stops additional debt. This bill continues the ongoing funding of the TCA, through tolls, for the repayment of that existing debt. Additionally, it allows for the refunding of existing debt to facilitate the repayment of the debt at commercially better terms thus protecting bondholders and the creditors. AB 1273 will return the Toll Roads to its core mission as a toll road operator, pay off the bonds, and turn the roads over to the people as free, which was the original intent."

- 7) **Policy Consideration.** The author and a number of supporters assert this bill was introduced due to TCA's financial mismanagement, inaccurate project costs, inaccurate ridership forecasts, and increasing tolls to cover agency expenses and debt payments. Other local stakeholders have indicated that some of TCA's proposed alternatives that are currently being studied have caused confusion as to the appropriate role TCA plays in Orange County. While certain stakeholders and residents of Orange County do not approve of some of TCA's actions, this bill effectively removes the ability of TCA to finance, plan, and construct new or expanded highways in Orange County. According to TCA, it has never defaulted on any of its debt obligations, has never fallen below debt service coverage requirements, and has made all payments of principal and interest on time.

JPAs are often formed to solve regional challenges. The Legislature did not mandate the formation of TCA. Creating TCA was a decision made by a group of local agencies at the local level. Opponents to this bill proclaim that this proposal is a response by a member agency that disagrees with certain decisions that are being made. Would it be appropriate for a member agency to a JPA to seek legislative help every time it does not agree with the other members of the JPA?

Additionally, TCA's board is made up of city and county elected officials. Residents have the ability to elect different representatives if the elected officials are making unpopular decisions. Due to these factors, the Committee may wish to consider if legislation is needed or if the stakeholders should instead resolve the concerns at the local level with TCA's elected board members.

- 8) **Arguments in Support.** The City of San Clemente argues, "When the State Legislature authorized the creation of the TCA in the late 80s, it was an experiment to see if the TCA would work. It has not. Its planning and development functions can be ably performed by other local and regional agencies while TCA remains in existence to retire its significant debt

load and to place Orange County's existing toll roads into public use decades behind the original schedule.”

- 9) **Arguments in Opposition.** The TCA argues that, “This bill attacks TCA and the Orange County local governments that are part of the JPAs. This bill was introduced as part of broader tactics by the City of San Clemente to discredit and disrupt the environmental review process for the South County Traffic Relief Effort – a collaboration between TCA, Caltrans, and the OCTA. TCA has more than \$3 billion in planned projects, including local and regional partnership projects, designed to widen the toll roads, and to improve local streets and highways to create operational efficiencies with the toll road network.”

REGISTERED SUPPORT / OPPOSITION:

Support

City of San Clemente
7 Individuals

Concerns

Friendly Fix It Mobile Computer Services
San Juan Capistrano Chamber of Commerce

Opposition

Audi, Mission Viejo
Carlsbad Chamber of Commerce
Cities of: Anaheim, Irvine, Laguna Woods, Mission Viejo, Newport Beach, Orange, Rancho Santa Margarita, Santa Ana, and Tustin
Civil Works Engineers, Inc.
Coast Surveying, Inc.
Corona Del Mar Chamber of Commerce
Costa Mesa Chamber of Commerce
Earth Mechanics, Inc.
Economic Development Coalition
Ghirardelli Associates
Greater Irvine Chamber of Commerce
Hispanic 100
HNTB Corporation
Inland Empire Regional Chamber of Commerce
Laguna Hills Chamber of Commerce
LSA Associates, Inc.
Lynn Capouya, Inc.
Mark Thomas
NDC Realty Resources, Inc.
Net Development Co.
North Orange County Chamber of Commerce
NRM Real Estate Advisors

Opposition (continued)

Orange County Hispanic Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Orange County Supervisor Lisa Bartlett
Orange County Taxpayers Association
Principal Technical Services Advance
Rancho Margarita Chamber of Commerce
San Diego North Economic Development Council
Santa Margarita Auto Group
South Orange County Economic Coalition
Southwest California Legislative Council
Tatsumi and Partners, Inc.
Terraken Geotechnical Consultants, Inc.
Transportation Corridor Agencies
TransSystems Corporation
WSO USA, Inc.
ZT Consulting Group
3130 Airway, LLC
46 Individuals

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