

Date of Hearing: April 20, 2015

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 1459 (Kim) – As Amended April 14, 2015

SUBJECT: Toll lanes: County of Orange

SUMMARY: Prohibits the California Department of Transportation (Caltrans) from seeking or providing funding for the construction of a toll lane on a public highway in Orange County unless the toll lane project is first approved by a two-thirds vote of the Orange County Transportation Authority (OCTA). Specifically, **this bill:**

- 1) Makes legislative findings and declarations regarding the history of Orange County's sales tax measure for transportation and the Interstate 405 (I-405) high-occupancy toll (HOT) project.
- 2) States that it is the intent of the Legislature to protect the will of the voters of Orange County by requiring a two-thirds vote of OCTA in order to approve construction of a toll lane funded by Caltrans on a public highway in Orange County.
- 3) Prohibits Caltrans, notwithstanding certain provisions of law, from seeking or providing funding for construction of a toll lane on a public highway in Orange County unless the toll lane project is first approved by a two-thirds vote of OCTA.

EXISTING LAW:

- 1) Prescribes the membership of OCTA as follows:
 - a) Five members of the Orange County Board of Supervisors, appointed by the board;
 - b) Ten city members, each of which must be a mayor or a city council member serving within the county; and,
 - c) Two public members appointed by a majority vote of the other 15 voting members of OCTA; public members may not be elected officials.
- 2) Grants OCTA broad authority to acquire, construct, develop, lease, own, operate, and control transportation facilities in Orange County.
- 3) Generally requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, pursuant to the California Environmental Quality Act (CEQA).

- 4) Sets forth the process, parameters, and guidelines for preparing an EIR, including procedures meant to ensure opportunities for public participation.

FISCAL EFFECT: Unknown

COMMENTS: In 2006, Orange County voters voted to renew a half-cent sales tax for transportation (Measure M2). The measure included funding for a project to add one general purpose lane in each direction on a 16-mile stretch of I-405 between Costa Mesa and Seal Beach. The project is being developed jointly between Caltrans and OCTA, with Caltrans being the lead agency.

The I-405 draft EIR was released in May 2012 and included three build alternatives in addition to the no-build alternative. All of the build alternatives included at least one general purpose lane in each direction, as provided for and approved in Measure M2. One of the build alternatives included HOT lanes as part of the proposed solution.

The proposal to develop HOT lanes met with contentious public outcry. Opponents argued that HOT lanes would essentially be a "tax on a tax" because the lanes would first be built with sales tax measure money and, after they were built, drivers would have to pay yet again to use them. Others argued that the HOT lanes would hurt local businesses because there would be few exits within the HOT lane facility and traffic would bypass cities within the interior stretches of the HOT lane corridor.

OCTA ultimately voted to recommend to Caltrans that the project proceed with construction of one general purpose lane in each direction, without HOT lanes, consistent with Measure M2. However, Caltrans, as the project lead, has the final decision on the project alternative and in July 2014 opted to proceed with the HOT lane alternative, despite OCTA's objections.

To date, the issue of the I-405 HOT lane project is not yet entirely resolved. Earlier in the year, Caltrans committed \$82 million from deferred operations funds to the project and, in response, the OCTA Board of Directors directed its staff to re-engage in discussions with Caltrans related to the project. Specifically, staff was asked to return to the board with an alternative option for OCTA to proceed as the lead agency for the HOT lane alternative. The board also directed staff to begin developing policies that will be required for operations, management, and excess revenue use.

The author introduced AB 1459 to ensure no toll facility is constructed in Orange County without a two-thirds vote of the OCTA Board of Directors. The author asserts that "Caltrans does not have the right to leverage over one billion dollars in local money to build a project that was not approved by the residents of the county, and was not approved by the local transportation authority." AB 1459 is meant to address what the author characterizes as an overreach of power by Caltrans and to empower the local transportation agency to make the ultimate decision regarding which alternative gets built.

Opponents object to AB 1459 because they believe it undermines the flexibility of OCTA and Caltrans to find the best solutions to reduce traffic congestion in this highly impacted transportation corridor.

Committee concerns: The current process is not broken and does not need to be fixed. The situation in Orange County is playing out just as it should, with appropriate checks and balances in place. Caltrans, with which the Legislature has vested broad authorities and powers and full possession of the state highway system, is the lead agency on the I-405 improvement project. In its estimation, the HOT lane is the superior alternative for longer-term, more sustainable congestion relief in the corridor; hence it identified it as its preferred alternative. In fact, Caltrans is not alone in this estimation. In 2012, OCTA staff recommended to the Board of Directors that OCTA that they adopt the HOT lane alternative as the recommended preferred alternative for the project.

The OCTA Board of Directors, weighing the pros and cons of the various project alternatives as well as the public opinion on the project, as is appropriate, voted first to reject the HOT lane alternative then later voted to re-engage with Caltrans in considering the HOT lane alternative. Clearly the board, in its many deliberations and votes, is striving to balance residents' concerns with critical transportation needs.

The bottom line is this: if these two agencies do not cooperate with one another, no project will get built. OCTA cannot build on the state highway system without a cooperative agreement with Caltrans and Caltrans cannot practically build the HOT lane alternative without OCTA's cooperation related to, for example, property acquisition, project financing, and operations. Contrary to the author's fears, OCTA will, in reality, have a say on which project alternative gets built. Subjecting its board to an arbitrary two-thirds vote requirement will harm the process, not fix it.

Double-referral: This bill will be referred to the Assembly Local Government Committee should it pass out of this committee.

Previous legislation: AB 2036 (Mansoor) of 2014, would have required approval by a two-thirds vote of the people within Orange County to authorize a toll road in that county. AB 2036 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

Automobile Club of Southern California
HNTB
Orange County Business Council
Self-Help Counties Coalition

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