

Date of Hearing: June 27, 2022

ASSEMBLY COMMITTEE ON TRANSPORTATION

Laura Friedman, Chair

SB 1050 (Dodd) – As Amended May 23, 2022

SENATE VOTE: 34-1

SUBJECT: State Route 37 Toll Bridge Act

SUMMARY: This bill establishes a new authority to collect tolls on State Route (SR) 37 and requires the authority to impose tolls for improvement on the Sonoma Creek Bridge and for long-term improvements to the corridor. Specifically, **this bill:**

- 1) Makes various legislative findings and declarations related to traffic congestion and the threat of sea level rise on SR-37.
- 2) Establishes the SR-37 Toll Authority (Authority), to be governed by the Bay Area Infrastructure Financing Authority (BAIFA), as a separate entity.
 - a) Requires the Authority to operate and maintain tolling infrastructure, including by installing toll facilities, and collect tolls for the use of the toll bridge and administer such toll revenues, and design and construct improvements on the toll bridge and corridor in accordance with programming and scheduling requirements adopted by the authority.
 - b) The creation of the Authority shall not limit the authority or responsibility of the state, including the department, to maintain SR-37.
- 3) Creates the SR-37 Toll Account (Account), which makes monies available to the Authority upon appropriation by the Legislature.
 - a) Vests control and maintenance of the Account with the Authority, and allows subaccounts within the Account, as deemed necessary and appropriate.
 - b) Requires toll revenues and all other income derived from the toll bridge pursuant to this chapter be deposited into the Account, and paid directly to the Authority.
- 4) Requires the Authority to adopt an annual budget, including compensation for members of the Authority, and prioritize revenue expenditures for improvements on the toll bridge, including the cost of environmental mitigation. Revenues from the toll bridge may be used on any of the following:
 - a) Near-term improvements to the toll bridge, known as the Interim Project, from the intersection of SR 37 with State Route 121 at Sears Point to Mare Island.
 - b) Long-term improvements as part of the SR 37 Ultimate Sea Level Rise Adaptation Project, known as the Ultimate Project.
 - c) Costs for capital improvements to repair or rehabilitate the toll bridge, to expand toll bridge capacity, to improve toll bridge or corridor operations, to reduce the demand for

travel in the corridor, or to increase public transit, carpool, vanpool, and nonmotorized options on the toll bridge or in the corridor.

- d) Costs to integrate ecological restoration and environmental enhancement in the San Pablo Baylands beyond required mitigation into the Interim and Ultimate Projects, as specified.
- 5) Defines terms for purposes of this Act.
- 6) Limits the reimbursable administrative costs of the Authority and the BAIFA to an amount that shall not exceed 3 percent of toll bridge revenues.
- 7) Outlines powers and duties of the Authority, including;
- a) Consult with counties, cities, towns, and other agencies and political subdivisions of this state regarding plans and projects
 - b) Acquire by dedication, gift, purchase, or eminent domain, and hold and dispose of any interests in property whether real or personal in the exercise of its powers
 - c) Establish and enforce policies, rules, and regulations for the administration, operation, and maintenance of the toll bridge and corridor
 - d) Make and enter into contracts and sue and be sued in its own name.
 - e) Invest any moneys not required for the immediate necessities of the authority, as the authority determines is advisable.
 - f) Do all acts necessary and convenient for the full exercise of the powers granted pursuant to this chapter.
- 8) Authorizes the Authority to issue revenue bonds.
- 9) Establishes toll rates at not less than \$1 and requires the Toll Authority to set the toll schedule in the amount as necessary to meet the bond obligations.
- 10) Requires that the toll rates provide a 50% discount to high occupancy vehicles and between a 25% to 50% discount, as determined by the Authority, for low-income drivers as defined.

EXISTING LAW:

- 1) Authorizes the California Department of Transportation (Caltrans) and other entities to apply to the California Transportation Commission (CTC) to develop toll facilities but does not authorize the conversion of an existing non-toll lane to a toll lane.
- 2) Requires that if the California Transportation Financing Authority allows a project sponsor to collect tolls, the project must also have non-tolled lanes available for use.

FISCAL EFFECT: Unknown. This bill has changed since it was heard in the Senate Appropriations Committee; therefore, the fiscal analysis at that time may no longer be accurate.

COMMENTS: SR 37 is a 21 mile highway ringing the northern edge of San Pablo Bay connecting Interstate 80 in Solano County to US 101 in Marin County. SR 37 is an important regional connection linking the north, east and west San Francisco Bay Region following along the northern shore of San Pablo Bay, and connects job markets and housing within Marin, Sonoma, Napa and Solano counties. SR 37 is one of the most vulnerable state highways for sea level rise.

Much of the route traverses one of the Bay Area's largest remaining tidal marsh environments, known as the San Pablo Bay lands. Federal and state agencies, as well as numerous non-profit environmental conservation organizations, have invested concerted efforts on ecosystem planning, wetland acquisition, and habitat restoration for over three decades, guided since 1999 by the comprehensive science-based Baylands Ecosystem Habitat Goals Report and its 2015 update. To address these concerns, in 2012 Caltrans contracted with the University of California, Davis to prepare a Highway 37 Stewardship Study, followed in 2016 by the Route 37 Integrated Traffic Infrastructure, and Sea Level Rise Analysis. In 2015, Caltrans issued an SR 37 Transportation Concept Report, further refining understanding on a range of issues.

Early conclusions have identified portions of SR 37 that will be completely inundated by 2050, as well as increased flooding events along several sections of the corridor leading up to 2050. The threat of sea-level rise coupled with the growing congestion issues on SR 37 makes it a priority corridor for all four North Bay counties. Recognizing that something must be done, all four North Bay counties have agreed to partner in planning near and long term solutions for the corridor. In December 2015, a Memorandum of Understanding was signed by all four North Bay County Transportation Authorities "...to develop an expedited funding, financing and project implementation strategy for the reconstruction of SR 37 to withstand rising seas and storm surges while improving mobility and safety along the route".

The western part of SR 37 is two lanes in each direction and has already been subject to flooding. Caltrans is working on a mitigation project, in consultation with Transportation Authority of Marin, Metropolitan Transportation Commission, Sonoma County Transportation Authority, Napa Valley Transportation Authority, and Solano Transportation Authority, known as Resilient 37, which is out for environmental review and will cost between \$150 million and \$800 million. It is funded from existing resources and construction is expected to begin in 2027.

The eastern part of SR 37 is a single lane in each direction and is congested. Caltrans and the Metropolitan Transportation Commission (MTC) are working on a project to relieve congestion by adding one or more lanes for transit or high-occupancy vehicles, and widening the Sonoma Creek Bridge. This project, known as the "Interim Project", is in the environmental review phase with several options under consideration, and estimated to cost \$430 million. Completion is expected in 2027.

A second phase, known as the "Ultimate Project", will address sea level rise for the entire 21-mile SR 37 corridor. It is a major project that will likely require moving at least part of the highway and could require a new bridge or bridges. This project is in the very preliminary stages with a goal of completion by 2050 and a very preliminary estimated cost of \$6 billion.

This bill seems to supersede an existing process between local agencies and Caltrans, by giving BAIFA the authority to charge a toll on SR 37, and the responsibility to allocate the revenues in order to fulfill the planned "Interim Project" and "Ultimate Project."

Tolling Authority. AB 194 (Frazier) Chapter 687, Statutes of 2015, grants the CTC broad, indefinite authority to review and approve toll facility applications submitted by regional transportation agencies and by Caltrans.

Current statute allows a regional transportation agency, or Caltrans, to apply to the CTC to develop and operate high-occupancy toll (HOT) lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit or freight. Eligibility criteria for an application includes, and is not limited to: 1) a demonstration that the proposed toll facility will improve the corridor's performance especially for those traveling by carpool, vanpool, and transit; 2) requirement that the proposed toll facility is contained in the constrained portion of a conforming regional transportation plan; 3) evidence of cooperation between the applicable regional transportation agency and the department; and 4) a demonstration that a complete funding plan has been prepared, among other provisions related to reimbursable costs, and law enforcement matters.

CTC's authority to develop toll lanes does not include the conversion of existing non-tolled or nonuser-fee lanes into tolled or user-fee lanes, either by authorizing them or prohibiting them. Under this bill, SR 37 will change from a toll-free road to a toll road. This has never been done before in California and it is possible that it may be prohibited by state and federal law. While California has toll roads and toll bridges, none of these were previously toll-free lanes. Toll lanes have been added to existing freeways or been converted from a carpool lane, in both cases supplementing, not replacing, existing toll-free lanes. In this case, there will be no free lanes, nor will there be a reasonable toll-free alternate route.

In October of 2011, CTC approved MTC's application to develop and operate a 270-mile network of express lanes. Express lanes function as high-occupancy vehicle (HOV) lanes that allow vehicles not meeting HOV eligibility requirements to pay a toll to travel in the lane. In April 2013, MTC entered into a cooperative agreement with BAIFA through which MTC delegated the authority to develop and operate the Bay Area Express Lanes network to BAIFA. Today, BAIFA operates three toll roads, collecting \$21.9 million in toll revenues in 2021, up from \$9.7 million in 2020.

While BAIFA currently operates toll roads, it has neither delivered a complex transportation project nor issued revenue bonds, but is part of and staffed by MTC and BATA which does have significant experience delivering complex transportation projects and issuing debt. Additionally, while BAIFA is currently a six-member committee comprised of five members of the MTC who also serve on the Boards of Supervisors of Contra Costa, Napa, Solano, as well as two city representatives, MTC indicates that it will be redefining BAIFA's board to be the same as MTC's later this year.

The committee may wish to require the Authority to complete, and be approved through the existing CTC toll authorization process, before being implemented, in order to ensure consistency and accountability for the future tolling of SR 37 under the Authority. This would also prevent a precedent setting process this bill creates whereby toll authorization for a previous non-toll road is approved through legislation. The CTC toll authorization will also ensure a funding plan is complete for the "Interim Project" and "Ultimate Project," and that local partners are engaged throughout the process.

Additional concerns: This bill was amended in the Senate to remove the continuous appropriation and make any toll revenues subject to appropriation. While Proposition 26 (2010) generally requires a 2/3 vote for any change in state statute that results in any taxpayer paying a higher tax, a recent decision from Division 2 of the First District of the California Court of Appeals held that tolls imposed for use of state-owned toll bridges are not taxes, and increases to the rates for those tolls are not subject to voter approval (*Howard Jarvis Taxpayers Association et al. v. Bay Area Toll Authority et al*, Case #A157598 and #A157972). The California State Supreme Court is reviewing that case, without a 2/3 approval from each house of the Legislature, this bill may not comply with Proposition 26's requirement if it is later found to be a tax.

While this bill intends that the toll be at the level of the trans-bay bridges (currently \$7 with another increase in 2025; more for multi-axle vehicles), there is an overriding provision that requires the toll rates to be set at whatever level is needed to repay the bonds issued for the projects. The tolls will pay for at least part of both the Interim Project and the Ultimate Project. Since the cost of these projects, as well as future federal and state project contributions, are unknown, the toll rate cannot be predicted. Combined with relatively low traffic volumes (about one-sixth of the Bay Bridge), which result in relatively few vehicles over which to amortize the costs, this creates pressure for toll rates to be very high.

Imposing tolls on SR 37 raises equity concerns. This is a route that previously has been free and this bill would no longer provide people with a way to travel across this span without paying a toll. This bill attempts to address these equity issues by requiring a 25% - 50% discount, as determined by the Authority, for any low-income drivers that participate in the electronic toll collection system administered by the Bay Area Toll Authority known as FasTrak. Low income is defined as having an income at or below 200% of the federal poverty level. FasTrak requires the vehicle to have an electronic transponder and the owner to establish an account.

However, it is unclear if a 25% - 50% toll discount is a reasonable equity solution when the roads are free today. Under this bill there will be no free lanes or alternative routes, and any new lanes will be restricted to high-occupancy vehicles during peak traffic hours. Public transit options are currently non-existent and the region is not well suited for public transit because job centers are dispersed. More generally, MTC and other regional transportation agencies are considering tolling and other roadway pricing strategies to pay for other transportation options and to lower vehicle miles travelled (VMT). Tolling discounts do not seem to be a reasonable mechanism to address equity concerns more generally.

Congestion is primary concern. As part of Resilient 37, the SR 37 Outreach Team, including Caltrans D4, the Transportation Authorities of Marin, Sonoma, Napa and Solano Counties, and MTC, conducted an online survey to collect input from a broad diversity of SR 37 users. The objective of the survey was to better understand the travel patterns of regular SR 37 users and to collect feedback about users major concerns and priorities for improvements along the highway. The survey was open to the public between December 1, 2017 and January 16, 2018 and over 3750 responses were collected. This survey found that traffic congestion was by far the priority concern for users (75%) of SR 37, not sea level rise or climate change. Additionally, the survey found that 45% of users across all four counties commute using SR 37, and 40% of users travel on SR 37 for recreation.

The majority (79%) of respondents drive alone, and 19% carpool. These survey results indicate that improvements to SR 37 may be targeting congestion relief for those who use SB 37 to recreate as much as users commute, and that users rarely carpool. This survey also found that 54% of users are willing to fund improvements along SR 37 through a local sales tax measure, while 35% of users are willing to fund improvements along SR 37 through toll collection on the full or partial route.

Improvements to SR 37 costly and short-lived. There is no doubt SR 37 is a local and state priority for improvement. Further oversight and state authorization is necessary for this new toll authority and project scope. According to MTC, the draft funding plan for the “Interim Project” includes a mix of federal, state, and regional funds, and is tagged at \$430 million. Construction is scheduled to be complete by 2027, yet Caltrans projects SR 37 will begin flooding in 2040, and be significantly flooded by 2050- that leaves approximately 13 years for MTC to toll the “Interim Project.” As a result, this is a relatively costly improvement that will not last for a very long time. The completion of a cost-benefit analysis of funding the improvements to SR 37 may be a valuable undertaking.

Important infrastructure with relatively low utilization. Toll revenues from both projects are projected to accrue \$600 million over 30 years. This toll revenue projection is so low partially because Caltrans estimates approximately 20,000-40,000 vehicles use SR 37 a day. This is significantly less than the San Francisco–Oakland Bay Bridge, which carries approximately 260,000 vehicles a day. Therefore, it may be important to evaluate less costly options given the relatively low utilization, related low-toll revenue, and high price tag of both the interim and ultimate projects.

This bill remains problematic in terms of funding, project identification, and who it benefits. However, CTC approval of the toll authority will allow for some state oversight, and the opportunity to more thoroughly address the concerns raised by this committee, and every legislative committee this bill has passed through.

According to the author, “State Route 37 (SR 37) is a major thoroughfare extending from US 101 in Novato to I-80 in Vallejo and is currently threatened by congestion, sea level rise, and flooding. It serves as a vital connection between affordable housing and job rich centers in surrounding bay area counties. It also connects the North Bay to the rest of the state, serving as a recovery route for the Richmond-San Rafael Bridge in the event of an emergency closure. In 2017, flooding forced full or partial closures of SR 37 for a total of 27 days and in 2019 flooding resulted in an additional 8 days of closures. According to a report by the University of California, Davis, without action, all segments of SR 37 could be exposed to storm surge flooding from a 5- to 10-year costal storm event by 2050 and by 2100 sea level rise is projected to render SR 37 completely unusable. An estimated 40,000 cars and trucks cross it each day. That number is expected to increase nearly 50 percent, to 58,000 vehicles, over the next 20 years. Adaptive action is necessary to ensure SR 37 remains a viable transportation artery for the region. SB 1050 will establish the necessary toll authority on SR 37 to assist in providing the revenue needed to improve the resiliency of this important transportation infrastructure from sea level rise, flooding, and congestion, while also increasing opportunities for ecological enhancements, transit, multimodal use, and public access. The funding generated would help leverage competitive state and federal funding sources to complete the needed overhaul.”

In support, the Metropolitan Transportation Commission writes, “Tolls authorized in this measure will serve as a key source of local matching funds for state and federal grants in support of near and long-term improvements. Travelers in the SR 37 corridor face some of the worst delays in the Bay Area. Near-term improvements call for adding a carpool lane in each direction to facilitate transit service and carpools, offering commuters a timesaving, eco-friendly option while increasing overall throughput. Longer term, the bridge is especially vulnerable to sea level rise, and tolls would help fund the rebuilding of State Route 37 between U.S. 101 in Novato to I-80 in Vallejo with a multimodal facility that will relieve congestion, provide bicycle and transit access, facilitate wetlands restoration and withstand sea-level rise.”

Prior legislation: SB 1049 (Dodd of 2022) establishes a program for funding transportation resiliency investments. *This bill is pending in the Assembly Transportation Committee.*

SB 1408 (Dodd of 2020) requires an unspecified authority, on behalf of the state, to operate and maintain tolling infrastructure, including by installing toll facilities, and charge and collect tolls for the use of the Sonoma Creek Bridge, and to be responsible for the design and construction of improvements on the bridge and a segment of State Route 37 between its intersections with Route 121 in the County of Sonoma and Walnut Avenue in the County of Solano in accordance with programming and scheduling requirements adopted by the authority. *Died in Senate Transportation due to the pandemic. Author held the bill.*

AB 194 (Frazier) Chapter 687, Statutes of 2015 authorizes Caltrans and others to apply to the CTC to develop high occupancy toll lanes under specified conditions.

REGISTERED SUPPORT / OPPOSITION:

Support

American Council of Engineering Companies of California
Metropolitan Transportation Commission
Napa County Transportation and Planning Agency/Napa Valley Transportation Authority
North Bay Leadership Council
Northern California Engineering Contractors Association
Solano Transportation Authority
Sonoma County Transportation Authority
Sonoma Land Trust

Opposition

None on file.

Analysis Prepared by: Julia Kingsley / TRANS. / (916) 319-2093