

Date of Hearing: June 20, 2022

ASSEMBLY COMMITTEE ON TRANSPORTATION
Laura Friedman, Chair
SB 985 (Hueso) – As Amended June 15, 2022

SENATE VOTE: 35-0

SUBJECT: Otay Mesa East Toll Facility Act

SUMMARY: Makes various changes to the Otay Mesa East Toll Facility Act (hereafter referred to as the Act), including authorizing the San Diego Association of Governments (SANDAG) to enter into an agreement and contracts, as specified, with the government of Mexico or a government agency for the purposes of imposing and collecting tolls; and acquiring, operating, and maintaining tolling facilities at the Otay Mesa East Port of Entry (POE). Specifically, **this bill:**

- 1) Defines “toll” to mean a toll, fee, or other charge for entrance to or use of the corridor.
- 2) Revises various references in the Act, including from “project revenues” to “toll revenues.”
- 3) Expressly authorizes the use of alternative bidding and building procedures authorized in existing law.
- 4) Requires that the land on which the international port of entry facilities is constructed, at SANDAG’s option, be owned by either the federal government, or by SANDAG who shall lease it to a federal agency.
- 5) Requires Department of Transportation (Caltrans) land that is conveyed to SANDAG or the federal government, be conveyed free of charge.
- 6) Authorizes SANDAG to only impose tolls for entrance to or the use of the corridor, except as specified.
- 7) Stipulates SANDAG must follow certain requirements for the authorized toll authority, including, requiring SANDAG to review the adequacy of the toll rates established to cover the aggregate costs of all projects within two years following the opening of an initial project to be supported by toll revenue and at least biennially thereafter.
- 8) Requires SANDAG to revise the toll rate, including eliminating any free or reduced-rate toll schedule, to meet any obligations secured by a pledge of revenues and any agreements made.
- 9) Eliminates the priority given to certain categories and would authorize costs to be paid by toll revenues, as specified.
- 10) Authorizes SANDAG to enter into an agreement to impose and collect tolls, acquire, operate, and maintain tolling facilities, and exercise related powers jointly with the tolling powers of one or more of the federal government of Mexico or a governmental agency or unit thereof.

- 11) Authorizes SANDAG to contract with one or more of the federal government of Mexico or a governmental agency or unit thereof to receive from or provide to the other contracting parties toll collection and remittance functions and services.
- 12) Authorizes any agreement entered into by SANDAG to include provisions to limit or restrict all of the following:
 - a) Toll collection to one side of the Otay Mesa East Port of Entry.
 - b) Equitable allocation of toll revenues collected by a party to another party or make payments from toll revenues in consideration of covenants made or other value contributed.
 - c) Equitable allocation and financing of the operating, maintenance, and capital costs, including financing costs.
 - d) Sharing of information regarding toll collections and revenues and information regarding traffic at or near the Otay Mesa East Port of Entry and approaching roadways.
 - e) Investment of funds.
 - f) Establishment of policies and procedures for toll rate setting.
 - g) The time and manner of termination, unwinding, and distribution of property upon termination.
 - h) Allocation of liabilities and indemnity.
 - i) The adjudication of disputes or disagreements.
 - j) The manner that strict accountability of funds will be provided for and auditing.
 - k) Other provisions that would enhance the efficiency border crossings at the Otay Mesa East Port of Entry or tolling as well as any other necessary and proper matters agreed upon by the parties.
- 13) Declares that toll revenues paid or allocated to a party other than SANDAG under an agreement shall not be subject to the restrictions of the Act upon transfer to the other party in accordance with the agreement.
- 14) Declares that the Act can only be implemented consistent with federal law, including obtaining any federal approvals.

EXISTING LAW:

- 1) Authorizes SANDAG, pursuant to the Otay Mesa East Toll Facility Act (Act), to carry out a construction project for the State Route (SR) 11 corridor, including, among other things, highway improvements and international border crossing facilities, to be operated as a toll facility.
- 2) Authorizes SANDAG to consult with the government of Mexico relating to plans and projects authorized by the Act.
- 3) Declares that highway projects constructed pursuant to the Act will be owned by Caltrans, international port of entry facilities constructed pursuant to the Act will be owned by a federal agency, and all other property and facilities constructed will be owned by SANDAG.
- 4) Authorizes SANDAG to utilize alternative project delivery methods on the projects, such as design-build and design sequencing.

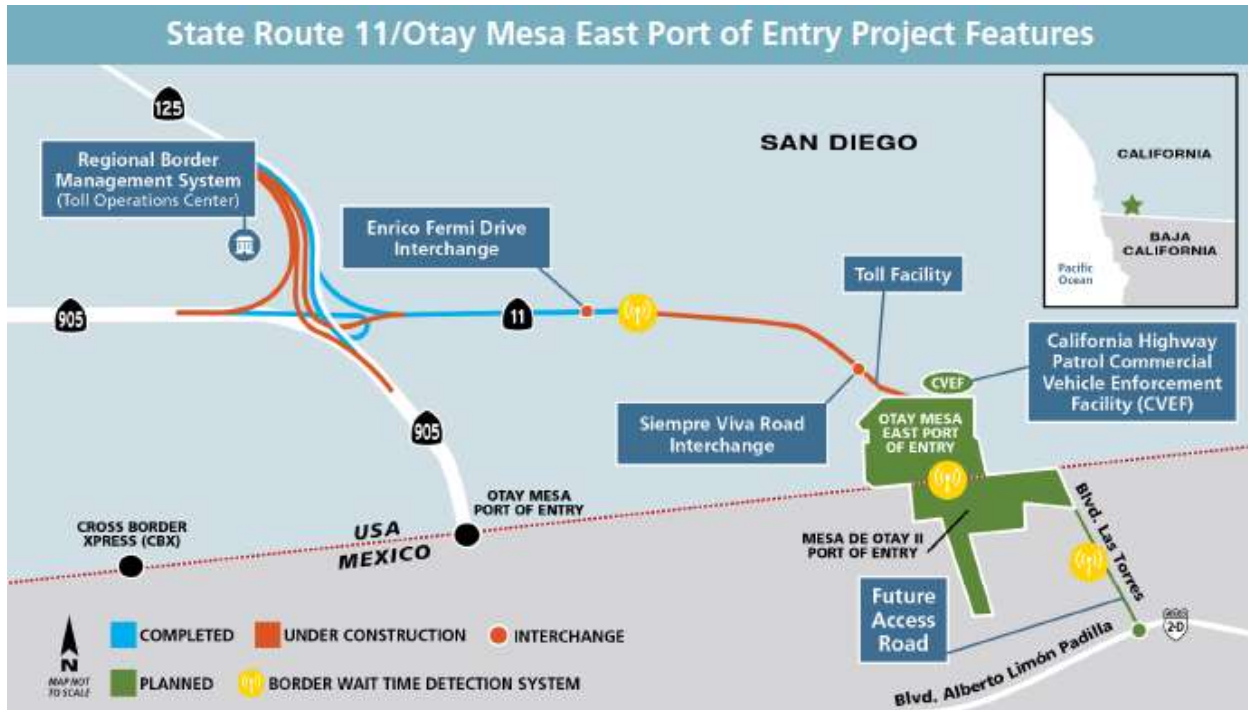
- 5) Authorizes SANDAG to only impose tolls and user fees for the use of the corridor.
- 6) Authorizes SANDAG to include discounts and premiums to encourage efficient use of the tolled projects and the reduction of congestion and greenhouse gas (GHG) emissions.
- 7) Authorizes toll revenue to be used to reimburse or finance the costs state agencies and federal agencies incurred as part of implementation of the project.
- 8) Requires toll revenues to be used to pay for costs in categories, with specified priority given to certain categories, including payment of bonds, SANDAG's costs for operations, toll collection, and administration of the facility, reimbursement to federal, state, and local agencies for costs incurred, and costs for capital improvements to repair or rehabilitate a project or expand project capacity.
- 9) Requires excess revenues be used pursuant to an expenditure plan approved by the SANDAG Board of Directors on an annual basis.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS: As the U.S.-Mexico border region grows, there is a need to improve the commercial movement of goods, services, and passengers through an efficient, integrated system to bolster the local, state, federal, and international economies. In 2019, the Otay Mesa and Tecate ports of entry processed a combined \$48.3 billion in total bilateral trade, and that number is expected to grow in coming years. Currently, more than 90% of California-Mexico trade is moved by truck. The State Route 11/Otay Mesa East POE project will facilitate job growth and new economic opportunities for private sectors on both sides of the border.

The project is a joint venture between SANDAG and Caltrans, in collaboration with state and federal partners in the U.S. and Mexico, to create a 21st century border crossing for the San Diego-Baja California region that will enhance regional mobility and fuel economic growth and binational trade. These improvements will provide a direct connection to the new port of entry, helping to enable fast, predictable, and secure border crossings. Reducing vehicle wait times and building in smart technologies will also help to reduce GHG emissions and improve air quality in the border region.

Crews anticipate breaking ground on the Otay Mesa East POE in summer 2022, with an estimated completion date in 2024. Below is a drawing of the project's features.



According to the author, “As the border region continues to grow, trade and traffic along our border crossing sites will increase. We are working to help alleviate long wait times at the border by building more infrastructure that can help reduce congestion at all ports of entry so that we can benefit from more efficient trade while limiting the effects of increased traffic. The Otay Mesa East POE/SR11 project will help decrease border wait times and pollution, while increasing efficiency and economic output for California and the United States. SB 985 will help SANDAG finance projects along the SR11 corridor and help maintain facilities once they are completed.”

How will the tolls work? The U.S. and Mexico are currently coordinating on the design of the POE on both sides of the border. Toll collection will be located on the U.S. side for both northbound and southbound travelers. The toll revenue will be shared jointly between the U.S. and Mexico under a revenue-sharing agreement.

The new POE will have variable toll rates that change on an hourly basis and will be designed to ensure travelers crossing the border do not experience wait times that exceed 20 minutes. Higher tolls will be charged during peak periods to help manage throughput.

Additionally, the new POE will feature interchangeable passenger and commercial vehicle primary inspection lanes to maximize throughput. An advanced traveler information system will inform border crossers about toll rates, wait times, lane conditions, and incidents. An integrated operations system will link traffic operations.

SB 985 makes updates to the Act. This bill updates the Act to meet the needs of the current POE project, including authorizing SANDAG to enter into agreements and coordinated activities with the government of Mexico and our federal government. Specifically, the bill authorizes SANDAG to enter into an agreement with the government of Mexico or a governmental agency to impose and collect tolls, acquire, operate, and maintain tolling facilities, exercise related powers jointly, and to receive or provide toll collection and remittance functions or services.

The bill also specifies what may be included in any agreements, essentially laying out parameters for the operation of the facility, including restricting toll collection to one side of the POE, making equitable allocation of toll revenues, sharing of information of toll collection and revenue, establishment of toll rate setting, and possible contract details including how to deal with termination, allocation of liabilities and indemnity, and the adjudication of disputes.

As a first step in the final phase of the project, on June 28, 2021, the State of California, represented by Lieutenant Governor Eleni Kounalakis and California State Transportation Agency (CalSTA) Secretary David Kim, SANDAG, and the Mexico Ministries of Foreign Relations, Communications and Transportation, and Finance and Public Credit signed a memorandum of understanding committing to enhanced coordination and collaboration to open the POE by late 2024. SB 985 will allow a formal operating agreement to be developed.

Looking for funding to operate. The actual POE facility, after constructed, will be owned and operated by the U.S. government, specifically U.S. Customs and Border Patrol. SANDAG estimates it will cost roughly \$50 million annually to fully staff and operate the POE. SANDAG is currently working with the federal government to secure the appropriate funding and staffing levels needed.

Related and previous legislation: SB 1486 (Ducheny), Chapter 720, Statutes of 2008 authorized SANDAG to construct and operate the SR 11 and a new federal Otay Mesa East Port of Entry by charging tolls, and issuing bonds secured by those toll revenues to finance the cost of acquiring or operating transportation facilities, international ports of entry, international border crossing facilities and other necessary and related facilities.

REGISTERED SUPPORT / OPPOSITION:

Support

Office of Lieutenant Governor Eleni Kounalakis
San Diego Association of Governments

Opposition

None on file

Analysis Prepared by: Farra Bracht / TRANS. / (916) 319-2093