C/CAG

CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY

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AGENDA

The next meeting of the Legislative Committee
will be as follows.

Date: Thursday, April 14, 2005 – 5:00 p.m. to 7:00 p.m. (sandwiches will be served)

Place: San Mateo County Transit District Office[1]
1250 San Carlos Avenue
4th Floor Dining Room
San Carlos, California

PLEASE CALL WALTER MARTONE (599-1465) IF YOU ARE UNABLE TO ATTEND.

1.	PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA	Presentations are limited to 3 minutes.		5:00 p.m. (5 mins.)
	REGULAR AGENDA			
2.	Minutes of the meeting of March 10, 2005	Action (Martone)	Pages 1-3	5:05 p.m. (5 mins)
3.	Update from C/CAG's Lobbyist in Sacramento (via conference call). A position may be taken on any legislation, including legislation not previously identified.	Potential Action (Wes Lujan & Chuck Cole)	Pages 5-14	5:10 p.m. (40 mins)
4.	Consideration of positions on various bills: • ACA 13 – Parcel tax voting exemption for flood control and stormwater pollution prevention. • AB 1329 – Design-build contracting authority for cities.	Action (Martone)	Page 15-54	5:50 p.m. (30 mins)

[1]From Route 101 take the Holly Street (west) exit. Two blocks past El Camino Real go left on Walnut. The entrance to the parking lot is at the end of the block on the left, immediately before the ramp that goes under the building. Enter the parking lot by driving between the buildings and making a left into the elevated lot. Follow the signs up to the levels for public parking.

For public transit access use SamTrans Bus lines 390, 391, 292, KX, PX, RX, or take CalTrain to the San Carlos Station and walk two blocks up San Carlos Avenue.

- SB 371 - Design-build contracting authority for local transportation entities.
- AB 1203 - Housing and regional job growth.
- SB 44 – General Plans-Air Quality Element.

5.	Review and conceptual approval of Rescue Transportation Proposal.	Action (Napier)	Pages 55-58	6:20 p.m. (15 mins)
6.	Establish date and time for next meeting (May 12, 2005).	Action (Panza)		6:35 p.m. (5 mins)
7.	Other Items/Comments from Guests.	Potential Action (Panza)		6:40 p.m. (5 mins)
8.	Adjournment.	Action (Panza)		6:45 p.m.

NOTE: All items appearing on the agenda are subject to action by the Committee. Actions recommended by staff are subject to change by the Committee.

Other enclosures/Correspondence

- None

CITY/COUNTY ASSOCIATION OF GOVERNMENTS
LEGISLATIVE COMMITTEE

MINUTES
MEETING OF MARCH 10, 2005

At 5:04 p.m. Chairman Lee Panza called the meeting to order in the Fourth Floor Dining Room at the San Mateo Transit District Office.

Members Attending: Chairman Lee Panza, Deborah Gordon, Marc Hershman, Joe Silva, Jim Vreeland, and Deborah Wilder.

Staff/ Guests Attending: Mary McMillan (County Manager's Office), David Burruto (Speaker Pro Tem Leland Yee's Office), Brian Moura (City of San Carlos), Walter Martone (C/CAG Staff), Jessica Stanfill (Assemblyman Mullin's Office), and Jerry Grace.

1. Public comment on items not on the agenda.

- None.

2. Minutes of the Meeting of January 13, 2004.

Motion: To approve the minutes of February 10, 2005 as presented. Wilder/Hershman, unanimous.

3. Update from C/CAG's Lobbyist in Sacramento (via conference call).

Wes Lujan reported:

- The Governor has personally come out in support of ACA 13 that will ask the voters to exempt flood control and stormwater pollution prevention programs from the two-thirds voting requirement under Proposition 213.
- Important bills that have been introduced in the 2005 Legislature include parks and infrastructure bonds, attempts to compromise local government authority over housing, land use, and density issues.
- The Governor has identified pension reform, education reform, and redistricting reform as his main causes for this year. He has presented these items as a challenge to the Legislature and is preparing to do battle.
- Senator Perata held a press conference and announced that Senator Sheila Kuehl has introduced SB 820 that would make urban water management plans subject to CEQA (currently they are exempt). Senator Perata wanted to show that the Senate leadership is doing something proactive on environmental issues.
- Update on the financing of the Bay Bridge – Senator Perata may be proposing a bond measure to raise funds; one of the Indian Tribes is considering providing some funding in return for favorable consideration of a gaming compact; the Legislature and the Administration appear to have reached an impasse and the level of trust is very low; Assemblyman Plescia (San Diego) has introduced a bill requiring MTC to pay the full cost of the cost overruns.

- It appears that there is a lot of momentum to increase the protections for Proposition 42 funds.
- This year it appears that Housing legislation is going to be very important. Assemblyman Mullin has positioned himself to be an ambassador to both sides on this issue.
- The League and the building community are meeting to try to develop a compromise to encourage the development of more housing.
- The proposed changes to PERS need to be carefully negotiated and there will need to be compromises on all sided in order to make it work. Although it has the potential to have long term financial savings, on the short term there will be added fiscal burden as existing employees retire and there are no new workers contributing to the system.

4. Consideration of positions on bills to protect the use of the sales tax on motor vehicle fuel for transportation purposes.

Staff reported that there are three bills that attempt to make it more difficult to redirect the sales tax on motor vehicle fuel purchases to non-transportation purposes. Proposition 42, adopted overwhelmingly by the voters, is evidence that the public wants these funds to be used to support transportation. Unfortunately Proposition 42 included a loophole whereby the Governor and the Legislature can declare a fiscal emergency and redirect these funds to other programs. The three bills currently pending in the Legislature include:

- ACA 4 (Plescia and Harman) – to revoke the authorization of the Governor and the Legislature to use the sales tax on motor vehicle fuel for General Fund purposes during a fiscal emergency.
- ACA 9 (Bogh) – to change the vote requirement from two-thirds to four-fifths of each house in order to use the sales tax on motor vehicle fuel for General Fund purposes during a fiscal emergency.
- ACA 11 (Oropeza) – to require the payment of interest on the loan of motor vehicle fuel sales tax funds and to restrict the frequency of these loans.

MTC Staff has indicated that they will likely recommend an "oppose" position on ACA 9 because it does not provide enough protection against raids of these funds. They will likely recommend a "support" position on the other two bills. It was noted that of the three bills, only ACA 11 is likely to move forward because the author is a Democrat. Wes Lujan, C/CAG's Lobbyist, suggested that It was noted that of the three bills, only ACA 11 is likely to move forward because the author is a Democrat. Wes Lujan, C/CAG's Lobbyist, suggested that the Committee may want to support all three bills until it is determined which one is likely to garner more support in the Legislature. All of the bills provide greater protection than currently exists.

Motion: To recommend that the C/CAG Board take a "support" position on ACA 4, ACA 9, and ACA 11. Hershman/Gordon, unanimous.

5. Consideration of C/CAG Legislative Priorities for 2005 related to the sharing of redevelopment funds among jurisdictions.

C/CAG Staff reported on the results of a survey of the cities to determine the level of interest in sharing redevelopment funds to build affordable housing. The results were mixed, with roughly half of the respondents favoring such an approach and half not being interested. After discussion, the Committee decided that there was insufficient interest in making this a Legislative Priority for 2005. The Committee would however follow legislation that deals with this issue and potentially recommend positions to the C/CAG Board on specific proposals.

6. Establish date and time for next meeting (April 14, 2005).

The next meeting was set for April 14, 2005 at 5:00 p.m. in the Fourth Floor Dining Room at the San Mateo County Transit District Office.

7. Other Items/Comments from Guests.

David Burruto, representing Assembly Speaker Pro Tempore Leland Yee, provided the Committee with a copy of the Highlights of the Legislative Analyst's Office (LAO) Analysis of the 2005-06 Budget Bill. Mr. Burruto also noted that it is unlikely that ACA 4 and 9 will pass out of Committee.

Jessica Stanfill, representing Assemblyman Gene Mullin, reported on three of Mr. Mullin's bills that may be of interest to C/CAG:

- AB 1282 to ensure that San Mateo County jurisdictions receive their appropriate share of the sales tax proceeds from jet fuel sales to United Airlines at San Francisco International Airport.
- AB 939 regarding redevelopment along the CalTrain and BART corridors in San Mateo County.
- AB 1203 to establish Greyfield housing and investment zones.

Mary McMillan, representing the County Manager's Office and the Board of Supervisors, provided information on the Board's adopted Legislative Program and noted that the Board would like to work cooperatively with C/CAG on Legislative matters. Ms. McMillan also reported that at the Federal Level, funding for the Community Development Block Grant (CDBG) Program is seriously in jeopardy. The National Association of Counties (NACo) has made protection of these funds a priority.

Jerry Grace reported that this year's Special Olympics were held in Foster City and he wanted to express appreciation to that jurisdiction for its hospitality.

8. Adjournment.

The meeting was adjourned at 5:53 p.m.

C/CAG AGENDA REPORT

Date: April 14, 2005

To: C/CAG Legislative Committee

From: Richard Napier, C/CAG Executive Director

Subject: REVIEW AND APPROVAL OF LEGISLATIVE UPDATE

(A position may be taken on any legislation, including legislation not previously identified).

(For further information contact Walter Martone at 599-1465 or Richard Napier at 599-1420)

RECOMMENDATION

That the Legislative Committee accept the attached report on State legislation.

FISCAL IMPACT

Not applicable.

SOURCE OF FUNDS

Not applicable.

BACKGROUND/DISCUSSION

Attached is a list of the bills that appear to be most related to the legislative priorities established by the C/CAG Board. C/CAG staff will also be tracking approximately 135 other bills that have subject matter consistent with C/CAG's legislative priorities. These bills are generally place holders (spot bills) and many will not even be scheduled for Committee hearings. Some of them may be amended to include more substantial content. C/CAG staff will watch these bills for future amendments and bring them forth for review if they appear to have a more direct connection to C/CAG's legislative priorities.

ATTACHMENTS

- Action Report With Summary By Subject.

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Budget

AB 518 **(Canciamilla) State budget: two-year spending plan.** I - 02/16/2005

Status:

03/10/2005 - ASM BUDGET Referred to Com. on BUDGET.

Calendar:

Summary:

The California Constitution requires the Governor to submit annually to the Legislature a budget itemizing state expenditures and estimating state revenues and requires the Legislature to pass the Budget Bill by midnight on June 15. This bill would require the Governor to submit, together with the Governor's Budget for each fiscal year that begins in an odd-numbered year, commencing with the 2007-08 fiscal year, a proposed budget plan for the immediately following fiscal year. The bill would specify that the Governor's Budget subsequently submitted for that immediately following fiscal year identify proposed modifications to the budget plan previously submitted for that year. This bill contains other related provisions and other existing laws.

C/CAG *1* *Budget*

ACA 1 **(Calderon) Two-Year Budget.** I - 12/06/2004

Status:

12/07/2004 - ASM PRINT From printer. May be heard in committee January 6.

Calendar:

Summary:

The California Constitution requires that a budget be submitted by the Governor, and that a Budget Bill be passed by the Legislature, for each fiscal year. This measure would express the intent of the Legislature to enact the necessary statutory changes, and to propose to the people the necessary constitutional changes, to enact a budget for a two-year fiscal period.

C/CAG *1* *Budget*

Housing

AB 1203 **(Mullin) Housing: regional job growth.** I - 02/22/2005

Status:

02/24/2005 - ASM PRINT From printer. May be heard in committee March 26.

Calendar:

Summary:

Existing law requires a city or county to include a housing element in its general plan, and, for that purpose, prescribes criteria for determining the city or county share of the regional housing needs, including a requirement that the distribution of regional housing needs take into account, among other things, market demand for housing and employment opportunities. This bill would declare the Legislature's intent to authorize local governments to create Greyfield housing and investment zones in coordination with a regional process, in specific areas where additional job growth and high density housing is desired to match transportation, air quality, and other regional priorities. The created zones shall have tax increment authority, access to transportation funds, future infrastructure improvement funds, and affordable housing funds.

C/CAG *1* *Housing*

SB 575 **(Torlakson) Housing development projects.** A - 03/29/2005

Status:

03/29/2005 - SEN T. & H. From committee with author's amendments. Read second time. Amended. Re-referred to committee.

Calendar:

04/05/05 1:30 p.m. - John L. Burton Hearing Room (4203) SEN TRANSPORTATION AND HOUSING

Summary:

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ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

The Planning and Zoning Law requires that a local agency not disapprove a housing development project, including farmworker housing, for very low, low-, or moderate-income households or condition its approval, including through the use of design review standards, in a manner that renders the project infeasible for development for those households unless it makes written findings, based upon substantial evidence in the record, as to one of a number of specified conditions. This bill would revise the conditions upon which a disapproval or a conditional approval of the housing development project is based. This bill contains other existing laws.

C/CAG *1* *Housing*

Land Use Authority

SB 44 **(Kehoe) General plans: air quality element.** A - 02/23/2005

Status:

03/02/2005 - SEN APPR. From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 4. Noes 3. Page 262.) Re-referred to Com. on APPR.

Calendar:

Summary:

Existing law requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries that bears relation to its planning. The law requires the plan to include a specified land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, and other categories of public and private uses of land. Existing law specifically requires the legislative body of each city and county within the jurisdictional boundaries of the San Joaquin Valley Air Pollution Control District to amend appropriate elements of its general plan to include specified information to improve air quality. This bill would make a legislative finding that air pollution is a serious problem in this state. The bill additionally would require the legislative body of each city and county, including those in the San Joaquin Valley Air Pollution Control District, to amend the appropriate elements of its general plan to include data and analysis, comprehensive goals, policies, and feasible implementation strategies to improve air quality no later than one year from the date specified for the next revision of its housing element. This bill contains other related provisions and other existing laws.

C/CAG *1* *Land Use Authority*

SB 321 **(Morrow) Development: fees.** 1 - 02/16/2005

Status:

03/01/2005 - SEN L. GOV. Set, first hearing. Hearing canceled at the request of author. Set for hearing April 20.

Calendar:

04/20/05 9:30 a.m. - Room 112 SEN LOCAL GOVERNMENT

Summary:

Existing law authorizes a local agency to charge a variety of fees in connection with the approval of a development project, as defined. Existing law provides that in specified actions imposing a fee as a condition of approval of a development project by a local agency, the local agency shall determine how there is a reasonable relationship between, among other things, the fee's use and the type of development project on which the fee is imposed or the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed. This bill would, instead, require that the local agency determine how there is a rough proportionality between the fee's use and the type of development project on which the fee is imposed or the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

C/CAG *1* *Land Use Authority*

SB 1059 **(Escutia) Electric transmission corridors.** 1 - 02/22/2005

Status:

04/01/2005 - SEN PRINT Author's amendments.

Calendar:

04/05/05 9:30 a.m. - Room 3191 SEN ENERGY, UTILITIES AND COMMUNICATIONS

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ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Summary:

Existing law requires the State Energy Resources Conservation and Development Commission to adopt a strategic plan for the state's electric transmission grid using existing resources. Existing law requires that the plan identify and recommend actions required to implement investments needed to ensure reliability, relieve congestion, and to meet future growth in load and generation, including, but not limited to, renewable resources, energy efficiency, and other demand reduction measures. This bill would authorize the commission to designate a transmission corridor on its own motion or on petition by any person who plans to construct an electric transmission line within the state. The bill would provide that the designation of a transmission corridor shall serve to identify a feasible corridor in which can be built a future transmission line that is consistent with the state's needs and objectives as set forth in the strategic plan adopted by the commission. This bill contains other related provisions and other existing laws.

C/CAG	*1*	*Land Use Authority*

Meetings of Public Bodies

AB 194 **(Dymally) Brown Act violations: remedy.** I - 01/27/2005

Status:

02/03/2005 - ASM L. GOV. Referred to Com. on L. GOV.

Calendar:

Summary:

The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend. The act authorizes the district attorney or any interested person to commence an action for a judicial determination that an action of a legislative body of a local agency taken in violation of the act is null and void but requires that the body have an opportunity to cure or correct the alleged violation prior to commencement of the legal action. The act provides that an action of the body alleged to violate specified provisions of the act shall not be determined to be null and void if the action was taken in substantial compliance with those provisions and in other specified circumstances. This bill would remove the requirement that the legislative body be allowed to cure or correct an alleged violation prior to commencement of a legal action and would remove provisions that preclude specified actions from being determined to be null and void.

C/CAG	*1*	*Meetings of Public Bodies*

Sales Tax

AB 451 **(Yee) Local sales tax: jet fuel: place of sale.** A - 03/29/2005

Status:

03/30/2005 - ASM REV. & TAX Re-referred to Com. on REV. & TAX.

Calendar:

04/11/05 1:30 p.m. - Room 126 ASM REVENUE AND TAXATION

Summary:

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose sales and use taxes pursuant to the adoption of local ordinances. That law provides, for purposes of applying a local sales tax imposed under that law to sales of jet fuel, that the point of sale of that jet fuel is the point of delivery of the jet fuel to the aircraft if, both the principal negotiations for that sale are conducted in this state, and the retailer of that jet fuel has more than one place of business in this state. This bill would provide that the point of sale of jet fuel is the point of delivery of that jet fuel to the aircraft .

C/CAG	*1*	*Sales Tax*

AB 1282 **(Mullin) Local sales and use tax: jet fuel: place of sale.** I - 02/22/2005

Status:

03/10/2005 - ASM REV. & TAX Referred to Com. on REV. & TAX.

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ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Calendar:

04/11/05 1:30 p.m. - Room 126 ASM REVENUE AND TAXATION

Summary:

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose sales and use taxes pursuant to the adoption of local ordinances. That law provides, for purposes of applying a local sales tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law to sales of jet fuel, with respect to a retailer that has more than one place of business in the state, that the point of sale of that fuel is the point of delivery of that fuel to the aircraft, if the principal negotiations for that sale are conducted in this state. That law also provides for specific allocations of local sales tax collected with respect to specified sales of jet fuel delivered to aircraft located at a multijurisdictional airport, as defined. This bill, would, with the exception of sales of jet fuel deemed to occur at the Ontario International Airport, delete the provisions that require allocations of local sales taxes, with respect to jet fuel delivered to aircraft located at a multijurisdictional airport, between the local government operating the multijurisdictional airport and the local government in which the multijurisdictional airport is located. This bill contains other related provisions.

C/CAG *1* *Sales Tax*

SB 998 **(Margett) Sales and use tax: exemptions: fuel and petroleum products.** A - 03/29/2005

Status:

03/29/2005 - SEN REV. & TAX From committee with author's amendments. Read second time. Amended. Re-referred to committee. (Corrected March 29.)

Calendar:

Summary:

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax. This bill would provide an exemption from that tax for the sale of fuel and petroleum products to air common carriers for immediate shipment outside this state for consumption in the conduct of their business, as specified. This bill contains other related provisions and other existing laws.

C/CAG *1* *Sales Tax*

Stormwater (NPDES)

ACA 13 **(Harman) Local government: assessments and fees or charges.** I - 02/22/2005

Status:

02/25/2005 - ASM PRINT From printer. May be heard in committee March 27.

Calendar:

Summary:

The California Constitution conditions the imposition or increase of an assessment by a city, county, or special district for flood control purposes upon compliance with requirements for written notice to property owners, a public hearing, and an opportunity for majority protest, except that the imposition of a flood control assessment existing on November 6, 1996, is not subject to these requirements. The California Constitution conditions the imposition or increase of a property-related fee or charge by a city, county, or special district for flood control purposes upon compliance with requirements for written notice to property owners, a public hearing, and an opportunity for majority protest, and upon the approval by a majority vote of the property owners of the property subject to the fee or charge, or at the option of the entity imposing the fee or charge, by a 2/3 vote of the electorate residing in the area affected by the fee or charge. This measure would exclude from these requirements any levy for flood control purposes.

C/CAG *1* *Stormwater (NPDES)*

Transportation - Roads

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ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

AB 1329 **(Wolk) Design-build contracting: cities.** I - 02/22/2005

Status:

03/10/2005 - ASM L. GOV. Referred to Com. on L. GOV.

Calendar:

Summary:

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law, until January 1, 2006, permits certain counties, with the approval of the board of supervisors, to enter into design-build contracts, as defined, in accordance with specified provisions. This bill would permit any city, with the approval of the city council, to enter into design-build contracts, as defined, in accordance with specified provisions.

C/CAG	*1*	*Transportation - Roads*

AB 1714 **(Plescia) Bay Area state-owned toll bridges: financing of seismic repair and replacement.** I - 02/22/2005

Status:

03/30/2005 - ASM TRANS. Referred to Com. on TRANS.

Calendar:

Summary:

Existing law estimates the cost to seismically retrofit the state-owned toll bridges and to replace the east span of the San Francisco-Oakland Bay Bridge at $4,637,000,000, including $2,600,000,000 for the east span replacement. Existing law identifies funding to be made available for this purpose from various funding sources, including a $1 per vehicle toll surcharge on Bay Area state-owned toll bridges and Proposition 192 seismic repair bond funds, among other sources. This bill would revise the estimated cost of the state-owned toll bridge seismic retrofit and replacement program to $7,105,000,000, including $4,830,000,000 for the replacement east span of the San Francisco-Oakland Bay Bridge and revised amounts for certain other toll bridges. The bill would identify $300,000,000 in additional state funds from various sources to fund the demolition costs of the replaced east span of the San Francisco-Oakland Bay Bridge. The bill would delete provisions requiring the replacement east span to be built incorporating a specific single tower cable suspension design. The bill would require any remaining additional funds required to complete the program to be paid for by the Metropolitan Transportation Commission (MTC) from various sources. This bill contains other related provisions and other existing laws.

C/CAG	*1*	*Transportation - Roads*

SB 371 **(Torlakson) Public contracts: design-build contracting: transportation entities.** A - 03/29/2005

Status:

03/29/2005 - SEN T. & H. From committee with author's amendments. Read second time. Amended. Re-referred to committee.

Calendar:

04/05/05 1:30 p.m. - John L. Burton Hearing Room (4203) SEN TRANSPORTATION AND HOUSING

Summary:

Existing law sets forth requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law also authorizes specified state agencies, cities, and counties to implement alternative procedures for the awarding of contracts on a design-build basis. Existing law, until January 1, 2007, authorizes transit operators to enter into a design-build contract, as defined, according to specified procedures. This bill would authorize, until January 1, 2011, certain state and local transportation entities to use a design-build process for bidding on highway construction projects, as specified. This bill would establish a procedure for submitting bids that includes a requirement that design-build entity bidders provide certain information in a questionnaire submitted to the transportation entity that is verified under oath. Because a verification under oath is made under penalty of perjury, the bill would, by requiring a verification, create a new crime and thereby impose a state-mandated local program. The bill would require these transportation entities to report to the Legislature regarding implementation of the design-build process. This bill contains other related provisions and other existing laws.

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ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

C/CAG	*1*	*Transportation - Roads*

SB 1024 **(Perata) Seismic Improvements: bond measure.** I - 02/22/2005

Status:

03/17/2005 - SEN T. & H. To Com. on T. & H.

Calendar:

Summary:

Existing law sets forth a funding plan for the seismic retrofit or replacement of certain state-owned toll bridges by the Department of Transportation. Existing law, pursuant to Proposition 192 of 1996, provides $2 billion in voter-approved general obligation bond funds for state highway and toll bridge seismic work. Existing law imposes certain seismic safety requirements on hospitals. This bill would enact the Essential Facilities Seismic Retrofit Bond Act of 2005 to authorize an unspecified amount in state general obligation bonds for the seismic retrofit of essential facilities throughout the state, including toll bridges and hospitals, subject to voter approval. Of the total amount of the bond measure, $3.22 billion would be designated for seismic work on toll bridges and an unspecified amount would be designated for seismic work on hospitals. This bill contains other related provisions.

C/CAG	*1*	*Transportation - Roads*

Transportation-All

ACA 4 **(Plescia) Transportation Investment Fund** I - 12/06/2004

Status:

12/07/2004 - ASM PRINT From printer. May be heard in committee January 6.

Calendar:

Summary:

Article XIX B of the California Constitution requires, commencing with the 2003-04 fiscal year, that sales taxes on motor vehicle fuel that are deposited into the General Fund be transferred to the Transportation Investment Fund for allocation to various transportation purposes. Article XIX B authorizes this transfer to the Transportation Investment Fund to be suspended in whole or in part for a fiscal year during a fiscal emergency pursuant to a proclamation by the Governor and the enactment of a statute by a 2/3 vote in each house of the Legislature if the statute does not contain any unrelated provision. This measure would delete the provision authorizing the Governor and the Legislature to suspend the transfer of revenues from the General Fund to the Transportation Investment Fund for a fiscal year during a fiscal emergency.

C/CAG	*Support*	*1*	*Transportation-All*

ACA 9 **(Bogh) Motor vehicle fuel sales tax revenue.** I - 01/24/2005

Status:

01/25/2005 - ASM PRINT From printer. May be heard in committee February 24.

Calendar:

Summary:

Existing provisions of the California Constitution require that sales taxes on motor vehicle fuel that are deposited into the General Fund be transferred to the Transportation Investment Fund and used for transportation purposes, but allow the transfer of these revenues to be suspended in whole or in part for a fiscal year under specified circumstances by a statute enacted by a 2/3 vote of the membership of each house of the Legislature. This measure would change the vote requirement to 4/5 of the membership of each house of the Legislature in order to enact a statute suspending in whole or in part the transfer of this particular revenue from the General Fund to the Transportation Investment Fund.

C/CAG	*Support*	*1*	*Transportation-All*

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ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

ACA 11 **(Oropeza) Transportation funds: loans.** I - 02/16/2005

Status:

02/17/2005 - ASM PRINT From printer. May be heard in committee March 19.

Calendar:

Summary:

Article XIX of the California Constitution requires excise taxes on motor vehicle fuel and certain fees imposed on motor vehicles to be used only for specified transportation and vehicle-related purposes, but authorizes these excise tax revenues to be loaned to the General Fund under certain conditions, including a requirement that the funds be repaid within 3 years. Article XIX A of the California Constitution provides that funds in the Public Transportation Account, which are derived from certain sales taxes on motor vehicle fuels, may be loaned to the General Fund or any other state fund or account under certain conditions, including a requirement that the funds be repaid within 3 years. This measure would require interest to be paid on a loan of revenues subject to either Article XIX or XIX A if the loan is not repaid during the same fiscal year in which it was made. The measure would require a loan made pursuant to Article XIX or XIX A to be made pursuant to a statute establishing the terms for repayment and would prohibit the enactment of a statute making a new loan pursuant to Article XIX or XIX A prior to the full repayment of each previous loan under Article XIX or XIX A, respectively. The measure would also prohibit a loan from being authorized by a statute during more than 2 fiscal years within any period of 10 consecutive fiscal years. The measure would also authorize tax revenues subject to Article XIX or XIX A to be loaned to other state funds or accounts in addition to the General Fund. This bill contains other related provisions and other existing laws.

C/CAG *Support* *1* *Transportation-All*

SCA 7 **(Torlakson) Loans of transportation revenues and funds.** I - 02/15/2005

Status:

03/14/2005 - SEN T. & H. Set for hearing April 5.

Calendar:

04/05/05 1:30 p.m. - John L. Burton Hearing Room (4203) SEN TRANSPORTATION AND HOUSING

Summary:

The California Constitution restricts the expenditure of certain motor vehicle fuel and vehicle-related revenues to specified transportation purposes, but authorizes these revenues to be loaned to the General Fund under certain conditions. The California Constitution further provides that the trust funds in the Public Transportation Account in the State Transportation Fund may be loaned to the General Fund under certain conditions. This measure would require any loan of these motor vehicle fuel and vehicle-related revenues or trust funds that is not repaid within the same fiscal year in which the loan was made, or by a date not more than 30 days after the enactment date of the Budget Bill for the subsequent fiscal year, to be repaid with interest at a specified rate. The measure would provide that a loan of these funds may also be made to other state funds or accounts under the conditions applicable to loans to the General Fund.

C/CAG *1* *Transportation-All*

Vehicle Abatement

AB 716 **(Canciamilla) Vessels: abandonment: abatement.** I - 02/17/2005

Status:

03/03/2005 - ASM TRANS. Referred to Com. on TRANS.

Calendar:

04/04/05 1:30 p.m. - Room 4202 ASM TRANSPORTATION

Summary:

Existing law authorizes the officer who has custody of wrecked vessel property to sell it at public auction and transmit the proceeds of the sale, after deducting salvage, storage, property tax liens, other liens, and other expenses, to the Treasurer for deposit in the General Fund, if, among other things, no claimant of the property appears within 90 days after the wrecked property was saved. This bill, instead, would authorize the wrecked property to be sold at auction if no claimant of the property appears within 45 days after the wrecked property was saved. This bill contains other related provisions and other existing laws.

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ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

C/CAG	*1*	*Vehicle Abatement*

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C/CAG AGENDA REPORT

Date: April 14, 2005

To: C/CAG Legislative Committee

From: Richard Napier, C/CAG Executive Director

Subject: **CONSIDERATION OF POSITIONS ON VARIOUS BILLS**

(For further information contact Walter Martone at 599-1465 or Richard Napier at 599-1420)

RECOMMENDATION

That the Legislative Committee consider positions on the following bills:

- ACA 13 – Parcel tax voting exemption for flood control and stormwater pollution prevention.
- AB 1329 – Design-build contracting authority for cities.
- SB 371 - Design-build contracting authority for local transportation entities.
- AB 1203 - Housing and regional job growth.
- SB 44 – General Plans-Air Quality Element.

FISCAL IMPACT

Unknown at this point.

SOURCE OF FUNDS

Not applicable.

BACKGROUND/DISCUSSION

ACA 13 (Harman) – Parcel tax voting exemption for flood control and stormwater pollution prevention: The California Constitution conditions the imposition or increase of an assessment by a city, county, or special district for flood control purposes upon compliance with requirements for written notice to property owners, a public hearing, and an opportunity for majority protest. The California Constitution conditions the imposition or increase of a property-related fee or charge by a city, county, or special district for flood control purposes upon compliance with requirements for written notice to property owners, a public hearing, and an opportunity for majority protest, and upon the approval by a majority vote of the property owners of the property subject to the fee or charge, or at the option of the entity imposing the fee or charge, by a 2/3 vote of the electorate residing in the area affected by the fee or charge. This measure would exclude from these requirements any levy for flood control purposes. This bill is currently being amended to include stormwater pollution prevention programs (NPDES) as also excluded from these requirements. This item is C/CAG's number one legislative priority for 2005. Staff recommends a "support if amended" position. Assemblyman Harman and the Governor's Office have assured C/CAG's lobbyist (Advocation) that the amendment to include the stormwater exemption will be introduced shortly.

AB 1329 (Wolk) – Design-build contracting authority for cities: Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. This bill would permit any city, with the approval of the city council, to enter into design-build contracts. "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity. C/CAG staff surveyed the Public Works Directors in San Mateo County and there was substantial support for having this type of contracting authority being made available to the cities. Therefore C/CAG staff recommends a "support" position on this bill.

SB 371 (Torlakson) – Design-build contracting authority for local transportation entities: Existing law sets forth requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. This bill would authorize, until January 1, 2011, certain state and local transportation entities to use a design -build process for bidding on highway construction projects. C/CAG staff reviewed this bill with Transportation Authority staff and determined that the enactment of this bill could help to facilitate some future roadway projects undertaken by the Transportation Authority. Therefore C/CAG staff recommends a "support" position on this bill.

AB 1203 (Mullin) – Housing and regional job growth: Existing law requires a city or county to include a housing element in its general plan and prescribes criteria for determining the city or county share of the regional housing needs, including a requirement that the distribution of regional housing needs take into account, among other things, market demand for housing and employment opportunities. This bill would declare the Legislature's intent to authorize local governments to create Greyfield housing and investment zones in coordination with a regional process, in specific areas where additional job growth and high density housing is desired to match transportation, air quality, and other regional priorities. The created zones shall have tax increment authority, access to transportation funds, future infrastructure improvement funds, and affordable housing funds. A Greyfield is defined as a former retail site (usually a strip mall) where there are no toxic or hazardous substances on the site or in the soil. This bill is permissive and provides another mechanism for local jurisdictions to secure funding to redevelop sites that could result in an increase of housing and/or jobs to help move closer to a jobs/housing balance. C/CAG staff recommends a "support" position on this bill.

SB 44 (Kehoe) – General Plans-Air Quality Element: Existing law requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries that bears relation to its planning. The law requires the plan to include a specified land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, and other categories of public and private uses of land. This bill would make a legislative finding that air pollution is a serious problem in this state. The bill additionally would require the legislative body of each city and county to amend the appropriate elements of its general plan to include data and analysis, comprehensive goals, policies, and feasible implementation strategies to improve air quality no later than one year from the date specified for the next revision of its housing element. C/CAG staff reviewed this bill with the Planning Directors of a few of the cities in San Mateo County. There was consensus that this bill should be opposed for the following reasons:

1. The Air Quality Management Districts already regulate fixed sources of air pollution.

2. CEQA review is already required for any development/General Plan Update that has the potential to impact air quality.
3. There is no evidence that incorporating state and federal policies at the local level will result in the benefits that were listed in 65302.1 (a)(4) A-F
    a. lower infrastructure costs
    b. lower public service costs
    c. more efficient transit service
    d. lower costs for comprehensive planning
    e. streamlining of the permit process
    f. improved mobility for the elderly and children

    This list of benefits was subsequently amended out of the bill.
4. This bill appears to add Air Quality Management Districts to the review process for local General Plans. Bad idea - we already learned a lesson by seeing the State HCD initial advisory review process evolve into an arbitrary approval process that is causing lots of anguish at the local level.
5. Air Quality is a regional issue and more appropriately addressed at a regional level instead of local General Plans. Air Districts already comment on individual local project approvals. That is where their input is most appropriate.
6. This bill represents another unfunded State mandate.

C/CAG staff concurs with the opinion of the Planning Directors and recommends an "oppose" position on this bill.

ATTACHMENTS

- Complete copies of ACA 13, AB 1329, SB 371, AB 1203, and SB 44 (plus Committee analysis).

Assembly Constitutional Amendment No. 13

Introduced by Assembly Members Harman, Jones, and Mullin

February 22, 2005

Assembly Constitutional Amendment No. 13— A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Sections 2 and 5 of Article XIII D thereof, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

ACA 13, as introduced, Harman. Local government: assessments and fees or charges.

The California Constitution conditions the imposition or increase of an assessment by a city, county, or special district for flood control purposes upon compliance with requirements for written notice to property owners, a public hearing, and an opportunity for majority protest, except that the imposition of a flood control assessment existing on November 6, 1996, is not subject to these requirements. The California Constitution conditions the imposition or increase of a property-related fee or charge by a city, county, or special district for flood control purposes upon compliance with requirements for written notice to property owners, a public hearing, and an opportunity for majority protest, and upon the approval by a majority vote of the property owners of the property subject to the fee or charge, or at the option of the entity imposing the fee or charge, by a ⅔ vote of the electorate residing in the area affected by the fee or charge.

This measure would exclude from these requirements any levy for flood control purposes.

Vote: ⅔. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 2005-06 Regular Session commencing on the sixth day of December 2004, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California, that the Constitution of the State be amended as follows:

First—That Section 2 of Article XIII D thereof is amended to read:

SEC. 2. ~~Definitions.~~—As used in this article:

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax." *"Assessment" does not include any levy imposed for the purposes of flood control, including a levy imposed to finance capital costs or maintenance and operation expenses for flood control.*

(c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service. *"Fee" or "charge" does not include any levy imposed for the purposes of flood control, including a levy imposed to finance capital costs or maintenance and operation expenses for flood control.*

(f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) "Property-related service" means a public service having a direct relationship to property ownership.

(i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

Second—That Section 5 of Article XIII D thereof is amended to read:

SEC. 5. ~~Effective Date.~~ Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, ~~flood control,~~ drainage systems, or vector control. Subsequent increases in ~~such~~ *those* assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in ~~such~~ *those* assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

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ASSEMBLY BILL No. 1329

Introduced by Assembly Member Wolk

February 22, 2005

An act to add Section 20133.6 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1329, as introduced, Wolk. Design-build contracting: cities.

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law, until January 1, 2006, permits certain counties, with the approval of the board of supervisors, to enter into design-build contracts, as defined, in accordance with specified provisions.

This bill would permit any city, with the approval of the city council, to enter into design-build contracts, as defined, in accordance with specified provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 20133.6 is added to the Public Contract
2 Code, to read:
3 20133.6. (a) (1)This section provides for an alternative
4 procedure on bidding on building construction projects
5 applicable in cities upon approval of the appropriate city council.

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(2) The cities may award the project using either the lowest responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable cities to utilize cost–effective options for building and modernizing public facilities. The Legislature also recognizes the national trend, including authorization in California, to allow public entities to utilize design–build contracts as a project delivery method.

(2) The Legislature also finds and declares that utilizing a design–build contract requires a clear understanding of the roles and responsibilities of each participant in the design–build process. The benefits of a design–build contract project delivery system include an accelerated completion of the projects, cost containment, reduction of construction complexity, and reduced exposure to risk for the city. The Legislature also finds that the cost–effective benefits to cities are achieved by shifting the liability and risk for cost containment and project completion to the design–build entity.

(3) It is the intent of the Legislature to provide an alternative and optional procedure for bidding and building construction projects for cities.

(4) The design–build approach may be used, but is not limited to use, when it is anticipated that it will: reduce project cost, expedite project completion, or provide design features not achievable through the design–bid–build method.

(5) If a city council elects to proceed under this section, the city council shall establish and enforce for design–build projects a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the city or the design–build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(c) As used in this section:

(1) "Best value" means a value determined by objective criteria and may include, but is not limited to, price, features, functions, life–cycle costs, and other criteria deemed appropriate by the city.

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(2) "Design–build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(3) "Design–build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design–build contract.

(d) Design–build projects shall progress in a four–step process, as follows:

(1) (A) The city shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the city's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the city to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design–build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the city shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the city. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the city to inform interested parties of the contracting opportunity, to include the methodology that will be used by the city to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors which the city reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the city chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the city to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The city shall establish a procedure to prequalify design–build entities using a standard questionnaire developed by the city. In preparing the questionnaire, the city shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design–build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design–build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design–build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the city that the design–build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design–build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (Public Law 91–596), settled against any member of the design–build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance where an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance where the entity, its owner, officers, or managing employees defaulted on a construction contract.

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements settled against any member of the design–build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design–build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design–build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars ($50,000). Information shall also be provided concerning any work completed by a surety during this period.

(xi) In the case of a partnership or other association, that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design–build contract.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the

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manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(4) The city shall establish a procedure for final selection of the design–build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump–sum bids by the prequalified design–build entities. Awards shall be made to the lowest responsible bidder.

(B) The city may use a design–build competition based upon best value and other criteria set forth in paragraph (2) of subdivision (d). The design–build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall collectively represent at least 50 percent of the total weight of consideration given to all criteria factors; price, technical design and construction expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the city shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the city's second and third ranked design–build entities.

(v) For the purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship

training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For the purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if their experience modification rate for the most recent three–year period is an average of 1.00 or less, and their average Total Recordable Injury/Illness rate and average lost work rate for the most recent three–year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design–build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design–build entity for the purposes of purchasing necessary bonding to cover the activities of the design–build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the city.

(f) All subcontractors that were not listed by the design–build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design–build entity in accordance with the design–build process set forth by the city in the design–build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design–build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the city.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design–build entity. Any deviations from those standards may only be allowed by written consent of the city.

(h) The city may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(k) (1) If the city elects to award a project pursuant to this section retention proceeds withheld by the city from the design–build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design–build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the city and the design–build entity. If the design–build entity provides written notice to any subcontractor who is not a member of the design–build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design–build entity, then the design–build entity may withhold retention proceeds in excess of the percentage specified in the contract between the city and the design–build entity from any payment made by the design–build entity to the subcontractor.

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SENATE BILL No. 371

Introduced by Senator Torlakson

February 17, 2005

An act to add and repeal Article 6.9 (commencing with Section 20209.20) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 371, as introduced, Torlakson. Public contracts: design–build contracting: transportation entities.

(1) Existing law sets forth requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law also authorizes specified state agencies, cities, and counties to implement alternative procedures for the awarding of contracts on a design–build basis. Existing law, until January 1, 2007, authorizes transit operators to enter into a design–build contract, as defined, according to specified procedures.

This bill would authorize, until January 1, 2011, certain state and local transportation entities to use a design–build process for bidding on highway construction projects, as specified. This bill would establish a procedure for submitting bids that includes a requirement that design–build entity bidders provide certain information in a questionnaire submitted to the transportation entity that is verified under oath. Because a verification under oath is made under penalty of perjury, the bill would, by requiring a verification, create a new crime and thereby impose a state-mandated local program. The bill would require these transportation entities to report to the Legislature regarding implementation of the design-build process.

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(2) This bill would require the Bureau of State Audits to conduct a preproject and postproject audit of each project and to compare them to similar design-bid-build or design sequencing projects and report the results to the Legislature, as provided.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 6.9 (commencing with Section
2 20209.20) is added to Chapter 1 of Part 3 of Division 2 of the
3 Public Contract Code, to read:
4
5 Article 6.9. Transportation Design-Build Contracts
6
7 20209.20. The Legislature finds and declares all of the
8 following:
9 (a) It is the intent of the Legislature, in enacting this article, to:
10 (1) Demonstrate an alternative and optional procedure for
11 bidding on highway, bridge, tunnel, or public transit construction
12 projects in the jurisdiction of any county, any local transportation
13 authority designated pursuant to Division 19 (commencing with
14 Section 180000) of the Public Utilities Code, or any local or
15 regional transportation entity that is designated by statute as a
16 regional transportation agency.
17 (2) Authorize the Department of Transportation to
18 demonstrate an alternative bidding procedure for highway,
19 bridge, or tunnel projects on the state highway system.
20 (b) (1) Transportation entities should be able to utilize
21 cost-effective options for delivery of highway projects, in
22 accordance with the national trend, that includes authorizing
23 public entities to utilize design-build contracts as a project
24 delivery method.

(2) Utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process. The benefits of a design-build contract project delivery system include an accelerated completion of the projects, cost containment, reduction of construction complexity, and reduced exposure to risk for the transportation entity.

(3) This approach toward the design-build project delivery method should be evaluated for the purposes of exploring the potential for reduced project costs, expedited project completion, or design features not achievable through the design-bid-build method.

(c) For the purposes of this demonstration, it is important to select projects for which funding has been identified or programmed and are ready or are near ready for construction. It is also important to select projects that range in cost for the demonstration program.

(d) These projects are subject to the existing process under the state transportation improvement program (Chapter 2 (commencing with Section 14520) of Part 5.3 of Division 3 of the Government Code) for planning, programming, environmental clearance, and funding. Projects that are ultimately chosen for demonstration of the design-build collaboration project delivery method under this article shall comply with all existing requirements under the state transportation improvement program for project development and funding. This article does not confer any type of competitive advantage upon the projects in this article, relative to other projects subject to the state transportation improvement program, during other phases of project development.

20209.22. For the purposes of this article, the following definitions apply:

(a) "Best value" means a value determined by objective criteria, including, but not limited to, price, features, functions, life cycle costs, and other criteria deemed appropriate by the transportation entity.

(b) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(d) "Department" means the Department of Transportation as established under Part 5 (commencing with Section 14000) of Division 3 of the Government Code.

(e) "Local transportation entity" means a transportation authority designated pursuant to Division 19 (commencing with Section 180000) of the Public Utilities Code and any other local or regional transportation entity that is designated by statute as a regional transportation agency.

(f) "Transportation entity" means the department and a local transportation entity.

20209.23. (a) A local transportation entity may utilize the design-build method of procurement for highway, bridge, tunnel, or public transit projects within the jurisdiction of the entity.

(b) The department may utilize the design-build method of procurement for highway, bridge, or tunnel projects.

20209.24. A transportation entity shall implement for design-build projects a labor compliance program as described in Section 1771.5 of the Labor Code, or it shall contract with a third party to implement on the entity's behalf a labor compliance program described in that statute. This requirement does not apply to any project where the transportation entity or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

20209.26. Bidding for design-build projects shall progress as follows:

(a) The transportation entity shall prepare a set of documents setting forth the scope of the project. The documents may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the transportation entity's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(b) Based on the documents prepared under subdivision (a), the transportation entity shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the transportation entity. The request for proposals shall include, but need not be limited to, the following elements:

(1) Identification of the basic scope and needs of the project or contract, the expected cost range, the methodology that will be used by the transportation entity to evaluate proposals, whether the contract will be awarded to the lowest responsible bidder, and any other information deemed necessary by the transportation entity to inform interested parties of the contracting opportunity.

(2) Significant factors that the transportation entity reasonably expects to consider in evaluating proposals, including, but not limited to, cost or price and all nonprice related factors.

(3) The relative importance of the weight assigned to each of the factors identified in the request for proposals.

(4) If a nonweighted system is used, the transportation entity shall specifically disclose whether all evaluation factors other than cost or price when combined are any of the following:

(A) Significantly more important than cost or price.

(B) Approximately equal in importance to cost or price.

(C) Significantly less important than cost or price.

(5) If the transportation entity reserves the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposals and shall publish separately or incorporate into the request for proposals applicable rules and procedures to be observed by the transportation entity to ensure that any discussions or negotiations are conducted in good faith.

(c) (1) The transportation entity shall establish a procedure to prequalify design-build entities using a standard questionnaire prepared by the transportation entity. In preparing the questionnaire, the transportation entity shall consult with the construction industry, including, but not limited to, representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(A) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners,

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general partners, or association members known at the time of bid submission who will participate in the design-build contract.

(B) (i) Evidence that the lead member of the design-build entity has completed a state highway project in California with a value of at least fifty million dollars ($50,000,000) in the past 10 years.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, and a financial statement that assures the transportation entity that the design-build entity has the capacity to complete the project.

(C) The licenses, registration, and credentials required to design and construct the project, including, but not limited to, information on the revocation or suspension of any license, credential, or registration.

(D) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(E) Information concerning workers' compensation experience history and a worker safety program.

(F) A full disclosure regarding all of the following that are applicable:

(i) Any serious or willful violation of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against any member of the design-build entity.

(ii) Any debarment, disqualification, or removal from a federal, state, or local government public works project.

(iii) Any instance where the design-build entity, or its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(iv) Any instance where the design-build entity, or its owners, officers, or managing employees defaulted on a construction contract.

(v) Any violations of the Contractors' State License Law, as described in Chapter 9 (commencing with Section 7000) of

1 Division 3 of the Business and Professions Code, excluding
2 alleged violations of federal or state law regarding the payment
3 of wages, benefits, apprenticeship requirements, or personal
4 income tax withholding, or Federal Insurance Contribution Act
5 (FICA) withholding requirements settled against any member of
6 the design-build entity.
7 (vi) Any bankruptcy or receivership of any member of the
8 design-build entity, including, but not limited to, information
9 concerning any work completed by a surety.
10 (vii) Any settled adverse claims, disputes, or lawsuits between
11 the owner of a public works project and any member of the
12 design-build entity during the five years preceding submission of
13 a bid under this article, in which the claim, settlement, or
14 judgment exceeds fifty thousand dollars ($50,000). Information
15 shall also be provided concerning any work completed by a
16 surety during this five-year period.
17 (G) In the case of a partnership or any association that is not a
18 legal entity, a copy of the agreement creating the partnership or
19 association that specifies that all partners or association members
20 agree to be fully liable for the performance under the
21 design-build contract.
22 (2) The information required under this subdivision shall be
23 verified under oath by the design-build entity and its members in
24 the manner in which civil pleadings in civil actions are verified.
25 Information required under this subdivision that is not a public
26 record under the California Public Records Act, as described in
27 Chapter 3.5 (commencing with Section 6250) of Division 7 of
28 Title 1 of the Government Code, shall not be open to public
29 inspection.
30 (d) The transportation entity shall establish a procedure for
31 final selection of the design-build entity. Selection shall be based
32 on either of the following criteria:
33 (1) A competitive bidding process resulting in lump-sum bids
34 by the prequalified design-build entities. Awards shall be made
35 to the lowest responsible bidder.
36 (2) A design-build competition based upon best value and
37 other criteria set forth in subdivision (b). The design-build
38 competition shall include the following elements:
39 (A) Competitive proposals shall be evaluated by using only
40 the criteria and selection procedures specifically identified in the

1 request for proposal. However, the following minimum factors
2 shall each represent at least 10 percent of the total weight of
3 consideration given to all criteria factors:
4 (i) Price.
5 (ii) Technical design and construction expertise.
6 (iii) Life cycle costs over 15 years or more.
7 (iv) Skilled labor force availability, determined by the
8 existence of an agreement with a registered apprenticeship
9 program, which program has been approved by the California
10 Apprenticeship Council.
11 (v) An acceptable safety record. A bidder's safety record shall
12 be deemed acceptable if its experience modification rate for the
13 most recent three-year period is an average of 1.00 or less, and its
14 average total recordable injury/illness rate and average lost work
15 rate for the most recent three-year period does not exceed the
16 applicable statistical standards for its business category or if the
17 bidder is a party to an alternative dispute resolution system as
18 provided for in Section 3201.5 of the Labor Code.
19 (B) When the evaluation is complete, the top three responsive
20 bidders shall be ranked sequentially from the most advantageous
21 to the least advantageous.
22 (C) The award of the contract shall be made to the responsible
23 bidder whose proposal is determined to be the most
24 advantageous.
25 (D) Notwithstanding any other provision of this code, upon
26 issuance of a contract award, the transportation entity shall
27 publicly announce its award, identifying the contractor to whom
28 the award is made, along with a written decision supporting its
29 contract award and stating the basis of the award. The notice of
30 award shall also include the transportation entity's second and
31 third ranked design-build entities.
32 (E) The written decision supporting the transportation entity's
33 contract award, described in subparagraph (D), and the contract
34 file shall provide sufficient information to satisfy an external
35 audit.
36 20209.27. (a) A firm that is hired or paid by a transportation
37 entity to perform prebid services for a project shall not bid or join
38 with another company to bid for that project's design-build
39 contract.

(b) For purposes of this article, prebid services include preliminary engineering studies and other activities that lead to the selection of a project alternative. These activities include, but are not limited to, the following:

(1) Project geometric design.

(2) Earthwork calculations.

(3) Preparation of cross sections.

(4) Drainage design.

(5) Construction staging design.

20209.28. (a) Any design-build entity that is selected to design and build a project under this article shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design, engineering, and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build project for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this article shall be written using a bond form developed by the Department of General Services under subdivision (g) of Section 14661 of the Government Code.

20209.30. All bids by subcontractors bidding on contracts under this article shall be subject to Chapter 4 (commencing with Section 4100) of Part 1 of Division 2. The design-build entity shall do both of the following:

(a) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the transportation entity.

(b) Provide a fixed date and time on which the subcontracted work will be awarded, which awards shall be made in accordance with the procedure established under this article for awarding a design-build contract.

20209.32. A deviation from the performance criteria and standards established under subdivision (a) of Section 20209.26 shall not be authorized except by written consent of the transportation entity.

20209.34. (a) A local transportation entity shall consult with the department in identifying projects to be performed on the state highway system.

(b) The department shall establish the parameters for the extent of the participation of its employees under this article.

20209.36. Quality-control inspection for the construction of any project utilizing the design-build method of procurement authorized by this article may not be performed by the design-build contractor for the project.

20209.38. Nothing in this article affects, expands, alters, or limits any rights or remedies otherwise available at law.

20209.40. (a) The retention proceeds withheld by a transportation entity from a design-build entity shall not exceed 5 percent.

(b) The transportation entity shall not withhold retention from payments to a design-build entity for actual costs incurred and billed or design services, construction management services, or where applicable, for completed operations and maintenance services.

(c) In a contract between a design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the transportation entity and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time that the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the transportation entity and the design-build entity from any payment made by the design-build entity to the subcontractor.

(d) In accordance with applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments specified in subdivision (b). These substitutions shall be made in accordance with Section 22300.

20209.42. Not later than three years after the design-build contract is awarded, the transportation entity shall submit a progress report to the Senate Committee on Transportation, and the Assembly Committee on Transportation. The progress report shall include, but shall not be limited to, all of the following information:

(a) A description of the project.

(b) The estimated and actual project costs.

(c) The design-build entity that was awarded the project.

(d) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including, but not limited to, the resolution of the protests.

(e) An assessment of the prequalification process and criteria.

(f) An assessment of the impact of limiting retention to 5 percent on the project, as required under Section 20209.40.

(g) A description of the labor compliance program required under Section 20209.24 and an assessment of the impact of this requirement on a project.

(h) A description of the method used to award the contract. If best value was the method, the factors used to evaluate the bid shall be described, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(i) An assessment of the impact that the "skilled labor force availability" requirement imposed under clause (iv) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 20209.26 has had on the project.

(j) Recommendations regarding the most appropriate uses for the design-build method of procurement.

20209.44. This article shall remain in effect only until January 1, 2011, and as of that date is repealed.

SEC. 2. The Bureau of State Audits shall conduct a preproject and postproject audit of each project and compare them to similar design-bid-build or design sequencing projects and report the results to the Legislature. The bureau shall deliver each final report on a project to the Legislature after the project has been in operation for five years.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the
3 penalty for a crime or infraction, within the meaning of Section
4 17556 of the Government Code, or changes the definition of a
5 crime within the meaning of Section 6 of Article XIII B of the
6 California Constitution.

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ASSEMBLY BILL No. 1203

Introduced by Assembly Member Mullin

February 22, 2005

An act relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1203, as introduced, Mullin. Housing: regional job growth.

Existing law requires a city or county to include a housing element in its general plan, and, for that purpose, prescribes criteria for determining the city or county share of the regional housing needs, including a requirement that the distribution of regional housing needs take into account, among other things, market demand for housing and employment opportunities.

This bill would declare the Legislature's intent to authorize local governments to create Greyfield housing and investment zones in coordination with a regional process, in specific areas where additional job growth and high density housing is desired to match transportation, air quality, and other regional priorities. The created zones shall have tax increment authority, access to transportation funds, future infrastructure improvement funds, and affordable housing funds.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to enact
2 legislation to authorize local governments to create Greyfield
3 housing and investment zones in coordination with a regional

1 process, in specific areas where additional job growth and high
2 density housing is desired to match transportation, air quality,
3 and other regional priorities. The created zones shall have tax
4 increment authority, access to transportation funds, future
5 infrastructure improvement funds, and affordable housing funds.

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44

AMENDED IN SENATE FEBRUARY 23, 2005

SENATE BILL **No. 44**

Introduced by Senator Kehoe

January 4, 2005

An act to amend Section 65302.1 of the Government Code, relating to general plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 44, as amended, Kehoe. General plans: air quality element.

Existing law requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries that bears relation to its planning. The law requires the plan to include a specified land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, and other categories of public and private uses of land. Existing law specifically requires the legislative body of each city and county within the jurisdictional boundaries of the San Joaquin Valley Air Pollution Control District to amend appropriate elements of its general plan to include specified information to improve air quality.

This bill would make *a* legislative ~~findings and declarations regarding~~ *finding that* air pollution ~~problems~~ *is a serious problem* in this state. The bill additionally would require the legislative body of each city and county, ~~other than~~ *including* those in the San Joaquin Valley Air Pollution Control District, to amend the appropriate elements of its general plan to include data and analysis, comprehensive goals, policies, and feasible implementation strategies to improve air quality no later than one year from the date specified for the next revision of its housing element.

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The bill would also require each city and county, at least 45 days prior to the adoption of *an* air quality ~~amendments to~~ *element or the amendment of* a general plan, to send a copy of the draft document to the air quality management district or air pollution control district in which it is located for review and comment, as specified. By increasing the duties of local public officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65302.1 of the Government Code is
2 amended to read:
3 65302.1. (a) The Legislature finds and declares ~~all of the~~
4 ~~following:~~
5 ~~(1)~~ *that* California has a serious air pollution problem ~~that will~~
6 ~~take~~ *is the result of many factors, including pollution from both*
7 *mobile and stationary sources. Solving this problem requires* the
8 cooperation of land use and transportation planning agencies,
9 transit operators, the *business and* development ~~community,~~
10 *communities,* air quality management districts, air pollution
11 control districts, and the public ~~to solve~~.
12 ~~(2) The solution to the problem requires changes in the way~~
13 ~~we have traditionally built our communities and constructed the~~
14 ~~transportation systems. It involves a fundamental shift in~~
15 ~~priorities from emphasis on mobility for the occupants of private~~
16 ~~automobiles to a multimodal system that more efficiently uses~~
17 ~~scarce resources. It requires a change in attitude from the public~~
18 ~~to support development patterns and transportation systems~~
19 ~~different from the status quo.~~
20 ~~(3) Air quality guidelines are recommended strategies that do,~~
21 ~~when it is feasible, all of the following:~~

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~~(A) Determine and mitigate project level and cumulative air quality impacts under the California Environmental Quality Act (CEQA) (Division 13 (commencing with Section 21000) of the Public Resources Code).~~

~~(B) Integrate land use plans, transportation plans, and air quality plans.~~

~~(C) Plan land uses in ways that support a multimodal transportation system.~~

~~(D) Local action to support programs that reduce congestion and vehicle trips.~~

~~(E) Plan land uses to minimize exposure to toxic air pollutant emissions from industrial and other sources.~~

~~(F) Reduce particulate matter emissions from sources under local jurisdiction.~~

~~(G) Support district and public utility programs to reduce emissions from energy consumption and area sources.~~

~~(4) The benefits of including air quality concerns within local general plans include, but are not limited to, all of the following:~~

~~(A) Lower infrastructure costs.~~

~~(B) Lower public service costs.~~

~~(C) More efficient transit service.~~

~~(D) Lower costs for comprehensive planning.~~

~~(E) Streamlining of the permit process.~~

~~(F) Improved mobility for the elderly and children.~~

(b) The legislative body of each city and county shall *either adopt an air quality element as part of its general plan or* amend the appropriate elements of its general plan, which may include, but are not limited to, the required elements dealing with land use, circulation, housing, conservation, and open space, to include data and ~~analysis,~~ *analyses,* goals, policies, and objectives, and feasible implementation strategies to improve air quality.

(c) The adoption of ~~air quality amendments to~~ *an air quality element or the amendment of* a general plan to comply with the requirements of subdivision ~~(d)~~ *(b)* shall include all of the following:

(1) A report describing local air quality conditions including air quality monitoring data, emission inventories, lists of significant source categories, attainment status and designations, and applicable state and federal air quality plans and

transportation plans. *This report shall include a summary of local, district, state, and federal policies, programs, and regulations that may improve air quality in the city or county.*

~~(2) A summary of local, district, state, and federal policies, programs, and regulations that may improve air quality in the city or county.~~

~~(3)~~

(2) A comprehensive set of goals, policies, and objectives that ~~may improve air quality consistent with the strategies listed in paragraph (3) of subdivision (a).~~ *may improve air quality.*

~~(4)~~

(3) A set of feasible implementation measures designed to carry out those goals, policies, and objectives.

(d) At least 45 days prior to the adoption of ~~air quality amendments to~~ *an air quality element or the amendment of* a general plan pursuant to this section, each city and county shall send a copy of its draft document to the air quality management district or air pollution control district in which the city or county is located. The district may review the draft *elements or draft* amendments to determine whether they may improve air quality consistent with the strategies listed in paragraph (3) of subdivision (a). Within 30 days of receiving the draft *elements or draft* amendments, the district shall send any comments and advice to the city or county. The legislative body of the city or county shall consider the district's comments and advice prior to the final adoption of air quality amendments to the general plan. If the district's comments and advice are not available by the time scheduled for the final adoption of ~~air quality~~ *the air quality element or* amendments to the general plan, the legislative body of the city or county may act without them. The district's comments shall be advisory to the city or county.

(e) (1) The legislative body of each city and county within the jurisdictional boundaries of the San Joaquin Valley Air Pollution Control District shall comply with this section no later than one year from the date specified in Section 65588 for the next revision of its housing element that occurs after January 1, 2004.

(2) The legislative bodies of all other cities and counties shall comply with this section no later than one year from the date specified in Section 65588 for the next revision of its housing element that occurs after January 1, 2006.

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SEC. 2. Nothing in this act shall be interpreted to expand the application of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the existing authorities of the affected local governments, or any air quality management district or air pollution control district.

~~SEC. 2.~~

SEC. 3. The Legislature finds and declares that Sections 65104 and 66014 of the Government Code provide local agencies with authority to levy fees sufficient to pay for the program or level of service mandated by this act.

~~SEC. 3.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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SENATE LOCAL GOVERNMENT COMMITTEE
Senator Christine Kehoe, Chair

BILL NO: SB 44
AUTHOR: Kehoe
VERSION: 2/23/05

HEARING: 3/2/05
FISCAL: Yes
CONSULTANT: Detwiler

GENERAL PLANS AND AIR QUALITY ELEMENTS

Background and Existing Law

Every county and city must adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. Local officials can also add optional elements to their general plans. For example, 17 counties and 92 cities have adopted optional air quality elements as part of the general plans.

Depending on its location and setting, a community's general plan must also contain other special topics, including coastal resources, seismic safety, and airport land use. Counties and cities within the San Joaquin Valley Air Pollution Control District (APCD) must amend the relevant elements of their general plans to include data and analysis; goals, policies, and objectives; and feasible implementation strategies to improve air quality.

The Valley cities and counties must comply with these requirements within a year of their next housing element revision. Local officials must send their draft amendments to the San Joaquin Valley APCD at least 45 days before their scheduled adoption. The APCD has 30 days to review the draft amendments to determine if they are consistent with the bill's air quality strategies. Local officials must consider the APCD's comments and advice. If the APCD doesn't send its comments on time, local officials can act without them. The APCD's comments are advisory (AB 170, Reyes, 2003).

The California Air Resources Board regulates motor vehicle emissions. The air pollution control districts (APCDs) and air quality management districts (AQMDs) regulate stationary sources of air pollution, such as factories and refineries. Some observers believe that the missing link to improving air quality is long-range land use planning that can reduce vehicle travel, promote public transit, and separate pollution sources from sensitive land uses.

Proposed Law

Senate Bill 44 requires every county and city to adopt either an air quality amendment or amend the appropriate elements (i.e., land use, circulation, housing, conservation, open space) of its general plan to improve air quality.

The contents of the air quality element or plan amendments must include:

A report describing local quality conditions, including a summary of policies, programs, and regulations that may improve air quality.

Goals, policies, and objectives that may improve air quality.

Feasible implementation measures.

SB 44 deletes most of the legislative findings and declarations about air quality problems in the San Joaquin Valley and substitutes language that recognizes California's serious air pollution problems and the need for cooperative solutions.

The bill requires cities and counties that are outside the San Joaquin Valley Air Pollution Control District to comply with these requirements within a year of their next housing element revision after January 1, 2006.

SB 44 declares that it does not expand the application of the California Environmental Quality Act, or the existing authority of local governments, air quality management districts, or air pollution control districts.

Comments

1. A breath of fresh air . Land use planning and development decisions require counties and cities to balance local desires with larger realities. Whether they're economic development, environmental quality, or social equity concerns, local and regional goals are always competing. What's good for a small, economically struggling town in Monterey County, may not be good for the

rest of the Salinas Valley's environment. Approving a standard subdivision may be the easiest way to attract new houses, yet it gives residents no choice but to drive to shopping, jobs, and schools. About 20% of all counties and cities already balance these competing goals by making air quality elements part of their general plans. SB 44 advances that concept by requiring all counties and cities to consider air quality when they plan their communities' future.

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2. What's different ? SB 44 takes the current statutory template set by the 2003 Reyes bill for the San Joaquin Valley and applies that concept statewide. In moving the mandate for placing air quality topics into all local general plans, SB 44 differs from the current law in four ways:

Shrinks the legislative findings and declarations.

Deletes the reference to the San Joaquin Valley APCD's 2003 report.

Gives counties and cities (including those in the San Joaquin Valley) the choice to adopt an air quality element.

Sets the compliance date for non-Valley counties and cities after 2006.

3. Here, there, and everywhere ? The rationale behind AB 170 (Reyes, 2003) was the San Joaquin Valley's poor air quality. State and local regulators have cleaned up cars and smokestacks, leaving only the land use connection uncompleted. SB 44 spreads the concept all across California, without regard for regional differences in air quality. The Committee may wish to consider an amendment that exempts counties and cities if they're located in air basins don't violate state or federal standards.

4. Details, details, details . While the concept of integrating air quality concerns into local general plans is clear, some planners may have concerns about the specific mechanics of implementing SB 44. For example, the bill requires counties and cities to comply one year after their next housing element revision. For the counties and cities within the Southern California Association of Governments, the deadline to comply with SB 44 would be June 30, 2007, which is one year after the June 30, 2006 deadline to revise their housing elements. Because the

housing element deadline for San Diego County and its cities was in 2005, the next housing element deadline will be in 2010, making the SB 44 deadline June 30, 2011. The Committee may wish to consider if San Diego's air quality worries can wait for another six years.

5. Data, data, data . SB 44 implies but does not explicitly require counties and cities to draft their general plan elements or amendments by using the data prepared by their air pollution control districts and air quality management districts. Some planners worry that the air districts may not give them the data they need to comply with SB 44. The Committee may wish to consider an amendment that requires the air districts to provide the data and requires the counties and cities to use the air districts' data.

Support and Opposition (2/24/05)

Support : Unknown.

Opposition : City of Moreno Valley.

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C/CAG AGENDA REPORT

Date: April 14, 2005

TO: C/CAG Legislative Committee

From: Richard Napier, Executive Director - C/CAG

Subject: Review and Conceptual Approval of Rescue Transportation Proposal

(For further information or response to question's, contact Richard Napier at 650 599-1420)

Recommendation:

Review and conceptual approval of Rescue Transportation Proposal in accordance with the staff recommendation.

Background/ Discussion:

The $5B diversion of Transportation funds has devastated the funding of transportation projects in the State. While the local sales tax measures have helped to minimize the impact, it clearly is now threatening project delivery. It is critical that the legislative delegation be aware of this serious impact. Clearly legislative action needs to be taken to protect transportation.

Rescue Transportation:

The Self-Help Counties Coalition and State Transportation Professionals have been working on a proposal to protect transportation funds and to address procedural and institutional issues. There are four components to the Rescue Transportation proposal.

1- Firewall for Transportation Funds. This element would constitutionally protect transportation funds from diversion and thereby provide more certainty and predictability. It would bar loans or diversions of transportation revenues by the State for example to the General Fund. It is somewhat similar to the recently passed Proposition 1A.

2- Institutional Changes. The institutional framework within which Caltrans must work is fraught with inefficiencies. One possibility is to remove Caltrans from legislative budgeting and placing it under the direction of the California Transportation Commission (CTC), which would serve as a Board of Directors. The CTC would appoint the Caltrans Director and Chief Legal Counsel, to provide a high level of professionalism and continuity across changes in administration. Depending on the level of support on this issue this may or may not be addressed in the final proposal.

3- Project Delivery Enhancements. Caltrans and local agencies, would be provided with a broader range of delivery and related mechanisms, including design-build

authority, the ability to pay for bids and proposals when appropriate, toll road authority, assured contracting out authority for a broad range of services, and other mechanisms.

4- Transportation Financing. The proposal would require the CTC to conduct biennial reviews, in the years between the STIP and budget adoption, regarding the adequacy of transportation revenues to preserve the existing system and provide the necessary expansion. The CTC would report its results to the Administration and the Legislature and recommend, as necessary, potential adjustments to the States revenue sources to address long-term unmet maintenance and rehabilitation needs for the State Highway System, local streets and roads, and transit capital needs.

These are the basic concepts being addressed. The specific language is still under development by the Self-Help Counties Coalition. How many of these issues that are addressed in the final language will be a function of the level of support achieved. The Self-Help Counties are looking for a Legislative author; however, it is most likely that it will end up being an initiative.

C/CAG staff recommends conceptual approval of the Rescue Transportation Concepts. At the September 9, 2004 Board meeting the C/CAG Board adopted a position supporting a firewall for transportation.

Attachment:

Rescue Transportation Proposal Summary

Alternatives:

1- Review and conceptual approval of Rescue Transportation Proposal in accordance with the staff recommendation.

2- Review and conceptual approval of Rescue Transportation Proposal in accordance with the staff recommendation with modifications.

3- No action.

SELF-HELP COUNTIES COALITION

MEMORANDUM

TO: **Interested Parties**
FROM: **Eric Haley, Moderator of the Self-Help Counties Coalition, Bob McCleary (Contra Costa TA), and Michael Evanhoe (Santa Clara VTA, retired)**
DATE: **December 8, 2004**
RE: **"Rescue Transportation" Proposal**

This memorandum provides a synopsis of the Rescue Transportation proposal for consideration as a constitutional amendment on the November 2006 statewide ballot, specifically: (1) the problems it is trying to solve; and (2) a summary of its principal components, broken down into four categories. *Based on feedback received since the Focus on the Future Conference, the memorandum deletes the revenue-raising authority of the California Transportation Commission in recognition of the difficulty of creating such authority.* This updated memorandum continues to seek the comments and advice of interested parties relative to each of the categories and their components.

Fundamental Transportation Problems Rescue Transportation Seeks to Address

Preservation of California's transportation system and the expansions necessary to accommodate growth in population, employment and economic and social activity are essential to California's long-term economic viability and prosperity. To do otherwise would reduce the mobility of its inhabitants and visitors. The twin goals of preservation and expansion are threatened by a confluence of factors:

- **Diversion of Transportation Revenues.** Over $5.5 billion in transportation revenues have been diverted to help offset the State's General Fund deficits over the past 3 years. This has resulted in a dramatic reduction of funding, which first virtually eliminated new projects and operational enhancements, and subsequently has shrunk funding for rehabilitation and safety to ¼ or less of the levels warranted. The long-term impact on California's mobility and economy will be significant if a correction is not found.
- **Project Delivery Takes a Long Time and Involves Cumbersome Processes.** Major new capital projects can take at least 3 to 5 years to obtain environmental certification, and sometimes longer. Often sequential environmental approval, design, right of way acquisition, and construction processes can stretch completion of significant projects over a time period of ten or more years. Tools that are commonly used elsewhere in the United States to expedite delivery are not fully available in California.
- **The State's Institutional Framework Creates Inefficiencies and Promotes Delay.** Currently, Caltrans is subject to annual legislative budgeting, and its budget and staffing plans are subject to the review of the Department of Finance. Some of its contracts and purchasing are subject to the statutory authority of the Department of General Services, and its personnel practices are subject to regulation by the State Personnel Board and Department of Personnel Administration. This framework makes Caltrans' administration more complex and expensive, and adds time and costs to delivery of projects. Caltrans could benefit dramatically by streamlining the institutional framework that it works within, and providing some of the benefits and autonomy enjoyed by the Self-Help Counties. Caltrans is also no longer competitive in its compensation, resulting in an exodus of high-quality staff to local agencies and the private sector.

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- **Growth in Travel Demand Exceeds Our Ability to Sustain Reasonable Mobility**. It is a well-acknowledged fact that growth in vehicle miles traveled in California has far outpaced growth in transportation revenues. Freeways, highways and arterials have grown more crowded, and the state highway system, as well as local streets and roads, are in need of significant repairs and rehabilitation. Demand for transit, and rehabilitation needs, are growing at the same time as the principal source of transit revenues – sales taxes – have experienced a "down" cycle in the economy. The traditional source of revenues for the state highway system and local streets and roads – the gasoline excise tax on a per gallon basis – has only been raised on two occasions in the past 23 years, and in aggregate has grown at a much slower rate than travel demand.

Rescue Transportation Components

To address key elements of the problems cited above, Rescue Transportation can be sub-divided into four major components as follows:

1. **Firewall for Transportation Funds**. This element, which would constitutionally protect transportation funds from diversion and thereby provide more certainty and predictability, is the most critical component. It would bar loans or diversions of transportation revenues by the State, for example to the General Fund. It is somewhat similar to the recently passed Proposition 1A.
2. **Institutional Changes**. The institutional framework within which Caltrans must work is fraught with inefficiencies. A range of improvements is possible here. The proposal suggests removing Caltrans from legislative budgeting and placing it under the direction of the California Transportation Commission (CTC), which would serve as a board of directors and provide a model more similar to the Self-Help Counties. Oversight and authority of the Departments of Finance, General Services, and Personnel Administration would be eliminated, as would that of the State Personnel Board. Caltrans would be shifted to a biennial (every two years) budget that would be synchronized with the adoption of the biennial State Transportation Improvement Program (STIP). While provisions of the civil service system and PERS membership are envisioned to be retained, salaries would be set based on market conditions, probably including geographic differentials, in order to retain high quality staff throughout the Department. The CTC would appoint the Caltrans Director and Chief Legal Counsel, to provide a high level of professionalism and continuity across changes in Administration.
3. **Project Delivery Enhancements**. Caltrans, and local agencies, would be provided with a broader range of delivery and related mechanisms, including design-build authority, the ability to pay for bids and proposals when appropriate, toll road authority, assured contracting out authority for a broad range of services, and other mechanisms.
4. **Transportation Financing: Biennial Report and Revenue Needs**. The revised proposal would require the CTC to conduct biennial reviews, in the years between STIP and budget adoption, regarding the adequacy of transportation revenues to preserve the existing system and provide necessary expansion. The report would address the state highway and intercity rail system, preservation and critical expansion of the local streets and roads system, and the capital needs to sustain and expand local transit systems in the short and long term. The CTC would report its results to the Administration and the Legislature and recommend, as necessary, potential adjustments to the State's revenue sources to address long-term unmet maintenance and rehabilitation needs for the State Highway System, local streets and roads, and transit capital needs.

The Coalition looks forward to working with you to put together a viable strategy for advancing critically needed reforms. We would appreciate continuing input as we move forward towards implementation of key, and perhaps all, components of Rescue Transportation. Your comments can be sent to Mr. McCleary at rmccleary-7@ccta.net.