

Date: April 2, 2008

Committee Meeting Date: April 17, 2008

Board Meeting Date: May 1, 2008

BOARD MEMORANDUM

ACTION ITEM

TO: Administration and Finance Committee
Santa Clara Valley Transportation Authority
Board of Directors

THROUGH: Michael T. Burns
General Manager

FROM: Kurt Evans
Government Affairs Manager

SUBJECT: Support Position for AB 1756 (Caballero)

Policy-Related Action: Yes

Government Code Section 84308 Applies: No

RECOMMENDATION:

Adopt a support position for AB 1756 (Caballero), which requires the Business, Transportation and Housing Agency to establish the "Office of Local Public-Private Partnerships" to inform local agencies and other interested stakeholders regarding the role that public-private partnerships could play in financing, constructing and/or operating fee-producing local infrastructure projects.

BACKGROUND:

Public-private partnerships (P3s) are contractual, risk-sharing agreements between public agencies and private companies to design, build, finance, operate, and/or maintain infrastructure projects that traditionally would have been the sole responsibility of the public sector. Canada, Australia and the United Kingdom, among other nations, have used P3s extensively to build highways, schools, hospitals, water treatment plants, courthouses, and mass transit lines. But P3s are still relatively uncommon in the United States, including in California.

In 1989, the Legislature passed AB 680 (Baker), which then-Gov. George Deukmejian subsequently signed into law. This measure authorized Caltrans to enter into franchise agreements with private entities for the construction and operation of four toll road demonstration projects on the state highway system. The purpose of the demonstration projects was to encourage private investment in transportation because "public sources of revenue to provide an efficient transportation system have not kept pace with California's growing transportation needs." Under the provisions of AB 680, a private entity could obtain an exclusive franchise agreement for 35 years to construct a toll road facility. These agreements required that toll revenues be applied to "payment of the private entity's capital outlay costs for the project, the costs associated with operations, toll collection, and administration of the facility, reimbursement to the state for the costs

of maintenance and policing services, and a reasonable rate of return.” Supporters of AB 680 saw it as an innovative way to address the problem of traffic congestion, contending that private roadways could serve as an important component of the state highway system. Only two projects have been constructed with this authority: (1) the State Route 91 Express Lanes in Orange County, which opened in 1995; and (b) the State Route 125 South Bay Expressway in San Diego County, which was completed just last year.

The State Route 91 Express Lane Project turned out to be somewhat controversial. The project consisted of 10 miles of toll lanes constructed in the median of the so-called Riverside Freeway, an eight-lane facility that runs from I-405 in Los Angeles County to I-15 in Riverside County. When the State Route 91 Express Lanes were built, the Riverside Freeway was one of the most congested highways in the nation. Public reaction to the Route 91 Express Lanes was initially favorable. But that perception changed as congestion increased and a “non-compete” clause in the private operator’s franchise agreement prohibited public transportation agencies from making capacity improvements on alternate routes in the area. In 2003, the Orange County Transportation Authority (OCTA) bought out the private operator at significant public expense.

While the State Route 91 experience soured many lawmakers against P3s, proponents contend that it actually demonstrates the feasibility of using P3s for fee-producing infrastructure projects. They note that the revenues generated by the tolls paid for the entire costs of constructing and operating the express lanes. P3 supporters also point out that if there is a lesson to be learned from the State Route 91 experience, it is the need for government agencies to have experts familiar with the complexities of negotiating these deals available to them to look out for the public interest.

DISCUSSION:

AB 1756 would create an Office of Local Public-Private Partnerships within the Business, Transportation and Housing Agency to facilitate the use of “best value” P3s by local governments for fee-producing infrastructure projects. The specific duties of this new office would include the following: (a) providing information to local agencies and other interested stakeholders regarding P3s; (b) serving as a clearinghouse of information regarding local agency use of P3s to build infrastructure in California and elsewhere; and (c) establishing a service to link local agencies with technical and legal resources to assist them in developing and evaluating requests for proposals for P3 projects, and in structuring agreements to protect their interests in a P3.

Although local governments have had the authority, with certain limitations, to use P3s for 11 years, few have exercised that option. Part of the reason, according to Assembly Member Anna Caballero (D-Salinas), the author of AB 1756, is the lack of information about how and when P3s could be used, as well as insufficient technical and legal expertise to craft P3 agreements that fully protect the public interest. AB 1756 attempts to address this problem by creating a clearinghouse that would provide information to local jurisdictions about P3s, and connect local agencies with experts that might assist them in evaluating and developing potential P3 agreements.

One of the advocacy principles in VTA’s Board-adopted 2008 State Legislative Program is to support legislation that would allow local entities to engage in P3s to deliver transportation projects. AB 1756 is consistent with that principle and, therefore, we recommend that the Board support this legislation.

ALTERNATIVES:

The Board of Directors could decide to adopt a position for AB 1756 that is different from the one being recommended, or could opt to take no position on this bill at this time.

FISCAL IMPACT:

There is no immediate fiscal impact associated with this recommendation.

Prepared by: Kurt Evans, Government Affairs Manager