

To: VTA Board of Directors
From: Kurt Evans, Government Affairs Manager
Date: May 27, 2008
Subject: General Information: Weekly Legislative Report

For your information, I am attaching the weekly legislative update for the week of May 19, 2008.

MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

FROM: Kurt Evans, Government Affairs Manager
Santa Clara Valley Transportation Authority

DATE: May 27, 2008

SUBJECT: Weekly Legislative Update: Week of May 19, 2008

FEDERAL

Transportation: The House Transportation and Infrastructure Committee approved H.R. 6052, the Saving Energy Through Public Transportation Act. This bill is intended to address the nation's energy crisis by encouraging increased use of public transit. The legislation authorizes \$1.7 billion in new formula grants over two years for public transit agencies in urban areas to reduce fares and expand service, and increases the federal share for alternative-fuel equipment for transit vehicles from 90 percent to 100 percent for FY 2008 and FY 2009. However, H.R. 6052 does not identify the offsets that would be needed to pay for its provisions if it were to be enacted into law. Currently, there is no Senate companion legislation.

FAA Reauthorization: The Senate failed to approve the Federal Aviation Administration (FAA) reauthorization bill, which includes a provision to transfer General Fund revenues into the Highway Trust Fund in order to fix a projected shortfall in the Highway Account in FY 2009. Due to Republican opposition to a number of aviation-related provisions in the bill, the Senate rejected a procedural motion that would have allowed a final vote on the legislation. The bill now has been set aside, but it is expected to be brought back to the Senate floor in the near future for reconsideration after a "cooling off" period.

The FAA reauthorization bill is serving as the legislative vehicle to address a situation where the revenues coming into the Highway Account of the Highway Trust Fund are short of the amount needed to fund the federal highway program at the authorized level in FY 2009. The Trust Fund "fix" was introduced on the floor by the leadership of the Senate Finance Committee as a substitute amendment offered by Sen. Jay Rockefeller (D-WV). It would avert the shortfall by depositing \$3.3 billion in General Fund revenues into the Highway Trust Fund to reimburse the Trust Fund for emergency spending related to repairing the damage from the Gulf Coast hurricanes. The proposal to fix the shortfall also includes a temporary suspension of transfer payments from the Highway Trust Fund to the General Fund to cover the cost of fuel tax exemptions provided to public transit agencies and to state and local governments, but does so in a way that preserves the exemptions.

Gas Tax Holiday: There has been much discussion recently of proposals to suspend the federal motor fuels tax from Memorial Day to Labor Day. One proposal by Sen. John McCain (R-AZ), the presumptive Republican presidential nominee, would suspend the federal gas tax and compensate for lost revenues to the Highway Trust Fund with transfers from the General Fund. Another plan, offered by Sen. Hillary Clinton (D-NY), who is one of the contenders for the Democratic presidential nomination, would tax the “windfall profits” of oil companies to pay for any reduction in Highway Trust Fund revenues resulting from a temporary suspension of the federal motor fuels tax. Most economists predict insignificant savings to Americans as a result of a suspension. However, they estimate that a three-month suspension would reduce revenues that would otherwise be deposited into the Highway Trust Fund by \$9 billion.

Congressional advocates of the “gas tax holiday” have indicated that they would continue the effort to move a bill in the coming weeks. However, Democratic leaders in both the House and Senate remain opposed to any suspension of the federal motor fuels tax, and are trying to develop an alternative proposal that would provide relief from gas prices without impacting the Highway Trust Fund.

Strategic Petroleum Reserve: Congress voted overwhelmingly to challenge President George W. Bush to temporarily halt the daily shipment of thousands of barrels of oil into the federal government’s Strategic Petroleum Reserve. However, lawmakers disagreed on what—if any—impact the suspension might have on gas prices and acknowledged that it was but “a modest step” in addressing the public’s anger over soaring energy costs. Meanwhile, the President has steadfastly refused to halt shipments of about 70,000 barrels of oil a day into the Strategic Petroleum Reserve, which was created in the 1970s as a precaution against major oil supply disruptions. Today, it holds 701 million barrels, which is enough to replace two months of oil imports. The reserve is at 97 percent of capacity.

The Senate voted 97-1 to suspend the shipments for the rest of the year. Hours later, the House followed suit by a vote of 385-25. The votes do not compel President Bush to act because the measures differ somewhat and would need to be reconciled before final congressional approval. Still they were symbolic of lawmakers’ frustrations at not being able to agree on anything more substantive in response to public anger over high gas prices.

Global Warming: The head of the U.S. Environmental Protection Agency (EPA) supported California’s request for a waiver allowing the state to enforce its own curbs on global warming emissions from vehicles, but reversed himself after talking with White House officials, according to a key witness at a congressional investigation. “The record before this committee suggests that the White House played a pivotal role in the EPA’s decision to reject the California petition,” said a 20-page summary of an investigation by the House Committee on Oversight and Government Reform, chaired by Rep. Henry Waxman (D-CA). The report noted that it would be a “serious breach” of the federal Clean Air Act if President Bush or other White House officials directed the EPA “to ignore the record before the agency and deny California’s petition for political or other inappropriate reasons.”

The key committee witness on the reversal, EPA Associate Deputy Administrator Jason Burnett, testified that he was directed not to identify the White House officials or answer any other questions about White House involvement in the agency's recent decision that blocked California's landmark law. That law, AB 1493 (Pavley), was enacted in 2002, and was to take effect with 2009 model year cars and passenger trucks. It is key to the state's crusade against climate change. Cutting motor vehicle emissions of carbon dioxide would account for one-sixth of the greenhouse gas reductions required by California's other global warming law, AB 32 (Núñez), which Gov. Arnold Schwarzenegger signed in 2006.

Questions about White House intervention began to surface soon after December 19, 2007, when EPA Administrator Stephen Johnson announced his decision not to grant the California waiver. After that decision, the Washington Post quoted anonymous sources saying Johnson had overruled the unanimous opinion of his legal and technical staff in blocking California's effort. Sen. Barbara Boxer (D-CA) later released internal EPA documents in which agency staff members urged higher-ups to approve California's request.

The House investigative report is the first to yield evidence suggesting White House influence in denying California the permission it needs to limit greenhouse gas emissions from tailpipes. In testimony before the House Oversight and Government Reform Committee, Burnett said his boss, Johnson, was very "interested in a full grant of the waiver" last summer and then thought a partial grant of the waiver "was the best course of action." Burnett said Johnson's position did not change until after he communicated with the White House.

Housing: The House passed a massive homeowner rescue plan to provide cheaper, government-backed mortgages to half a million debt-ridden borrowers and to bolster an economy crippled by the housing crisis. Defying veto threats from President Bush, the House approved the measure by a vote of 266-154. It would let the Federal Housing Administration (FHA) take on up to \$300 billion in new mortgages so that financially strapped borrowers facing foreclosure could refinance. The plan is the centerpiece of a broader package of bills that Democrats say would prevent more foreclosures, and help homeowners and communities deal with the fallout from the mortgage meltdown. It is targeted at homeowners facing default, including many who owe more than their houses are worth. For instance, a homeowner who owes \$290,000 on a house now worth \$225,000 could refinance into an FHA-backed loan if the mortgage holder was willing to take a loss of about 36 percent. The borrower's monthly mortgage payments would fall from \$2,200 to about \$1,200. Loan holders would have an incentive to participate since the alternative would be costly foreclosures, which can involve losses of 50 percent or more.

By a vote of 239-188, the House also passed a bill to send \$15 billion to states to buy and fix up foreclosed property. President Bush has threatened to veto that measure as well. Proponents say it would prevent blight in neighborhoods plagued by abandoned, foreclosed homes.

The housing package also contains a grab-bag of measures that the President has sought. Those include legislation to overhaul the FHA, to more tightly regulate government-sponsored mortgage giants Fannie Mae and Freddie Mac, and authority for state and local housing finance agencies to use tax-exempt bonds to refinance distressed sub-prime mortgages. In addition, Democrats attached a housing tax credit of up to \$7,500 for first-time homebuyers, to be paid

back over 15 years. Finally, the package permanently raises the limit on the size of loans that FHA could insure and that Fannie Mae and Freddie Mac could buy to \$729,750 in the highest-cost housing markets. Those caps are scheduled to fall at the end of the year—to \$362,790 for the FHA, and to \$417,000 for Fannie Mae and Freddie Mac.

Supporters hope the housing package, which awaits action in the Senate, will serve as the basis for a broad bipartisan compromise that could satisfy both parties' keen appetite for delivering election-year aid to anxious constituents. But the President's veto warnings, bolstered by staunch GOP opposition, are clouding its prospects. Republicans argue that the package rewards lenders and irresponsible borrowers at the expense of homeowners and renters who made more prudent choices and are straining to cover their costs in a punishing economic climate.

Federal Budget: Democrats controlling Congress are leaving grim decisions on automatic tax increases to the next president and the newly elected Congress under a freshly negotiated House-Senate blueprint for the upcoming budget year. The FY 2009 budget resolution worked out in private talks between House Budget Committee Chairman John Spratt Jr. (D-S.C.) and his Senate counterpart, Kent Conrad (D-ND), awards an approximately 4 percent increase on average to non-defense Cabinet budgets passed by Congress each year. But it makes no effort to rein in the rapidly rising cost of federal benefit programs, such as Medicare. In terms of taxes, the measure assumes that many of President Bush's tax cuts would expire as scheduled at the end of 2010, and relies on the resulting influx of tax revenues to balance the budget.

Congress' annual budget debate involves a non-binding resolution that sets the stage for later bills affecting taxes, benefit programs and the annual appropriations bills. Unless such follow-up legislation is passed, however, the budget debate has little real effect and is mostly about making statements about party priorities. This is such a year. Congress rarely tackles difficult budget issues as elections loom, and a standoff with President Bush means that Democrats may even take a pass on advancing the 12 annual appropriations bills. The next president, on the other hand, will have no choice but to confront an enormous fiscal dilemma, starting with a deficit likely to exceed \$400 billion; and scheduled automatic increases in taxes on income, investments, large inheritances, married couples, and people with children.

Republicans are poised to assault the Democratic budget resolution for permitting many of President Bush's tax cuts to expire. Fully extending them would cost \$161 billion, according to congressional estimates, and would quickly rise above \$250 billion a year. Democrats, on the other hand, say their budget resolution would put the budget back in balance while also making investments in infrastructure, education, community development, clean energy, and other important domestic programs.

STATE

State Budget: In his May revisions to his January 10 budget plan (May Revise), Gov. Schwarzenegger proposed borrowing against California State Lottery income to help close a projected \$15.2 billion deficit, and reversed himself by deciding not to seek to close 48 state parks, ask for early release of 22,000 inmates or give K-12 schools less money than they are guaranteed by the state Constitution. In addition, the Governor called for deeper cuts to health

care and welfare programs for the poor even as his Administration calculated that the projected demand for government assistance is growing, and recommended diverting more than \$700 million in public transit money for General Fund expenditures. And citing changes in federal student loan regulations, the Governor postponed the sale of EdFund, the state's student loan guarantor program, to the FY 2010 budget, though he still hopes to generate \$500 million by selling the non-profit sometime in the future.

The centerpiece of Gov. Schwarzenegger's May Revise is a proposal to borrow against the proceeds of the lottery to help address the state's budget problems, rather than leasing it as previously suggested. Under the plan, California would seek investors to lend \$15 billion secured by future earnings from lottery games that the state hopes would be improved. Investors would be repaid from lottery revenues over 32 years. The \$15 billion would be deposited into a new "rainy day fund." About \$5.1 billion could be used to help balance the FY 2009 budget. The rest could be used over the next two years. The lottery's current rules would be changed to allow broader promotion, bigger and more frequent prize payouts, and other incentives to create more player interest. The money going to schools would be capped at the amount that they have received in recent years—about \$1.2 billion a year of the \$3.3 billion in total lottery revenues. The \$1.2 billion is not guaranteed, however, as the investors must be paid first from lottery proceeds under the deal.

Voters would have to approve a November ballot measure to change the state Constitution, which currently requires 34 percent of lottery revenues—the amount left after paying prizes and overhead—to go for K-12 education. Failure at the ballot would trigger a temporary 1-cent sales tax increase for up to three years to raise the \$15 billion for the rainy day fund. After that, it is assumed the economy will have improved enough to feed the rainy day fund in good years. After the tax ends, taxpayers would get a full rebate using a formula yet to be determined.

The basic idea of the rainy day fund is twofold. First, governors would have more power to make mid-year cuts. Second, the rainy day fund would accumulate money in good years for use in bad years to even out the ups and downs of the economy. Because the state is experiencing a down period now, the fund would be jump-started with the \$15 billion from the lottery transaction. The creation of the rainy day fund also would have to be approved by the voters in a separate ballot measure.

Political Reform: As he stepped down as Assembly speaker, Fabian Núñez (D-Los Angeles) unveiled proposals to alter term limits, restrict fundraising and strip lawmakers of the authority to draw their districts. The measures are joined in a constitutional amendment that would require bipartisan support—two-thirds of both houses of the Legislature—in order to be placed on the November ballot. Núñez's package, however, could compete with a separate redistricting measure being pushed by Gov. Schwarzenegger, whose backers claim to have collected enough voter signatures to qualify it for the November ballot. The key elements of Núñez's plan are as follows:

- **Term limits:** Reducing the maximum time a legislator could serve from 14 to 12 years, but allowing all to be served in one house. The measure would apply only to newly elected legislators, not incumbents.

- Fundraising: Banning campaign contributions to legislators and the governor from May 15 until a state budget is enacted.
- Redistricting: Stripping the Legislature of the authority to draw political boundaries and giving that duty to a 17-member commission consisting of seven Democrats, seven Republicans, and three independents or members of minor parties. Commission members would be divided into two pools—one consisting of eight members selected by legislative leaders; the other comprising nine members selected randomly from pools of candidates created by a panel of judges.

Núñez insisted that he is not trying to sink Gov. Schwarzenegger’s proposal by confusing voters with a second ballot measure targeting redistricting. He said he disagrees with details of the competing proposal, but ultimately hopes that both sides will join forces on a single plan.

REGIONAL

Metropolitan Transportation Commission (MTC): On May 27 and 28, MTC will hold a commission workshop to receive commissioner feedback on potential investments for the Regional Transportation Plan (RTP). Of the \$220 billion in revenues projected to be available to the Bay Area over the next 25 years, \$190 billion is committed by voter mandate, statute or commission policy for maintaining and expanding the existing transportation system. This leaves \$30 billion in uncommitted discretionary revenues. Among the transportation priorities vying for these discretionary revenues are: (a) transit; (b) local roads; (c) state highway maintenance; (d) system expansion; and (e) programs aimed at focused growth, climate protection and Lifeline services. At the workshop, commissioners will be asked to consider the merits of each investment option. The goal is for the discussions to result in up to three alternative investment strategies that would be subject to further review in June.

NOTE: Also contributing to this report were Susan Lent with Akin, Gump, Strauss, Hauer & Feld; Mark Watts with California Strategies; and Scott Haywood, VTA’s Policy and Community Relations Manager.

From: Board.Secretary
Sent: Friday, May 30, 2008 11:28 AM
To: Board.Secretary
Cc: Burns, Michael
Subject: Open Governance Issues

To VTA Board of Directors:

Attached is a memorandum from the General Manager regarding Open Governance Issues. These issues were discussed at the May 15th Administration and Finance Committee meeting, Agenda Item 18, Open Governance Proposal.

Thank you.

Yolanda L. Cruz
Assistant Board Secretary
VTA Office of the Board Secretary
Voice: 408.321.5669 Fax: 408.955.0891

MEMORANDUM

TO: VTA Board of Directors

FROM: Michael T. Burns
General Manager

DATE: May 28, 2008

SUBJECT: Open Governance Issues

At the May 15 Administration and Finance Committee meeting the Committee heard Item 18, *Open Governance Proposal* (attached). After hearing the staff report, the Committee directed staff to pursue the following:

- Create and display car cards with the upcoming Board Schedule of Meetings for a six-month period with advice to check a referral (website and/or telephone number) for up-to-date information.
- When reprinting schedules and other items for the public, include, when practical, a referral to a website and/or telephone number for information on Board and Committee meetings.
- Investigate the ability to provide a prompt on the telephone system that will provide a recorded message with up-to-date information on Board and Committee meetings.
- At Board meetings have a slide on the screen displaying upcoming meetings and a referral to website and/or telephone number for more information.

Per my recommendation, we will not be pursuing the option of printing pocket calendars noted in the Board Memo.

As of the above date, the car card listing Board Meetings is in production and will be posted in vehicles by the end of June. The production process for the July schedules has already begun. Therefore, the next opportunity to make additions to the schedules will be for the October service change, and October 2008 schedules will include website and contact information related to Board and Committee meetings. The VTA Customer Service Line will have the necessary programming and recording done to announce Board meeting times and dates by June 13. A slide presenting upcoming meetings will be projected at future Board Meetings.

If you have any questions or need further information, please do not hesitate to contact me.

Date: _____ May 1, 2008

Committee Meeting Date: _____ May 15, 2008

Board Meeting Date: _____ N/A

BOARD MEMORANDUM

DISCUSSION ITEM

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

THROUGH: Michael T. Burns
General Manager

FROM: Jim Lawson
Senior Policy Advisor

SUBJECT: Open Governance Proposal

FOR DISCUSSION

BACKGROUND:

At the March 6, 2008 Santa Clara Valley Transportation Authority's (VTA) Board of Directors meeting, the Board received the following suggestions from the public regarding Open Governance. Director Reed requested staff discuss these suggestions at an Administration and Finance Committee meeting.

1. Notices for all VTA-sponsored meetings must be advertised on all VTA buses and light rail vehicles. The notices should be posted at least ten days in advance.
2. Closed session agenda items occurring at VTA Board and Committee meetings should be taped and records made public when their reason for secrecy no longer exists.
3. VTA Board members, staff and management emails should be made public unless there is a specific reason that releasing them would harm the public interest. This is already being done at the City of Palo Alto, which has all emails from City Council members, staff and management publicly available.

DISCUSSION:

Ensuring that the public has the opportunity to participate in public meetings is a high priority for VTA. The Board has instituted a robust public information program that exceeds the requirements of the Open Government Legislation (Brown Act). Staff continues to evaluate our progress in this area and where the effectiveness and cost of suggestions is warranted will implement additional measures.

Following is a preliminary analysis of the suggestions presented to the Board.

1. *Notices for all VTA-sponsored meetings must be advertised on all VTA buses and light rail vehicles. The notices should be posted at least ten days in advance.*

Currently, all VTA board and committee meetings are posted on VTA's website. Agendas for these meetings are posted at least one week prior to the meeting. In addition, notices for VTA Board meetings are also posted through the following:

- Notices are advertised in three local papers, *The San Jose Mercury News*, *El Observador* and *Thoi Bao* each month at a cost of over \$21,000 a year.
- Notices are posted at the Downtown Customer Service Center.
- A list of meetings and locations are listed in Take-One, VTA's monthly on-board newsletter.
- At the beginning of each calendar year, the dates for all VTA Board meetings for the year are published in the *San Jose Mercury News*, *El Observador* and *Thoi Bao*.

Special one-time public/community meetings and hearings are also advertised through local community papers, bus and light rail car cards, flyers on bus and light rail vehicles and, at times, broadcast to reach as large a public audience as possible.

While staff agrees that placing notices on VTA bus and light rail vehicles for all meetings would further our outreach efforts, implementation would present several challenges and additional costs to VTA. One method for placing notices on VTA bus and light rail (revenue) vehicles is using car cards. VTA contracts with an outside vendor to place and maintain all internal and external advertising on revenue vehicles. This includes car cards and external bus boards. Under the terms of the contract, VTA is allocated 15% of the eligible advertising space for its own use. VTA uses this space for rider information, public safety and promotional activities. Due to the high volume of rider information and promotional activities, VTA is frequently at or exceeding the 15% usage maximum. Therefore if the Board desires to place additional meeting notices using car cards, VTA would amend its contract with the vendor to open additional space. Any change to advertising space would result in a decrease of annual revenues through the advertising contract.

Additionally, it generally takes six to eight weeks to design, produce and place car cards. This creates a very tight timeline for placing and removing the materials and is the reason this communication method has been reserved for postings that remain for a minimum of a month or more. Car cards are placed and removed by the vendor as part of the advertising contract. Placing and removing such a high number of car cards on all VTA vehicles in a timely manner is a large undertaking and the vendor would need to dedicate a staff person to the task. This additional work is beyond the scope of the contract and the vendor would likely require an amendment to pay for the additional staff time.

Staff recommends we continue to expend our limited resources on newspaper placement and using VTA's website. This method also supports our ongoing green sustainability efforts.

As an alternative, the Board might consider creating a VTA pocket calendar that includes tentative meeting dates and directs customers to VTA's website and customer service number for more detailed information. The calendar could also provide details on the purpose of each meeting. This would be a cost-effective way of increasing outreach while also ensuring that the information is timely and accurate. Additionally, staff could design an annual car card that lists the dates for VTA board meetings for the year, however VTA would still be subject to the 15% advertising space requirement.

2. *Closed session agenda items occurring at VTA Board and Committee meetings should be taped and records made public when their reason for secrecy no longer exists.*

VTA routinely tape records Board and committee meetings. It does not tape record the closed session portions of Board or standing committee meetings but does maintain a record of decisions made in closed session.

Government Code section 54957.2 permits a local agency, by ordinance or resolution, to designate a clerk or other officer or employee to keep and enter in a minute book a record of topics discussed and decisions made in closed session. The minute book is not a public record and is required to be kept in confidence. For a number of years, General Counsel has prepared and maintained such closed session records.

Section 54957.2 also provides that the minute book may consist of a recording of the closed session. The recording can be made only with the knowledge and consent of all of the participants in the closed session [62 Ops. Cal. Atty. Gen. 292 (1979).]

The purpose of Closed Session is to ensure that the information remains confidential to protect the best interests of the public and the organization. Once an action is taken on a Closed Session item, a report is provided to the public as required by law. Disclosure of confidential information acquired in a closed session is generally prohibited. (Government Code section 54963.)

If information from a closed session became public prior to the appropriate time, it could jeopardize VTA's negotiating position or invade privacy rights. Therefore, release of information from a closed session must be carefully monitored, and may not, in many circumstances, be appropriate even after a matter has been concluded.

In light of these considerations, the taping of closed sessions of the Board does not appear to be justified due to the expense involved, the risk of improper release of confidential information, and the fact that a record is currently maintained of closed session decisions.

3. *VTA Board members, staff and management emails should be made public unless there is a specific reason that releasing them would harm the public interest. This is already being done at the City of Palo Alto, which has all emails from City Council members, staff and management publicly available.*

Currently, VTA documents, including emails, are available at the public's request in accordance with the Public Records Act. VTA is pleased to comply with any request for documentation and does so on a regular basis. Additionally, VTA posts all email correspondence with Board

members on its website, including questions on agenda items and the responses. The only exception is for privileged or confidential communications.

Staff contacted the City of Palo Alto on its posting of emails from Board members, staff and management. According to Palo Alto staff, the representation made to the Board was inaccurate. The City of Palo Alto does post emails that contain specific questions from council members regarding agenda items and the corresponding response. However, it does not post all emails from staff and management on Palo Alto's website.

Given these factors, staff does not believe the additional effort and expense of placing all staff and management emails on VTA's website is warranted, given that email correspondence between VTA and its Board members is currently placed on VTA's website.

ALTERNATIVES:

The Board could direct staff to implement one or more of the proposals, some modified version or none.

FISCAL IMPACT:

Using advertising space for public notices would be the most costly to implement. VTA would need to alter the transit-advertising contract with the vendor. While the revenue impacts are unknown at this time, VTA currently receives approximately \$1.5 million annually for transit advertising. Additionally, printing the necessary number of car cards would cost approximately \$10,600 per year. If VTA were to post notices using either flyers or car cards, VTA will need to either pay the vendor for the additional services or hire additional staff. Implementing the suggestion would reduce revenue and increase cost.

Recording Closed Session meetings would have an additional impact on staff resources. Posting questions and responses between the Board and staff regarding agenda items would require further analysis.

Prepared by: Scott Haywood, Policy & Community Relations Manager