

From: Board.Secretary
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To: Board.Secretary
Cc: Burns, Michael
Subject: Legislative Update - Week of December 8, 2008

MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors
FROM: Kurt Evans, Government Affairs Manager
Santa Clara Valley Transportation Authority
DATE: December 15, 2008
SUBJECT: Weekly Legislative Update: Week of December 8, 2008

FEDERAL

Auto Industry: The Senate failed to compromise on a \$14 billion bailout for General Motors and Chrysler after Republicans objected to a House bill that was passed with White House backing. Meanwhile, General Motors and Chrysler said they do not have enough money to get through the end of the year. Ford has asked for no immediate money, but stated that a bankruptcy filing by the others could pull it down. If all three were to go under, up to 2.6 million jobs—about 1.9 percent of the U.S. workforce—could be lost. That includes more than 255,000 people directly tied to the three companies, and an additional 2.3 million whose jobs are in the steel, glass, fabric, tire, and electronics industries.

After hours of closed-doors talks, which separately included company, creditor and worker representatives, the impasse in the Senate came when the United Auto Workers would not agree to align their labor costs with those of workers from foreign-owned U.S. plants by the end of 2009.

The question now is what happens next? General Motors and Chrysler said they needed at least \$4 billion each by the end of the year to stay afloat, and maintained that a bankruptcy filing to restructure is not a viable option. Both said they fear filing for bankruptcy would cause their sales to dry up instantly because of consumers' fears over warranties and parts. Treasury Secretary Henry Paulson could provide aid from the \$700 billion financial rescue program that Congress approved earlier, but he has said in the past that those funds must be reserved to protect the financial system. However, the White House commented that doing nothing could mean the end of the U.S. auto industry.

General Motors and Chrysler could conserve cash by shutting down operations between now and January 20 in hopes of quick aid when President-elect Barack Obama is inaugurated, and a new Congress is in place. Obama supports help for the industry with conditions. However, that option would be a high-stakes risk. The automakers would have no revenues during that time even if cars sell because they book revenues when vehicles are shipped to the dealers. Shutting down operations that long also could devastate suppliers. Because they supply domestic and foreign-owned plants, the impact would ripple through the industry.

Leveraged Leases: The auto industry bailout bill that was approved by the House included language that would have directed the president's designee—likely the U.S. Treasury Department—to serve as guarantor for leveraged lease transactions that were entered into by public transit agencies and approved by the Federal Transit Administration (FTA) prior to January 1, 2006. The language further specified that any payments made by the federal government as a result of such guarantees must be recouped from the public transit agencies. This language was added to ensure that there would be no cost to the taxpayers or the federal government as a result of the guarantees.

The guarantees would simply be used to replace the loss of triple A ratings on securities used to make lease payments—mostly Treasury bills—which are not in danger of default. No one has asserted that these securities are in danger of failing to meet lease payments under the transactions, but the loss of the triple A ratings has put numerous large public transit agencies that entered into leveraged lease transactions in danger of being forced to pay banks and investors more than \$2 billion in payments. The American Public Transportation Association (APTA) and others sought to modify the language in the House bill to ensure that it covered all such public transit agency transactions, including those that involved locally funded assets and, therefore, did not require FTA approval. APTA and others also have discussed with congressional staff the possibility of imposing a 100 percent excise tax on proceeds that public transit agencies would have to pay to investors over and above the amounts in defeasance accounts as a way to discourage investors from pursuing notices of default. With the failure of the auto bailout bill in the Senate, the resolution of this issue is still pending.

Obama's Meeting with Governors: The nation's governors took their case to President-elect Obama for a \$136 billion infrastructure spending program that they hope will funnel immediate federal government money toward bridges, roads, rail lines, and other infrastructure with the goal of creating jobs and spurring the economy out of recession. At least 41 states are expected to face budget shortfalls this year, in part because the slowing economy has decreased the tax revenues that states depend on for their annual spending plans. Those shrinking state coffers come even as hard times and layoffs force more people to apply for unemployment and other state benefits. And declining property tax revenues in states with high foreclosure rates have hurt local governments, which depend on that money to provide local services.

Obama pledged to move as quickly as possible on a stimulus package that could hasten an economic turnaround. "I recognize that every single one of you is struggling to come up with a budget at a time when you're facing great and growing needs," Obama told the governors who attended the meeting. "More and more people are turning to you for help for health care, for affordable housing, to prevent foreclosures even as the credit markets are tightening, and tax revenues are making it more difficult to provide that help."

The President-elect has set a goal of saving or creating 2.5 million jobs to boost the economy. His aides and congressional leaders have been discussing the

outlines of a measure that could exceed \$500 billion over two years. Congress wants to have it ready for Obama's signature shortly after his inauguration on January 20. Obama, and Republican and Democratic governors agreed that the economic stimulus measure must focus heavily on money for infrastructure. Top priorities under consideration include investments in roads, bridges, public transit systems, high-speed rail, water-treatment systems, schools, medical information technology, broadband networks, and green technology.

According to Obama, the country's economic woes require a bipartisan approach, and he told the Republican governors at the meeting that he was offering "the same hand of friendship and cooperation that I offer our Democratic governors. We have a strong and vibrant democracy. We compete vigorously during an election. But with the end of that season comes the time to govern together—and that time is now."

Most governors were on board with the infrastructure spending proposal, including high-profile Republicans such as California Gov. Arnold Schwarzenegger. Gov. Schwarzenegger said he came away impressed with Obama's "intellectual curiosity" and willingness to listen to ideas that have worked in the states, where, unlike in the case of federal spending, governors are prohibited from running up deficits. According to Schwarzenegger, governors stand ready to speed up the process of economic recovery and "not just talk about infrastructure, but actually put shovels into the dirt and pour cement and lay steel and get to work and really stimulate the economy."

Global Warming: Federal investigators have concluded that U.S. Environmental Protection Agency (EPA) officials did not violate anti-lobbying laws amid a high-stakes campaign over California's request for permission to strictly regulate greenhouse gas emissions from motor vehicles. Rejecting charges by several GOP senators, the investigators stated that two top agency officials acted legally when they conveyed information to former EPA Administrator William Reilly. A well-connected Republican, Reilly was supporting California's clean-air waiver request.

The latest investigation may close out the controversy over what happened as the Bush Administration considered California's waiver request. The clean-air waiver proposal itself, though, remains alive and kicking. California lawmakers are now urging President-elect Obama to reconsider the clean-air waiver, which a Bush Administration appointee rejected in December 2007. At least 18 other states also are seeking more power to regulate greenhouse gas emissions from motor vehicles. First, though, the states need a waiver from the federal Clean Air Act, which sets a less stringent national standard. California's stricter rules would cut tailpipe greenhouse gas emissions by nearly 30 percent by the year 2016.

Lobbying controversies have pervaded California's clean-air waiver fight from the start. Last year, congressional investigators revealed that the U.S. Department of Transportation was actively lobbying Congress to rally opposition to a waiver. Top White House officials also pressured EPA Administrator Stephen Johnson to deny the waiver, according to Sen. Barbara Boxer (D-CA) and other members of California's congressional delegation.

Discussions between Capitol Hill and Obama transition officials are focusing on how the waiver might be granted. A California lawsuit probably would have to be settled, although it is unclear whether a new public comment period would be required.

STATE

Joint Legislative Budget Session: Treasurer Bill Lockyer warned lawmakers that absent a fast solution to the state's budget crisis, \$5 billion in public works projects would grind to a halt in the near future, creating thousands of layoffs and delaying construction of projects all over California. "We can no longer both lend money for projects and lend money to the General Fund for cash flow," Lockyer told a rare joint session of the Legislature. "It means the economic stimulus that we all want won't occur."

Lockyer's warning came as legislators and Gov. Schwarzenegger wrestle with a state budget deficit that is expected to climb to more than \$28 billion over the next 19 months. The treasurer was one of a quartet of state financial officials who addressed lawmakers and laid out an apocalyptic vision of California's future:

Legislative Analyst Mac Taylor pointed out that trying to close the gap through budget cuts alone would mean slicing the equivalent of all state spending for state colleges and universities, and for all social service programs.

Mike Genest, director of the Department of Finance, said projections of the future gap between revenues and spending are getting darker by the day.

State Controller John Chiang noted that the state could face running out of money by March, might not be able to borrow, and could be forced to issue the equivalent of IOUs for only the second time since the Great Depression.

All four urged the Legislature, which failed in its efforts to come up with a budget-balancing plan last month, to act quickly. "Make no mistake," Chiang said. "A delay in acting would be catastrophic."

Assembly Speaker Karen Bass (D-Los Angeles) said before the presentation that the purpose of the joint session was to confront lawmakers who just took office on December 1 with the dire reality of the situation, as well as to re-emphasize it to some of the veteran legislators. "I think that some of my colleagues on both sides of the aisle are in denial, frankly," she commented.

While some of the officials' warnings have been sounded before, the presentation before the joint legislative session spelled out both the enormity and complexity of the situation. As Lockyer explained, local and state public works projects are financed from the state's Pooled Money Investment Account (PMIA), which is comprised mainly of General Fund revenues, special state funds, and money deposited by cities and counties. When building projects are proposed, the

sponsoring entity borrows money from the PMIA (about \$660 million worth each month), and the account is repaid when the Treasurer's Office sells bonds. But Lockyer pointed out that because of the state's dire financial condition, there is no market for bonds. Without bond revenues, the PMIA must hoard its current revenues to fuel the General Fund so it can pay ongoing bills. Lockyer said the crisis threatens \$5 billion worth of projects in the current fiscal year and \$8 billion worth in FY 2010, and would cost the state as many as 200,000 jobs.

Chiang, whose responsibility is to monitor the state's cash flow, noted that in normal years, the state borrows from internal funds and outside sources on a short-term basis. The borrowing is triggered by the fact that the state incurs a lot of bills early in the fiscal year, but gets most of its tax revenues at the end. This year, however, Chiang pointed out that borrowing internally had about reached its maximum, and private lenders were not eagerly lining up to lend the state money. By the end of February, the state could be down to its last \$882 million in cash, he said. By the end of March, it could be at least \$1.9 billion in the red.

Afterward, the Legislature's partisan leaders pretty much parroted what they had been saying for weeks—an indication that as the crisis deepens, the contending factions see an opportunity to force each other into retreat. While Democrats believe that the depth of the crisis will compel Republicans to abandon their no-new-taxes position, GOP leaders believe they can force Democrats into giving ground on a list of pro-business measures that Democrats and their labor and environmental allies despise.

GOP Budget Demands: With California's budget crisis worsening, Assembly Minority Leader Mike Villines (R-Clovis) said his members would consider revenue increases only if Democrats capitulate to wide-ranging demands that they bitterly oppose. Villines commented that an agreement first must be reached on a strict spending cap, permanent budget cuts and, to bolster business, an economic stimulus package that would make changes in environmental regulations and labor laws. However, Villines further stated that even if a deal were to be struck on those issues, Republicans could not commit now to support a tax increase—only to discuss revenue-generating options in response to the projected shortfall.

Villines released a list of nearly two dozen labor, regulatory and environmental law changes sought by GOP lawmakers. The list includes proposals to increase flexibility in work schedules to reduce overtime payments, increase contracting for state services, simplify rules on workplace meal and rest breaks, loosen deadlines for greenhouse gas regulations, and provide various tax credits to stimulate business activity. Villines also said the GOP wants to cut about \$11 billion from the current-year budget, affecting schools, prisons, Medi-Cal, welfare, in-home support services, and other fast-growing state programs. He characterized the GOP strategy as fighting for taxpayers by cutting spending, boosting the economy, and ending the state's boom-and-bust budget cycles.

Big 5 Budget Meeting: Senate Republican Leader Dave Cogdill (R-Modesto) declared legislative negotiations with Gov. Schwarzenegger essentially dead after an apparently hostile meeting in the latter's office. Cogdill said leaks to the media from "Big 5" meetings between the four legislative leaders and the

Governor have undermined future talks. He pointed out that he would attend future meetings with the Governor “out of respect for him and out of respect for his office,” but believes any deal must now be brokered among the legislative leaders and without Gov. Schwarzenegger.

“I believe that the Big 5 process has been irreparably compromised as a result of comments in the press over the last couple of days, and it’s pretty difficult to negotiate in good faith in that situation,” Cogdill commented. “My personal belief is that any resolution to this that is going to be negotiated will result from efforts with the Big 4 similar to what we were able to accomplish with the budget last year because, again, I just don’t see this process as being productive or helpful.”

Rather than take offense, Gov. Schwarzenegger encouraged legislative leaders to meet among themselves, telling them, “You don’t need me to be there all the time.” But he also suggested that Cogdill’s comments “might be an excuse not to negotiate.”

Climate Change: With a promise to look more closely at the economic impacts of fighting climate change, the California Air Resources Board (CARB) unanimously approved an ambitious new greenhouse gas game plan for the state. The cuts to greenhouse gas emissions are required under AB 32, a state law passed in 2006 that committed California to the nation’s most aggressive anti-global-warming target—reducing emissions to 1990 levels by 2020.

The plan approved by CARB is an outline of the state’s climate change strategy. The biggest emissions reductions would come from a tripling of renewable power generation capacity by 2020, major improvements in the energy efficiency of homes and businesses, a sharp increase in vehicle fuel economy, and a reduction in the carbon content of motor vehicle fuels. The plan also demands major cuts through a new market for buying and selling the right to produce greenhouse gas emissions—a so-called cap and trade system.

Regulators will spend the next two years filling in the details of the plan, with most policies taking effect in 2012 or later. In the coming year, CARB is expected to address some of the knottier questions that the plan left unanswered. Probably the largest of those is the structure of the market system for trading greenhouse gas emissions, which seems likely to be divisive.

Starting in 2012, the state plans to issue annual permits to firms that emit large volumes of greenhouse gas emissions, such as power plant operators and oil refineries. The total supply of permits would ratchet down over time, giving companies two options: (1) cut their own emissions; or (2) buy permits from other firms that have made deep cuts and thus have permits to sell. Business groups want the state to give away the emissions credits for free, while environmental groups want them to be auctioned. Meanwhile, a coalition of environmental-justice groups is urging CARB to junk the cap-and-trade system altogether in favor of a carbon tax, and have hinted that they may sue. They argue that emissions trading tends to concentrate pollution in low-income communities, and that a carbon trading system in place for several years in Europe has revealed fatal flaws in the approach.

CARB's economic analysis estimates that the plan will cost the state's economy \$25 billion in the year 2020. But agency staff predicted that by then, it should also be delivering around \$40 billion in annual benefits, mainly through making cars and buildings more energy-efficient. The non-partisan Legislative Analyst's Office (LAO) and a panel of outside economists, however, found parts of CARB's analysis to be overly optimistic, overstating some benefits and understating the costs of transitioning to a low-carbon economy. Some business and industry groups, along with a few Republican lawmakers, seized on those critiques and called for the board to redo the economic analysis and delay passage of the plan. CARB instead offered some concessions, ordering staff to do a more detailed analysis of the plan's effects with a full economic report to be delivered by the end of 2009.

REGIONAL

Metropolitan Transportation Commission (MTC): At its December 12 meeting, the MTC Planning Committee received an overview of the environmental impact report (EIR) for Transportation 2035, the long-range transportation vision for the nine-county Bay Area Region. The draft EIR evaluated the potential environmental impacts of implementing Transportation 2035 in the areas of transportation, air quality, climate change, greenhouse gas emissions, population, land use, energy, geology, noise, water, and cultural resources. Potential negative impacts and corresponding mitigations were identified for each area.

The EIR determined that implementing Transportation 2035 would have the following potential impacts in the areas of transportation, air quality and climate change compared to existing conditions: (a) improves accessibility to jobs by both auto and public transit modes; (b) increases vehicle miles traveled at Level of Service F for all roadway facilities; (c) slightly increases daily vehicle miles traveled per capita; and (d) lowers ground-level ozone, carbon monoxide, toxic air contaminants, and carbon dioxide emissions, but increases particulate matter emissions.

MTC will be releasing a draft of Transportation 2035, as well as the draft EIR for a 45-day public review on December 19. The final EIR is scheduled to be approved by the full commission on March 25.

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.