

MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

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

DATE: February 9, 2009

SUBJECT: Weekly Legislative Update: Week of February 2, 2009

FEDERAL

Economic Stimulus Legislation – Senate Compromise: Amid reports of new job losses and yet another bank failure, key senators and the White House reached a tentative agreement on an economic stimulus measure that is at the heart of President Barack Obama’s recovery plan. The compromise capped a tense period of backroom negotiations in which Senate Majority Leader Harry Reid (D-NV), joined by White House Chief of Staff Rahm Emanuel, sought to attract the support of enough Republicans to give the legislation the needed 60-vote majority. At \$838 billion, the proposed Senate version of the economic stimulus bill is slightly larger than the \$819 billion measure that cleared the House on a party-line vote last month. It also represents a sharp cut from the bill that had been the subject of Senate debate for about a week, which stood at \$937 billion.

At its core, the stimulus legislation is designed to ease the worst economic recession in generations, and combines hundreds of billions of dollars in new spending with tax cuts. Much of the money would go for victims of the recession in the form of food stamps, unemployment compensation and health care. There are funds, as well, for construction of highways, bridges, public transit systems, and other infrastructure. But the Obama Administration also decided to use the bill to make a down payment on key domestic initiatives, including creation of a new health technology industry and so-called “green” jobs designed to make the country less dependent on imported oil. And Democrats in Congress decided to add additional huge sums for states that are struggling with the recession, as well as billions more for favored programs, such as parks, the repair of monuments in federal cemeteries, and health and science research.

With President Obama enjoying post-inauguration support in the polls and the economy shrinking, Democratic leaders in Congress confidently predicted that they would have a bill on his desk by mid-February. But Republicans, freed of the need to defend former President George W. Bush’s policies, pivoted quickly to criticize the bill for its size and what they considered to be wasteful spending. The entire Republican rank-and-file voted against the measure in the House, effectively prodding senators to take up the same cause. In the

intervening days, Republican senators caught the administration and its allies off-guard, holding up relatively small items for criticism and accusing their Democratic colleagues of loading up the legislation with unneeded pet projects that would do nothing to stimulate the nation's struggling economy. At the same time, they stressed a desire to help the economy, but said they preferred tax cuts and spending that would have a more immediate impact on job creation.

While Democrats hold a 58-41 majority in the Senate, 60 votes are needed for passage of the stimulus bill because it would raise the federal deficit. For a while, it appeared that the additional votes would be hard to come by. Then, on a day when new unemployment statistics showed that 11.6 million Americans are out of work, a small, bipartisan group of moderate senators emerged from closed-door negotiations with White House officials, saying that they had reached an agreement to trim \$110 billion from the Senate bill by reducing the amount of tax cuts and spending less money on education. As a result, at least three Republican senators are now ready to vote for the revised bill on the Senate floor, giving Democratic leaders enough support to overcome a GOP filibuster. Those three Republicans are Susan Collins and Olympia Snowe from Maine, and Arlen Specter from Pennsylvania.

Economic Stimulus Legislation – Senate Transportation Provisions: The Senate bill calls for appropriating \$27 billion for highway and bridge construction projects. Of this amount, 55 percent would go directly to state Departments of Transportation (DOTs), 40 percent would be suballocated to regions, and 5 percent would be set aside for Congestion Mitigation and Air Quality Improvement Program (CMAQ) projects. The federal share for each project would be 100 percent.

Meanwhile, public transit would receive a total of \$8.4 billion. Of this amount, \$5.96 billion would be allocated to urban transit operators under the Urbanized Area (UZA) Formula Program, \$840 million would go to rural operators under the Rural Area Formula Program, and \$1.6 billion would be distributed under the Growing States and High Density Formula Program.

Unlike the House legislation, the Senate bill sets aside \$5.5 billion for a new discretionary grant program to be administered by the U.S. Department of Transportation to fund highway, public transit, passenger and freight rail, and port infrastructure projects “that will make a significant impact on the nation, a metropolitan area or a region.” Under this competitive grant program, the department would be required to give priority to projects that could be completed within three years. Furthermore, the department, in making project selections, must ensure an equitable geographic distribution of the funds, as well as an appropriate balance in addressing the needs of urban and rural communities. Grants could range from \$20 million to \$500 million per project, and the federal share would be 100 percent.

For both highways and public transit, the Senate legislation establishes specific timelines for when the stimulus funding would have to be used, though these timelines are not quite as aggressive as those found in the House measure. In most cases, 50 percent of the money would have to be obligated within 180 days of enactment of the bill, and the remainder within one year.

The Senate bill also includes \$2 billion for high-speed rail corridor investments, \$250 million for intercity passenger rail grants, \$850 million for Amtrak, and \$60 million for ferries.

Children's Health Insurance: President Obama signed a bill that calls for spending an additional \$32.8 billion for the State Children's Health Insurance Program in order to extend coverage to 4 million uninsured children. The revenues to support the expansion of the program would be generated by raising the federal tobacco tax. The President said the legislation is a key step toward his promise of universal health care coverage for all.

The State Children's Health Insurance Program was created more than a decade ago to cover children in families with incomes that are too high to qualify for Medicaid, but too low to allow them to buy private insurance. More than 7 million children were enrolled in the program at some point in 2008. Federal money for the program was set to expire on March 31, barring action by Congress. Former President Bush twice vetoed a similar spending increase.

STATE

State Budget: The so-called "Big 5" process has often been used to forge a final state budget deal. This process consists of the Governor and the four legislative leaders privately ironing out the necessary details that would be sufficient to secure enough votes in the Legislature to pass a final budget.

The current budget crisis, which involves a deficit that is estimated at \$42 billion over the next 17 months, has spawned a unique application of the Big 5 negotiations into an effort to deal with the whole problem in one fell swoop. The quintet—Gov. Arnold Schwarzenegger, Senate President Pro Tempore Darrell Steinberg (D-Sacramento), Senate Minority Leader Dave Cogdill (R-Fresno), Assembly Speaker Karen Bass (D-Los Angeles), and Assembly Minority Leader Mike Villines (R-Clovis)—has been negotiating exclusively behind closed doors for weeks, not sharing the details of the talks even with rank-and-file members of the Legislature. As a result, 116 lawmakers are as much in the dark about the progress of the Big 5 deliberations as the public. Steinberg recently commented that keeping the negotiations confidential is "the only way we can successfully resolve the remaining issues."

Most State Capitol observers believe the Big 5 has reached the climactic point in its negotiations. It appears that in order for Republicans to defy anti-tax forces and provide enough votes for raising billions of dollars in new revenues, they need political cover, such as some business-friendly changes in labor and environmental rules and/or a ballot measure that would impose a cap on state spending growth. On the other hand, for Democrats to accept big cuts in social welfare, health care and education spending, or to defy their core labor and environmental constituencies, they need to point to Republican votes on taxes as an acceptable tradeoff. For his part, Steinberg did signal a willingness to compromise with Republicans on issues only tangentially connected to the budget in order to seal a deal, recognizing that GOP lawmakers believe such changes are needed to offset the negative economic impact of raising taxes.

Meanwhile, outside groups are ramping up warnings to lawmakers if they cave in on this issue or that one. For example, Jon Fleischman, who publishes the conservative FlashReport Website and is a Southern California GOP vice chair, submitted a resolution for consideration at the upcoming California Republican Party Convention to formally censure any GOP lawmaker who votes for new or higher taxes in a state budget deal. The proposed censure came on the heels of

a warning issued by the Teamsters Union that it would consider initiating recall campaigns against any legislator who votes to roll back labor protections as part of a budget deal.

In addition, labor and environmental leaders have accused Republicans of illegally trading votes in budget negotiations, even though a budget vote has not taken place yet, and have sent a letter to Attorney General Jerry Brown asking for an immediate investigation. The letter was signed by leaders from the California Labor Federation, State Building and Construction Trades Council, Sierra Club California, and Planning and Conservation League. The groups said they singled out Republicans because they believe GOP leaders are the only ones making what they consider to be ancillary demands not directly tied to budget revenues or taxes. In response to the request, Brown said, "It's a serious question, and we're reviewing the matter carefully."

State Employees: While thousands of state workers faced their first unpaid day off on February 6, the fight over whether Gov. Schwarzenegger can legally cut employee hours and pay split into two different courts. Controller John Chiang asked a Sacramento Superior Court judge to clarify an earlier ruling that the Governor is interpreting as license to furlough 15,600 employees previously thought to be outside of his executive control. Meanwhile, two of the unions leading the battle to keep the Governor from furloughing any of the state's 238,000 workers took their case to an appeals court, but did not seek an order to block the start of furloughs last Friday. Taken together, the cases reflect ongoing turmoil throughout California's state government as it struggles to fill in the \$42 billion budget hole.

The heart of the controversy involves Gov. Schwarzenegger's plan to cut \$1.3 billion in state worker payroll through two-day-per-month furloughs. In response, state employee unions filed a lawsuit to stop the plan, contending that it oversteps the Governor's authority. On February 5, Sacramento Superior Court Judge Patrick Marlette disagreed and ruled that the state's financial crunch is an emergency that gives the Governor the power to start the furloughs this month.

But the fight continues. In a letter to Marlette, Chiang wrote, "Prior to the ruling, the Governor and his staff contacted the constitutional officers and informed them that their offices were not affected by the furlough order because those officers were not under the direct authority of the Governor." But after Marlette's ruling, the Governor's legal team reversed course, stating that the judge's order also gave the Governor the authority to furlough employees working for independently elected statewide officials. Chiang's letter "respectfully requests clarification of the breadth of the court's ruling." Lt. Gov. John Garamendi, Secretary of State Debra Bowen, Treasurer Bill Lockyer, Public Instruction Superintendent Jack O'Connell, Insurance Commissioner Steve Poizner, and Deputy Attorney General James Humes also sent letters to Marlette, questioning Gov. Schwarzenegger's interpretation of his ruling.

As elected officials fired off letters, the Professional Engineers in California Government (PECG) and the California Association of Professional Scientists took their furlough fight to Sacramento's 3rd District Court of Appeal. The two unions, which together represent about 13,000 state workers, are the first to appeal Marlette's decision.

Greenhouse Gas Emissions: California officials say they plan to enforce the state's regulation requiring the nation's most fuel-efficient vehicles as soon as the federal government grants the

state a waiver from less-stringent national standards. The regulation would have the single largest impact on California's ambitious goal to reduce greenhouse gas emissions by 30 percent by 2020 under AB 32 (Nunez).

Delayed by the Bush Administration since 2005, the rule would require automakers to produce vehicles that cut greenhouse gas emissions by 30 percent by 2016, resulting in an average vehicle fuel efficiency of 35.7 miles per gallon. This is far higher than the current federal standard of 27.5 miles per gallon for cars and 22.3 miles per gallon for SUVs and light trucks. The rule would have wide-ranging impact on the types of cars, minivans, SUVs, and trucks that consumers will see at California dealerships.

President Obama recently ordered his environmental officials to immediately review California's regulation, strongly hinting that he would like to allow California and 13 other states to move forward with stricter emissions standards. The federal government, under former President Bush, refused to grant the waiver in 2007 after two years of deliberation. Automobile manufacturers, who have been lobbying heavily against the federal waiver, declined to criticize President Obama's decision, but argued that a nationwide standard is a better approach than allowing individual states to have separate vehicle emissions standards.

Linda Adams, secretary of the California Environmental Protection Agency (CalEPA), said she expects federal officials to grant the waiver in the spring and the state to implement the new regulation immediately. The new rule would cover current 2009 model automobiles, some of which began appearing in dealerships last fall. Adams and the California Air Resources Board (CARB) said they believe automakers should be able to meet the requirements of the new rule for this year's vehicles because they were alerted that the 2009 model engines would come under the new regulation within 45 days if a federal waiver were to be granted. In addition, state officials believe most automakers have begun using many of the technologies that would make vehicles more fuel efficient, placing them on track to meet the requirements of the new rule.

REGIONAL

Peninsula Corridor Joint Powers Board (JPB): At its February 5 meeting, the JPB welcomed two new members to the board: (1) Ash Kalra (representing VTA); and (2) Mark Church (representing SamTrans). Don Gage was elected to serve as chair and Sean Elsbernd to serve as vice chair for 2009. The item that generated the most public comment at the JPB meeting was a plan to increase the number of spaces available to bicyclists on Caltrain cars. This issue has been of particular interest to the San Francisco bicycle community, which is concerned that bicyclists are being stranded at Caltrain stations because there is not enough room for bikes on the cars. After much public testimony, the JPB approved an interim plan to increase the bicycle capacity on Caltrain from 32 to 40 spaces on Gallery cars, and from 16 to 24 spaces on Bombardier cars. In addition, the JPB directed Caltrain crews to strive to have two bike cars per peak period train.

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.