

## MEMORANDUM

**TO:** Santa Clara Valley Transportation Authority  
Board of Directors

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

**DATE:** May 25, 2009

**SUBJECT:** Weekly Legislative Update: Week of May 18, 2009

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### **FEDERAL**

**SAFETEA-LU Reauthorization:** House Transportation and Infrastructure Committee Chairman Jim Oberstar (D-MN) has been circulating a handwritten outline of his surface transportation authorization proposal to other lawmakers and interest groups. While the outline lacks detail and does not discuss any dollar amounts either for specific programs or for the bill as a whole, it is the best indication yet of the direction in which Oberstar wants to move as Congress begins to ramp up its process for considering legislation to replace the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which is set to expire on September 30, 2009.

Oberstar recently commented that the key senior members of the House Transportation and Infrastructure Committee from both parties have agreed to support the outline that he presented to them, but the ease with which agreement was reached probably speaks more to the vagueness of the proposal and the postponement of hard funding decisions than anything else. For example, Oberstar's outline does not address the "donor-donee" fight between states for larger shares of federal-aid highway money. The outline says only that the existing Equity Bonus Program is a "problem" and that the next authorization bill will "retain some form of equity".

Oberstar's outline calls for a new U.S. Department of Transportation official at the assistant secretary or undersecretary level to be tasked with intermodalism. This responsibility would entail coordinating the various modal administrations within the department, such as the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), as well as agencies outside of the department to ensure that projects and processes that cross modal or departmental lines proceed smoothly. The new official would hold meetings between the modal administrations at least monthly, and would pay special attention to implementing the National Strategic Plan and overseeing high-dollar "megaprojects," which often cross modal lines.

The outline notes that some consolidation of the numerous highway formula programs is needed. The most notable item mentioned in the outline is Oberstar's proposal to consolidate the

Interstate Maintenance, National Highway System, and Bridge Replacement and Rehabilitation Formula Programs, which totaled \$15.4 billion in FY 2009, into one large “Critical Asset Preservation” Formula Program. Meanwhile, the Oberstar outline keeps the all-purpose Surface Transportation Program (STP) intact, along with its existing 10 percent set-aside for transportation enhancements and its sub-allocation of a portion of its funds to metropolitan areas by population, as well as the Highway Safety Improvement, and the Congestion Mitigation and Air Quality (CMAQ) Programs.

Oberstar’s outline identifies two new formula programs under the Highway Title: (1) Ferry Boats, which is currently a discretionary program with large state set-asides; and (2) a new Freight Transportation Program, the details of which are unknown at this time. In addition, the outline references the creation of a new program called “Metropolitan Mobility/Access.” This proposal appears to track the National Surface Transportation Policy and Revenue Study Commission’s report. This report recommended that the 108 existing federal surface transportation programs be winnowed down to 10, one of which would be dedicated to reducing congestion in metropolitan areas of one million or more residents. Oberstar’s handwritten notes seem to indicate that 68 metropolitan areas would be eligible for funding under his proposed Metropolitan Mobility/Access Program, which would put the population cutoff at around 750,000 according to the latest census estimates. It also appears that Oberstar wants to dedicate \$1 billion per year under the program for innovative financing mechanisms of all stripes, including TIFIA credit assistant, state infrastructure banks, GARVEE bonds, toll pilot projects, bonding, and congestion pricing.

The Oberstar outline mentions Projects of National Significance, a program that was created by SAFETEA-LU to allow the Department of Transportation to allocate funding to “megaprojects” with a total cost of at least \$500 million or 75 percent of a state’s annual federal-aid highway formula apportionment. However, SAFETEA-LU earmarked 100 percent of the money provided for the program, rendering the department’s role meaningless. Oberstar wants to keep the program, but without earmarks.

Oberstar’s outline makes only a brief mention of mass transit, principally by talking about the need to “level decision-making factors between highways and transit choices/project.” Oberstar would attempt to do this by getting rid of existing cost-effectiveness analysis requirements for New Start projects and replacing it with a more streamlined process designed to cut the delivery time for these projects roughly in half.

While Oberstar would like to move quickly with a surface transportation authorization bill in the House, the Senate has not yet indicated how or when it would proceed. And still unclear is the Obama Administration’s role in the process. At a recent Senate committee hearing, Transportation Secretary Ray LaHood said, “We’re going to present some principles to the Congress that we think are very important. We want to be in the room, we want to be in the game, we want to be available when folks are writing the bill. So we are working with the President and his team to develop these principles so you’ll know what direction the President wants to take with transportation and authorization.”

**Fuel-Efficiency Standards:** President Barack Obama ordered the auto industry to make more fuel-efficient cars under new national standards designed to cut climate-warming greenhouse gas emissions and increase gas mileage. The President said the standards, announced at a White House ceremony attended by auto manufacturer representatives and union leaders, would reduce U.S. dependence on foreign oil and give five years of cost certainty to an industry that is battling to survive. “The status quo is no longer acceptable,” he commented. “We have done little to increase fuel efficiency of America’s cars and trucks for decades.” He called the standards the start of a transition to a clean energy economy.

Growing public support for efforts to battle climate change and the weakened state of the domestic auto industry, which is staying afloat through federal bailouts and restructuring at the government’s direction, gave President Obama a window of opportunity to impose the rules. They call for the auto industry to produce by 2016—four years faster than required by a 2007 law—vehicles that average 35.5 miles per gallon overall, with each manufacturer adhering to slightly different fuel-efficiency standards across their fleet and vehicle class sizes. The plan also sets the nation’s first-ever federal limits on greenhouse gas emissions from cars and trucks, achieving a 30 percent reduction through the new fuel-efficiency levels. The standards would be implemented through rules developed jointly by the Department of Transportation and the Environmental Protection Agency (EPA), which could take more than a year to complete.

The White House-forged deal among often-warring parties—federal regulators, states, carmakers, and environmentalists—is the most dramatic evidence yet of what President Obama is hoping to brand and eventually sell to voters as his signature governing style. “In the past, an agreement such as this would have been considered impossible,” the President said in announcing the deal. “It represents not only a change in policy in Washington, but the harbinger of a change in the way business is done in Washington.”

Under the compromise, everyone agreed to give something. The federal government will now do what it long refused to do under the Bush Administration—bend to the desires of several states to see more stringent fuel-efficiency rules than those imposed in the 2007 law. States, for their part, agreed to abandon efforts to go their own way, at least for the time-being. Automakers pledged to drop their lawsuits protesting the enactment of a patchwork of differing state rules. And environmentalists accepted a longer build-up to more fuel-efficient vehicles.

If the fragile compromise can last through the rulemaking process, the new regulations would be the first to blend emissions and fuel-economy standards, becoming perhaps the most dramatic suite of auto rules since the Clean Air Act of 1970. One key is that California has agreed to follow the new federal standards, instead of imposing its own, at least until 2016. California previously asked for a waiver to allow the state to impose stricter greenhouse gas emissions standards than the federal ones. That request was rejected by the Bush Administration, but was being reconsidered by President Obama’s team.

**Housing:** President Obama is expected to sign into law the “Helping Families Save Their Home Act,” which was approved by the House by a vote of 367-54 and the Senate by unanimous consent. The bill would expand an existing \$300 billion program that encourages lenders to write down an individual’s mortgage if the homeowner agrees to pay an insurance premium.

The program, which is set to expire in 2011, would swap out a homeowner's high-interest rate for a 30-year fixed loan backed by the Federal Housing Administration.

Because of strict eligibility requirements, roughly 50 homeowners are refinancing through the program compared to the 400,000 people that it was estimated to help. The "Helping Families Save Their Home Act" is expected to correct this problem by expanding eligibility under the program. In addition, the legislation would potentially give banks a break on fees that they pay to the Federal Deposit Insurance Corporation (FDIC) to insure customer deposits. The bill increases the FDIC's borrowing authority from \$30 billion to \$100 billion, which would allow the agency to reduce insurance premiums.

## **STATE**

***State Budget:*** At a May 19 special election, California voters resoundingly defeated efforts by Gov. Arnold Schwarzenegger and the Legislature to patch a gaping hole in the state budget with a package of ballot measures that included borrowing, a two-year extension of a series of temporary tax increases, and a promise to reform future budgets with a reserve fund and a spending cap. Defeat of the measures means that a projected \$15.4 billion budget shortfall will grow to at least \$21.3 billion. To fill that gap, the Governor has proposed to slice deeper into education; cut more from health and human services programs; lay off state workers; borrow \$2 billion from local governments; transfer some state prison inmates to county jails and some illegal immigrant prisoners to federal custody; sell surplus state property; merge or eliminate numerous state boards and commissions; and borrow at least \$5.5 billion from the credit markets. So far, the Governor's plan has not received any support from senators and Assembly members.

Three of the ballot measures—Propositions 1C, 1D and 1E—would have generated money for the state budget right away by shifting a total of \$6 billion from the state lottery and two special accounts dedicated to child development and mental health programs to the General Fund. Proposition 1A contained the tax increase extensions, along with the "rainy-day" fund and the limit on state spending in future fiscal years. And Proposition 1B pledged to settle a lingering dispute between public educators and the state by paying schools \$9.3 billion over roughly a five-year period, starting in FY 2011. All of these measures failed by wide margins.

The results of the May 19 special election could be read as an order to Gov. Schwarzenegger and the Legislature to get back to work and do a better job in resolving the state's fiscal problems. But instead, the voters may have rung the bell on a new round of ideological battles inside the State Capitol Building, with majority Democrats trying to protect spending on public services and Republicans arguing against tax increases needed to finance those programs.

In the short term, the loss of \$6 billion from the bottom line of the budget that would have been provided by Propositions 1C, 1D and 1E will exacerbate a cash shortage that could drain the state's bank accounts by the end of the summer. Even in good times when the budget is balanced, the state, like many businesses, borrows to meet its cash-flow needs because its biggest obligations are front-loaded, while its tax receipts come mostly near the end of the fiscal year. But this year, the need for cash-flow borrowing is expected to be larger than ever, perhaps more than \$20 billion. With the credit markets still tight in the wake of the national financial crisis,

the state may not be able to borrow the amount it needs if it cannot show investors a credible plan for paying the money back within a year. And if the state cannot borrow to ease its cash-flow crunch, it will run out of money and be forced to halt payments for non-essential services and programs, and perhaps even for some that are considered to be urgent.

That is where the attention turns to the budget. Although the Legislature passed an FY 2010 spending plan in February that was four months early, lawmakers must now reopen it and make significant adjustments. How they will close the \$21.3 billion gap is anyone's guess at this point. The one option that seems least likely is raising taxes further. The plan approved in February increased taxes by about \$11 billion on an annual basis for the next two fiscal years, and the voters just rejected a proposition that would have extended those taxes for another two years. At least six Republican votes are needed to secure the two-thirds majority to pass a tax increase in the Legislature. Several of the GOP lawmakers who supported the temporary tax increases in February, in exchange for putting the spending limit on the ballot, have been targeted by recall campaigns. And the two Republican leaders who negotiated the February deal have been forced from their positions and replaced by lawmakers who have vowed to fight any additional tax hikes. Without any new taxes, legislators would be faced with having to consider deep cuts to General Fund programs, and Democrats may be unwilling to supply their votes to carry them out.

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: Thursday, May 28, 2009 10:43 AM  
To: Board.Secretary  
Subject: VTA Labor Letter - ATU

To VTA Board of Directors:

Attached for your information is a letter from the VTA Human Resources Manager regarding Labor Negotiations with the Amalgamated Transit Union (ATU). This issue is listed for discussion on your June 4th Board of Directors Meeting Agenda under Closed Session.

Deborah Harrington  
Board Secretary  
Santa Clara Valley Transportation Authority  
408.321.5773



May 27, 2009

William G. McLean  
International Executive Vice-President  
Amalgamated Transit Union, Local 265  
1590 La Pradera Drive  
Campbell, CA 95008-1533

Subject: VTA Labor Proposal

Dear Mr. McLean:

On May 14<sup>th</sup> I corresponded with you as a follow up to our meeting of May 11<sup>th</sup>. At that meeting we informed you that VTA projected a budget deficit of \$85.7M during fiscal years 2010 and 2011. VTA proposed that ATU represented employees defer wage adjustments to achieve the labor savings needed to preserve the current service level and to avoid reducing our staffing levels. Specifically, VTA proposed to ATU that the scheduled June 19, 2009 1.5% increase, be deferred to June 2011; the scheduled January 29, 2010 1.5% wage increase, be deferred to January, 2012; and the scheduled June 18, 2010 1.5% increase, be deferred to June 2012. ATU employees would remain on their current wage progression through June 2011.

At the close of the meeting you requested additional information which I provided to you as an attachment to the May 14<sup>th</sup> letter. You informed us at the meeting that ATU would participate in some manner and after your analysis of the data you would make a recommendation as to ATU's role in this collective effort.

Based on our current collective bargaining agreement, a wage increase of 1.5% will take effect on June 19<sup>th</sup> for employees represented by ATU. This wage increase will greatly and negatively impact our ability to achieve the labor cost savings necessary for a balanced budget for FY2010 and 2011.

We understand that you are committed to finding a way for the ATU to assist addressing the budget deficit that is before us. However, if the June wage increase is implemented it increases the deficit and prohibits VTA from its objective of preserving service and maintaining current staffing levels.

I know that you are fully aware of the urgency of the matter and that we are ready to meet and discuss any genuine proposal that ATU places before us. To allow that to happen without increasing the severity of the crisis, we ask that ATU agree to deferring the June increase until we have had time to fully discuss and consider any proposal ATU may want to offer and to likewise allow VTA to evaluate that proposal and to respond. This approach would provide for additional time and avoid being locked into a course of staff reductions.

We have a June 4<sup>th</sup> Board of Director's meeting with an agenda item to accept staff's recommendation to approve the proposed budget for FY2010 and FY2011. I would respectfully ask that you notify me by noon on June 4<sup>th</sup> with your response to our request to defer the June wage increase.

This letter is to share with you our position on how best to deal effectively with the impending deficit; it is not intended as a negotiation tactic. However, should ATU elect not to defer the June wage increase, service modification and staff reductions are inevitable. We truly want to avoid this, but can do so only with ATU's assistance.

Please respond by June 4, 2009.

Sincerely,

*/ Signed / Robert L. Escobar*

Robert L. Escobar  
Human Resources Manager

C: Bill Lopez, Chief Administrative Officer  
Loretta A. Springer, President

From: Board.Secretary  
Sent: Friday, May 29, 2009 12:45 PM  
To: Board.Secretary  
Subject: Proposition 218 applicability to HOT (Express) Lane Fees

To VTA Board of Directors:

Attached is a memorandum from General Counsel Kevin Allmand regarding the applicability of Proposition 218 to HOT (Express) Lane Fees.

Deborah Harrington  
Board Secretary  
Santa Clara Valley Transportation Authority  
408.321.5773

**VTA Logo**

Santa Clara Valley Transportation Authority

**OFFICE OF THE GENERAL COUNSEL  
MEMORANDUM**

Writer's Direct Telephone:  
321-7552

TO: VTA Board of Directors

FROM: Kevin D. Allmand, General Counsel      Writer's Signature

DATE: May 29, 2009

SUBJECT: Applicability of Proposition 218 to HOT (Express) Lane Fees

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**BACKGROUND:**

In a previous staff presentation regarding VTA's plans to implement HOT (Express) Lanes, Director Liccardo inquired about the applicability of Proposition 218 voting requirements to Express Lane fees.

Proposition 218, passed by the voters in 1996, added articles XIII C and XIII D to the California Constitution. Those articles mandate that no local government impose, extend, or increase any special tax unless the electorate has approved it by a two-thirds vote. Proposition 218 defines a "special tax" as "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund." (Cal Const., Art. XIII C, § 1, subd. (d).)

**ISSUE:**

Are Express Lane user fees a "special tax" subject to these requirements?

**DISCUSSION:**

Case law has established that certain kinds of monetary impositions, imposed for specific purposes, are to be considered "fees," rather than "taxes" subject to two-thirds voter approval requirements. In *Sinclair Paint Co. v. State Bd. Of Equalization* (1997) 15 Cal.4<sup>th</sup> 866, the California Supreme Court set forth "certain general guidelines used in determining whether 'taxes' are involved in particular situations." The Court stated:

The cases recognize that "tax" has no fixed meaning, and that the distinction between taxes and fees is frequently "blurred," taking on different meanings in different contexts. In general, taxes are imposed

for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. Most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges.

(*Sinclair*, at p. 874 (internal citations omitted).)

Following these guidelines, courts have recognized that “user fees” are not taxes subject to a two-thirds vote requirement. *Isaac v. City of Los Angeles* (1998) 66 Cal.App.4<sup>th</sup> 586. In *Isaac*, the court described “user fees” as “those which are charged only to the person actually using the service; the amount of the charge is generally related to the actual goods or services provided.” (*Id.* at p. 597.) A user fee is “payment of a specific commodity purchased.” (*Id.*; see also, *Utility Audit Co., Inc. v. City of Los Angeles* (2003) 112 Cal.App.4<sup>th</sup> 950, 957 (sewer service fees).)

For a user fee, and other fees and assessments, to not be considered a tax under Proposition 218, they:

... must bear some reasonable relation to the benefits and costs associated with the service: A special assessment is based on the benefit to the specific property; a development fee is not considered a special tax if it bears a reasonable relation to the development's probable cost to the community and benefits derived from the community; a regulatory fee is limited to “the reasonable cost of the services necessary for the activity for which the fee is charged and for carrying out the purpose of the regulation”; and a user fee is charged to the person using the service and its amount is related to the goods and services actually provided. Thus, in explaining the reasons that regulatory and development fees and special assessments are not regarded as special taxes, the court in *Evans v. City of San Jose* stated, “With each of these cases, a discrete group receives a benefit (for example, a permit to build or inspection of produce) or a service (for example, providing and administering a rental dispute mediation and arbitration hearing process) or a permanent public improvement (such as a local park or landscaped median islands on a local road) which inures to the benefit of that discrete group. The public as a whole may be incidentally benefitted [*sic*], but the discrete group is specially benefitted [*sic*] by the expenditure of these funds. The public should not be required to finance an expenditure through taxation which benefits only a small segment of the population.

A tax, on the other hand, can be levied “without reference to peculiar benefits to particular individuals or property.” Indeed, “[n]othing is more familiar in taxation than the imposition of a tax upon a class or

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upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.”

*(Bay Area Cellular Telephone Company v. Union City* (2008) 162 Cal.App.4<sup>th</sup> 686, 694-695 (internal citations omitted) (emphasis added).)

**CONCLUSION:**

Pursuant to this case law, the fee paid for use of Express Lanes would likely be deemed a “user fee,” rather than a “special tax” under Proposition 218, because the fee is directly related to a service provided to a discrete group specially benefited from that service (i.e., those who use the Lanes, with fees proportionate to the benefit received.)

Please let me know if you have any questions regarding this subject.

c: Michael T. Burns, General Manager