

## MEMORANDUM

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

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

**DATE:** March 8, 2010

**SUBJECT:** Weekly Legislative Update: Week of March 1, 2010

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### **FEDERAL**

***Health Care:*** President Barack Obama made what is expected to be his final push to overhaul the nation's health care system, revising his plans in an attempt to win the support of moderate Democrats. The President's latest proposal includes some ideas favored by Republicans, though he has little hope of winning over even a single GOP lawmaker. Republicans have called on him to discard his proposals and start working with them on a new approach from scratch. But the White House believes that by including several GOP elements in his plan, President Obama can win over Democrats from conservative districts whose re-election hopes in November could be jeopardized by voting for the bill. If stronger Democratic support can be generated, parliamentary maneuvers could be used to bypass Republican objections in the Senate.

The President and congressional Democrats are working to mount a party-line rescue mission for health care legislation that appeared on the cusp of passage late last year, only to be derailed when Republicans won a Massachusetts Senate seat that gave them the ability to stop it. Democrats still hold a majority in the 100-seat Senate, but they are one seat shy of the 60 votes needed to counteract GOP "filibusters," delaying tactics meant to stall legislation. There is still no certainty about the outcome—or even if Democrats will agree to the series of changes that President Obama said represent Republican contributions.

President Obama has already made the basics of his plan clear. He wants to extend health care coverage to about 30 million uninsured Americans, crack down on insurance company practices such as denying coverage on the basis of a pre-existing medical condition, expand drug benefits for the elderly, and give lower-income people subsidies to help them afford coverage. The President's proposal would be paid for by raising taxes on upper-income Americans and culling savings from a government health care plan for the elderly. The Republican elements that the President has embraced are as follows:

- Adding \$50 million for state demonstration projects aimed at reducing the cost of medical malpractice disputes.

- Offering high-deductible insurance plans that might encourage more people to take out health savings accounts.
- Employing undercover patients to root out Medicare and Medicaid fraud.
- Raising Medicaid payments to doctors so they will stay in the program.

**Financial Reform:** President Obama is no longer insisting on the creation of a stand-alone consumer protection agency as a central element of a plan to remake regulations affecting the financial industry. In hopes of quick congressional approval of a reform bill, the White House is expressing a willingness to compromise with lawmakers who are concerned about creating a new bureaucracy. The President is open to housing the consumer regulator inside another agency, such as the Treasury Department, though he still prefers a stand-alone agency. In either case, he is insisting on a regulator with political autonomy and real teeth so that it can effectively enforce rules designed to protect consumers of mortgages, credit cards and other financial products. The President may also have to compromise on his recent proposal to prohibit banks from engaging in many kinds of risky, speculative investments. There is little support among either Democratic or Republican lawmakers for this proposal, and Senate leaders are closing ranks around legislation that would leave it to banking regulators, rather than the law, to decide which activities to ban.

From the start of his term in office, President Obama has made far-reaching financial reform one of his highest priorities, along with overhauling the nation's health care system. He has vowed to put in place new rules and regulations to prevent a repeat of the abuses that precipitated the recent financial crisis. The new momentum has raised hopes within the Administration that a bill could be signed before the November elections. But the path is still not clear. The White House and Democratic leaders have been seeking to win support from Republicans, who could filibuster the bill in the Senate, without alienating liberals insisting on a new consumer protection agency and tough restraints on Wall Street activities.

Senate Banking Committee Chairman Christopher Dodd (D-CT), who is shepherding the effort in the Senate, said there is still no final agreement between Democrats and Republicans, and many vital details remain unresolved. Still, major components of the measure are beginning to take shape. A free-standing agency had been a central part of the original blueprint released by the White House, which said it is essential to have one agency with the sole mission of protecting consumers from lending abuses. In the lead-up to the financial crisis, that responsibility was spread across numerous agencies and often took a back seat to ensuring the well-being of banks. A version of the stand-alone proposal was included in a bill passed by the House in December. While Dodd has expressed some support, Sen. Bob Corker (R-TN), who has been working with Dodd on a revised Senate bill, has called the idea a "non-starter." As a result, the two have been exploring solutions that both sides could embrace.

Dodd's legislation is also likely to strip the Federal Reserve of much of its authority to supervise banks. Few on Capitol Hill want to take up the unpopular cause of defending the Federal Reserve, which lawmakers have claimed not only ignored the warning signs of the financial

crisis, but also has been aloof from the problems of ordinary Americans. In addition, Dodd's bill is set to include updated language giving the federal government the authority to wind down large, troubled financial firms in extreme cases.

**Federal Deficit:** President Obama issued an executive order creating an 18-member National Commission on Fiscal Responsibility and Reform, which will spend most of the year coming up with ways to slash the \$1.6 trillion federal budget deficit and \$14.3 trillion national debt. The commission will need at least 14 "yes" votes to send any recommendations to Congress.

The goal of the panel is to make recommendations that may require a mix of tax increases and spending cuts to bring the budget deficit down to 3 percent of the economy by 2015. That would put the budget in balance except for payments on debt. The commission's recommendations are due December 1, after the congressional mid-term elections. Even then, lawmakers may be able to avoid having to take a public stand on measures such as tax increases or cuts to popular programs because the President's executive order creating the panel cannot force Congress to vote on its recommendations.

## **STATE**

**Transportation Funding Swap:** On March 4, the Legislature, as expected, approved a complicated two-bill package that restructures state transportation funding in order to free up money for the General Fund. The package now goes to Gov. Arnold Schwarzenegger for his consideration. Building on an idea that the Governor surfaced in January, the proposal consists of the following key elements:

**Gas Tax Swap:** The centerpiece of the plan calls for eliminating the state sales tax on gasoline, which constitutes the lone revenue source for Proposition 42 and three of the five revenues sources that currently flow to the Public Transportation Account, and replacing it with a 17.3-cent increase in the per-gallon gasoline excise tax. As a result, the gasoline excise tax would go from its current rate of 18 cents per gallon to 35.3 cents per gallon. Gasoline purchases, however, would still be subject to locally imposed sales taxes, such as the ¼-cent Transportation Development Act (TDA) sales tax and Santa Clara County's ½-cent sales tax for the 2000 Measure A Program. The swap was structured to be "revenue neutral" so that it could be approved by the Legislature with a simple majority vote, thereby relegating Republican lawmakers to the sidelines.

In terms of the FY 2011 distribution of the revenues that would be generated by the 17.3-cent-per-gallon gasoline excise tax increase, debt service for highway bonds would be taken off the top, while another \$650 million would be set aside for future appropriation by the Legislature. The remaining revenues would be split 50 percent to the State Transportation Improvement Program (STIP), which funds larger-scale highway and public transit projects, and 50 percent to cities and counties for local streets and roads. Beginning in FY 2012, the distribution of these revenues would change. Highway bond debt service would still come off the top, but the remainder would be allocated as follows:

- 44 percent to the STIP.

- 44 percent for local streets/roads.
- 12 percent to the State Highway Operation and Protection Program (SHOPP), which funds rehabilitation projects on the state highway system.

The revenues from the 17.3-cent increase in the per-gallon gasoline excise tax would fall under the protections of Article XIX of the state Constitution. This means that the money could be used to fund fixed guideway transit projects programmed in the STIP, but not for transit vehicle procurements or for transit operating/maintenance expenses.

Under the plan, the Board of Equalization would be required to adjust the gasoline excise tax rate on an annual basis, if necessary, in order to ensure that it would compensate for the growth in revenues that the STIP and local streets/roads would have realized under Proposition 42's gasoline sales tax.

The momentum behind the concept of swapping transportation revenue sources stemmed from the desire of the Schwarzenegger Administration and legislative leaders to find General Fund savings. Roughly \$30 billion in transportation-related bonds has been authorized, and debt service costs for these bonds are projected to exceed \$1 billion by FY 2012. The swap is intended to relieve the General Fund of this obligation in a way that: (a) avoids a net tax increase to the consumer; and (b) gets around current protections associated with the Public Transportation Account and Proposition 42. As a result of recent court rulings, the use of Public Transportation Account money for debt service payments is limited to public transit bonds. And pursuant to Proposition 1A, a constitutional amendment that was approved by the voters in 2006, any Proposition 42 revenues used for debt service for transportation-related bonds would have to be repaid within three years with interest.

Aside from the General Fund, the clear winner under the swap proposal is the SHOPP, which would receive new money. In the case of the STIP and local streets/roads, the intent is to—at a minimum—hold them harmless, although those who crafted the swap contend that the STIP and local streets/roads would actually receive more money over time than they would under Proposition 42. Meanwhile, because three of the Public Transportation Account's revenue sources would be eliminated without any backfill, the General Fund relief achieved through the swap comes at the expense of public transit, although the hit is not as great as it would have been had the Governor's January proposal been adopted.

Diesel Sales Tax: The sales tax on diesel fuel purchases would continue to exist and would be retained for the Public Transportation Account. For the rest of FY 2010 and for FY 2011, the balance in the account would be distributed as follows:

- A one-time appropriation of \$400 million for the State Transit Assistance Program (STA), the only state-funded program for public transit operating and maintenance expenses.
- Fully covering debt service payments for high-speed rail/transit bonds, thereby relieving the General Fund of this obligation.
- Fully funding the operations and maintenance of California's intercity rail system, including the Capitol Corridor service.

- Fully funding the so-called “state transit programs.” The state transit programs primarily consist of the mass transit planning activities of Caltrans and the California Transportation Commission (CTC), and the passenger rail safety responsibilities of the California Public Utilities Commission (CPUC), with any left-over money going to the STIP for transit capital improvement projects.

Beginning in FY 2012, the state diesel sales tax rate would be increased to 6.75 percent, in conjunction with a corresponding drop in the per-gallon diesel fuel excise tax (from 18 cents per gallon to 13.6 cents per gallon) to ensure that consumers would feel no impact at the pump. High-speed rail/transit bond debt service would continue to have first call on the revenues generated by the diesel sales tax. Any remaining revenues would be split 75 percent to STA, and 25 percent to intercity rail and the other state transit programs.

The intent of the plan is for the diesel sales tax to fully fund intercity rail operations and maintenance, and the state transit programs, while at the same time, ensuring a minimum annual STA Program of \$350 million. However, in FY 2012 and FY 2013, the diesel sales tax would fall short of accomplishing those objectives. Therefore, the plan calls for appropriating State Highway Account revenues that are not restricted by Article XIX to the Public Transportation Account in order to fill the gap. Beginning in FY 2014, it is anticipated that those appropriations would no longer be necessary. In fact, it is projected that diesel sales tax revenues would gradually increase, allowing for annual STA funding to grow over time, eventually exceeding \$500 million in FY 2021.

For several weeks, there was talk about including provisions in the package that would authorize metropolitan planning organizations (MPOs), such as the Metropolitan Transportation Commission (MTC) in the Bay Area, to impose a per-gallon “light-duty vehicle mitigation fee” at the pump for bicycle, pedestrian and public transit programs, provided that those programs are part of the MPO’s sustainable communities strategy adopted pursuant to SB 375 (Steinberg). However, those provisions were dropped from the final bills because Gov. Schwarzenegger was not entirely comfortable with pursuing the idea at this time.

NOTE: Also contributing to this report were Steve Palmer with Van Scoyoc Associates; Mark Watts with Smith, Watts & Company; and Scott Haywood, VTA’s Policy and Community Relations Manager.