

MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

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

DATE: March 28, 2011

SUBJECT: Weekly Legislative Summary: Week of March 21, 2011

FEDERAL

Climate Change: Taking advantage of the spike in gasoline prices, House Republicans are attempting to gut California's landmark controls on greenhouse gas emissions from motor vehicles as a way to prevent the state's tougher standards from spreading nationwide. The House Energy and Commerce Committee, chaired by Fred Upton (R-MI), is working on H.R. 910, the Energy Tax Prevention Act, which would revoke the authority of the U.S. Environmental Protection Agency (EPA) to grant California the federal waivers that it needs to impose more stringent fuel-efficiency requirements based on carbon emissions. It also would block the Obama Administration from regulating greenhouse gases by overturning the EPA's finding, pursuant to a 2007 U.S. Supreme Court ruling, that carbon dioxide endangers public health. House Republicans contend that regulating greenhouse gas emissions amounts to a tax on carbon-based fuels. They further argue that such carbon taxes would make the recent increases in gasoline prices all the more painful for drivers.

A companion Senate measure is being authored by Oklahoma Republican James Inhofe, the ranking minority member on the Environment and Public Works Committee. His bill will face stiff opposition from the committee's chair, Sen. Barbara Boxer (D-CA), who is an ardent champion of climate change regulations. Although Senate passage of Inhofe's legislation is unlikely, a fight over greenhouse gas regulations could put political pressure on the 23 Senate Democrats up for re-election in 2012. Many of them are moderates from swing states. Last year when she was speaker, House Minority Leader Nancy Pelosi (D-CA) was criticized for forcing a vote on climate change legislation that became a campaign issue for moderate House Democrats who wound up losing their seats.

Meanwhile, in California, San Francisco County Superior Court Judge Ernest Goldsmith blocked the California Air Resources Board (CARB) from implementing a cap-and-trade program until a more thorough environmental analysis could be completed. A handful of small non-profit environmental groups, led by Communities for a Better Environment, filed the lawsuit, contending that the rules could increase pollution in low-income, largely minority communities

near power plants and oil refineries if those facilities are allowed to trade credits under a cap-and-trade program, rather than facing either a tax on their emissions or some other limit.

In December 2010, CARB approved a cap-and-trade program, under which about 600 facilities—from oil refineries and power plants to factories—would face mandatory limits on the amount of greenhouse gases they emit. The facilities would be able to trade pollution credits, as well as be allowed to use projects that offset global warming to cover up to 8 percent of their emission limits. The rules were drawn up under AB 32, which requires California’s greenhouse gas emissions to be cut to 1990 levels by 2020.

In his 37-page decision, Goldsmith noted that CARB should have considered other ways to reach the target besides cap and trade, a market-based mechanism favored by industry. For example, he pointed out that CARB devoted only two paragraphs in its environmental study to a carbon tax. He wrote that CARB “seeks to create a *fait accompli* by premature establishment of a cap-and-trade program before alternatives can be exposed to public comment and properly evaluated.”

Economy: The Federal Reserve expressed more confidence in the U.S. economy even as Japan’s nuclear crisis raised worries around the globe. In a statement, the Fed said the economic recovery is on “firmer footing,” and the jobs market is “improving gradually.” In a unanimous vote, the Fed also decided to maintain the pace of its \$600 billion Treasury bond purchase program to help the economy grow and to lower unemployment, which now stands at 8.9 percent nationally. The bond purchase program, which is scheduled to end in June, is intended to lower loan rates and boost stock prices in order to spur Americans to spend more and companies to hire new workers.

Despite the Fed’s more optimistic outlook, the list of potential risks to the nation’s economic recovery has expanded. Japan is the world’s third largest economy; therefore, its earthquake and nuclear crisis is expected to have an impact on the global economy. Oil prices have been rising in response to investor concerns that the current unrest in the Middle East and Africa could hurt global supply. Some believe these and other factors have the potential to slow the U.S. economic recovery and to increase the risk of inflation.

TARP: In a recently released report, the Congressional Oversight Panel said the Troubled Asset Relief Program (TARP), the federal government’s bailout of banks, auto makers and insurers, may have prevented an economic depression by sending billions of dollars to companies hurt by the 2008 financial crisis. However, the panel also noted that the Treasury Department’s programs to aid homeowners facing foreclosure or “others far from Wall Street” have been “far less effective.” Among the panel’s findings about TARP are:

- The program reinforced the belief that large and interconnected companies will enjoy federal government support in times of crisis. That could encourage them to take “unwise risks,” eventually leading to another crisis and more bailouts.

- By failing to be transparent about bailout decisions and goals, the federal government fueled the public’s frustration about TARP. That could tie lawmakers’ hands as they seek to respond to future crises.
- TARP cost less than expected, but part of the savings came from foreclosure prevention programs that spent a fraction of what the Treasury Department set aside for them.
- Much of the credit for stabilizing the financial system goes to other, less-transparent programs run by the Federal Reserve and the Federal Deposit Insurance Corporation.

The panel’s report concluded that TARP, which was created under the Bush Administration, was “one of the most thoroughly scrutinized government programs in U.S. history,” which helped to improve the Treasury Department’s management of the program over time. The report notes: “An enduring lesson of TARP is that extraordinary government programs can benefit from, and indeed may require, extraordinary oversight.”

STATE

State Budget: Gov. Jerry Brown signed budget trailer bills that address an estimated \$11.2 billion of the state’s \$26.6 billion General Fund deficit. What remains are the thorniest elements of his budget plan—eliminating redevelopment agencies; shifting the responsibility for some state programs to local governments; rolling back some corporate tax breaks; and asking the voters to extend temporary increases in sales, income and vehicles taxes, which are scheduled to expire at the end of June.

Gov. Brown has been searching for GOP votes to place the tax extensions on a special election ballot before they expire. Over the past several weeks, the Governor has been negotiating with a handful of Senate Republican lawmakers, who have presented him with a list of 53 demands in return for their support. The list includes an 18-month extension of the taxes as opposed to the five years that the Governor wants; a “hard” spending cap; various reforms to public employee pensions; an easing of some regulations affecting businesses; and a number of changes to environmental laws. Democratic legislators have indicated that they are amendable to some changes, but contend that their GOP colleagues are overreaching.

The budget trailer bills signed by Gov. Brown include provisions that would:

- Reduce Medi-Cal funding by \$1.7 billion. Key changes include a 10 percent rate reduction to health care providers, a cut in rates paid to long-term care facilities, and caps on the number of doctor and clinic visits. Some of these changes require federal waivers.
- Cut CalWORKs, the state’s welfare-to-work program, by \$1 billion. These savings are achieved by: (a) cutting off aid to parents after four years, instead of five; (b) reducing maximum grants by 8 percent; and (c) reducing aid to children by 5 percent after five years, and by an additional 5 percent after six years.
- Reduce funding for the University of California and California State University systems

- Take money from First 5 Childhood Development Programs to pay for some Medi-Cal costs.
- Use Proposition 63 funds to pay for mental health services that the state is required to provide. Proposition 63 money comes from an income tax surcharge on wealthier Californians and is used for county mental health programs.
- Reduce maximum SSI/SSP grants to low-income disabled and elderly Californians to achieve \$192 million in cost savings.
- Cut \$375 million in funding for services for the developmentally disabled.
- Increase community college fees from \$26 to \$36 per unit.
- Generate \$336 in revenues by: (a) instituting an amnesty program that would allow taxpayers who used questionable shelters to pay the taxes that they owe with reduced penalties and without being prosecuted; and (b) eliminating the refundable portion of child and dependent care tax credits paid to those with little or no tax liability.

Because of a number of lingering issues, the actual Budget Act has not yet been sent to Gov. Brown. Putting the tax extensions before the voters continues to be the stickiest of the remaining items, and time is rapidly running out for a June special election. The Governor admitted that any talk of taxes has thus far proved “too threatening and too anxiety-provoking and too career-ending” for Republicans to provide the four votes—two in the Assembly and two in the Senate—that are needed to reach the two-thirds majority that is required to qualify the extensions for a June special election. Party leaders are warning GOP legislators that a recall effort or primary challenge could be mounted against them if they agree to place the tax extensions on the ballot.

Gov. Brown acknowledged that he is exploring two alternatives if Republican votes for the tax extensions are not forthcoming. The first is using a legal maneuver to put the tax extensions on the June ballot with a majority vote of the Legislature. This option would run the risk of a court challenge by anti-tax groups. The second is gathering enough signatures under a very tight timetable to qualify an initiative for the November ballot. If the Governor pursues this route, the election would not occur until more than four months into FY 2012. By that time, the state would have lost one-third of the additional sales and vehicle tax revenues that it could have raised through a June special election. It is also unclear how such an initiative would treat income taxes, since it would be hard to sell a retroactive income tax hike in the 11th month of a tax year.

In addition, the state would be confronted with a number of other challenges. Despite the approval of billions in cuts and other solutions, California would not have a balanced budget. Therefore, Gov. Brown and Democratic legislative leaders would have to figure out whether to balance the budget beforehand with cuts, some of which could be restored if the voters pass the tax extensions in November. If they do not balance the budget beforehand, it would be difficult

for the state to undertake the traditional cash-flow borrowing that it needs in the summer of each year to better match revenue receipts with state expenditures, as well as to market general obligation bonds in the fall for Proposition 1B and others programs.

The Governor and Democrats also would face a number of political challenges. For instance, it would be difficult to portray the initiative as bipartisan. Moreover, the proposal could not be sold as a tax extension, given that the higher sales, income and vehicle tax rates would have ended by November. Polls indicate that support drops significantly when voters perceive it as a tax increase, rather than as a tax extension.

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.