

# New Developments in California Transportation Financing



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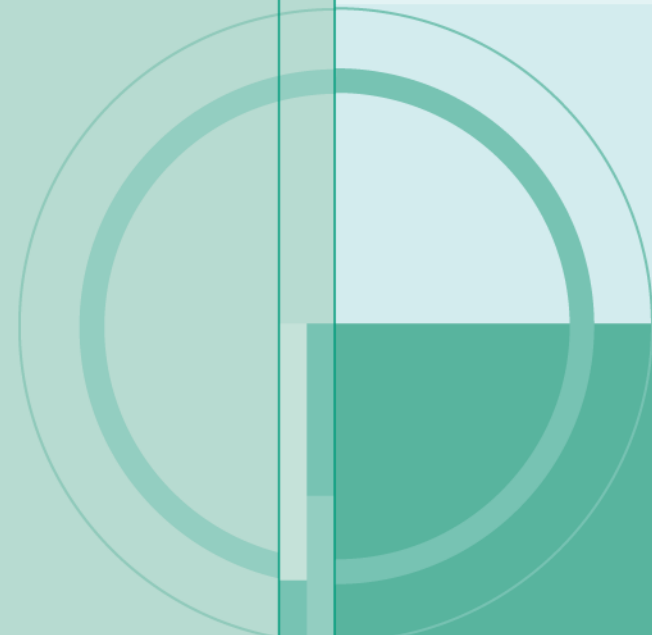
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# Introduction and Overview

- Senate Bill 83 / Chapter 554
- Assembly Bill 798 / Chapter 474
- Senate Bill 4 / Chapter 2

# Senate Bill 83 / Chapter 554 Overview

- Adds 65089.20 to Government Code
- Countywide transportation planning agencies
- Up to \$10 vehicle license fee
- Majority-vote ballot measure

# Senate Bill 83 / Chapter 554 Overview (Continued)

- Countywide transportation planning agency
  - Congestion management agency for the county
  - In Bay Area counties, includes designated alternative to CMA
  - Other agencies?
- Projects and Programs
  - Matching funds for state general obligation bond funding
  - Creating or sustaining congestion mitigation programs and projects
  - Creating or sustaining pollution mitigation programs and projects

# SB 83 Ballot Measure

- Basic requirements
  - Majority vote
  - Noticed public hearing
  - Adoption of expenditure plan
- Additional provisions
  - Administrative costs – up to 5% of fee
  - Required findings regarding the programs and projects to be funded:
    - Relationship or benefit to the persons who will be paying the fee
    - Consistent with the regional transportation plan

# SB 83 Key Legal Issue

- Avoid characterization as a special tax
  - Special taxes require two-thirds voter approval under Article XIII A, Section 4.
- Courts apply a four-prong test for distinguishing a fee from a tax. A fee meets the following criteria:
  - First, the amount of the charge assessed and paid is not more than the reasonable cost of providing the services for which the charge is imposed.
    - Burden of proof on levying agency
    - Methodology must be valid and reasonable
    - Calculations must be precise but can be based on estimated cost

## SB 83 Key Legal Issue (continued)

- Second, the charge is not levied for unrelated revenue purposes.
  - Third, a clear nexus exists between the payer's activities and the alleged adverse effects addressed by the charge.
  - Fourth, the amount of the charge bears a reasonable relationship to the social or economic "burdens" created by the fee payer's actions.
- Consult with counsel in developing the findings and expenditure plan.

# Leveraging the VLF

- No bonding authority in the statute.
- Possible to pledge fee revenue to support bonds.
- Bonds could be issued by a JPA or possibly by the CTFA.



# AB 798 / Chapter 474

- Overview:
  - Establishes the California Transportation Financing Authority
  - Power to issue bonds to fund transportation projects for government agencies
- Acting CTFA Executive Director, Rohimah Moly
  - Overview and status of CTFA

# CTFA Highlights

- Seven-member Authority
- Power to loan bond proceeds to governmental project sponsors
- Bonds secured by a broad range of transportation funding sources
  - Sources include, but are not limited to, fuel taxes, Article XIX B fuel sales taxes, local transportation sales taxes, and developer fees, as well as tolls authorized by CTFA.
  - Pledges of locally-controlled funding sources require approval of the relevant local agency.
  - Pledges of state-controlled funding sources requires approval of Caltrans and the CTC.

# CTFA Highlights (continued)

- Other prerequisites to financing a project include
  - Project must “improve the state transportation system in a manner that is consistent with and will help meet greenhouse gas reduction, air quality improvement and natural resource conservation goals of the state”
  - Approval of the project to be financed by Caltrans and CTC
  - Financial feasibility, as determined by CTFA
    - Revenues and other available funds will be sufficient to
      - pay debt service on bonds
      - operate and maintain the project over the life of the bonds
  - Performance measures developed for the project
  - 30 day public review and comment period prior to governing body approval of the project, including any proposed toll schedule

# CTFA Highlights (continued)

- CTFA has power to authorize tolls as a source of funding, subject to certain conditions:
  - Approval of governing board, CTC or voters
  - Nontolled alternative lanes
  - Only HOV lanes on existing highways may be converted to toll lanes
  - No tolls on local streets or roads
  - Toll rate or structure must take into account debt service and O&M/rehabilitation of the project over the life of the bonds.
  - Restrictions on use of excess toll revenue
  - Annual expenditure plan update subject to 30-day comment period
- Can use congestion management pricing

# CTFA Highlights (continued)

- Project sponsor may request that it be the issuer of the bonds
- CEQA compliance is bond issuance prerequisite
- CTFA fees

# Senate Bill 4 / Chapter 2

- Overview:
  - Allows use of design-build procurement method for transportation projects
    - Sunset of January 1, 2014.
  - Extends authorization for comprehensive lease agreements with public and private entities for development of toll facilities
    - New sunset of January 1, 2017
    - No longer requires approval of the lease agreements by the Legislature.
  - Does not include bond or other financing provisions.

# Design-Build Authorization

- Procurement must occur before January 1, 2014
- Available to local transportation entities
- CTC authorization required
  - 15 total projects - 5 for local streets and roads, 10 for Caltrans projects
  - CTC determines basis for award of bid: lowest responsible bid or best value
- Eligible projects
- Tolls on existing nontoll lanes are limited to existing HOV lanes.

# Public-Private Partnership Lease Arrangements

- Lease must be executed prior to January 1, 2017
- Authorization given to “regional transportation agencies”
- Eligible projects – limited to four, two remain in Northern California
  - highway, public street, rail or related facilities
  - address a known forecast demand
  - designed to meet performance objectives
    - improving mobility
    - improving operation or safety of the affected corridor
    - providing quantifiable air quality benefits



# Public-Private Partnership Lease Arrangements (continued)

- Soliciting and negotiating comprehensive development lease agreements
- Conditions applicable to the lease agreement
  - Reversion to Caltrans or regional transportation agency at the end of the lease
  - Statutory requirements for design-build by public agencies apply
  - Governmental party may provide services or exercise powers
  - Regular inspection of facility by governmental party
  - Lessee responsible for development, maintenance, repair, rehab, reconstruction and operation, unless otherwise provided in the lease
  - No non-compete clause

# Public-Private Partnership Lease Arrangements (continued)

- Requirement to levy tolls or user fees
  - Should cover debt service, O&M, and a reasonable return on investment
  - Limitations on application of excess toll/fee revenue
  - Amount of toll/user fee to be specified in lease agreement
  - Public hearing and approval of project sponsor needed to increase toll/fee amount
- Flexible list of procurement strategies; award may be on basis of lowest bid or best value
- Lessee qualifications

# Conclusion and Q&A

- Conclusion
- Any questions?