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Memorandum

San Francisco County Transportation Authority

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Date: 01.25.07

RE: Finance Committee
January 30, 2007

To: Finance Committee: Commissioners Elsbernd (Chair), Mirkarimi (Vice-Chair), Ammiano, Jew, Sandoval and McGoldrick (Ex-officio)

From: Maria Lombardo – Chief Deputy Director for Programming and Legislation

Through: José Luis Moscovich – Executive Director

Subject: **ACTION** - Recommend Approval of the 2007 State and Federal Legislative Programs

Summary

Every year in January/February the Authority adopts a Legislative Program to guide the agency's transportation advocacy efforts at the state and federal levels. This year's program continues many of the themes from the previous legislative sessions and emphasizes issues of local control, funding flexibility, pricing and streamlining of project delivery mechanisms. All of these are necessary, particularly at a time when California voters approved Proposition 1B, which allocates over $19 billion for transportation purposes but requires hefty local match contributions. Our focus is to advocate for San Francisco priorities, support legislation that secures or increases funding for Authority projects, and encourage the Legislature to consider legislation that expedites delivery of San Francisco projects. On the federal side, the proposed program is focused on ensuring that the San Francisco's transportation priorities are adequately addressed through both formula and discretionary funding programs, as well as in discussions about the next 6year surface transportation bill (the successor to SAFTEA-LU), and on maximizing the capture of federal funding through the annual appropriations process. Our Legislative Program also continues to look for ways to address long term funding issues for transit and paratransit services. **We are seeking a recommendation to approve the 2007 State and Federal Legislative Programs.**

BACKGROUND

The state and federal legislative programs, adopted every year by the Authority Board, establish a general framework to guide our legislative and funding advocacy efforts at the state and federal levels. The purpose of the legislative program is to establish general policy guidance on state and federal legislative and funding issues in transportation. Staff and our legislative advocacy consultants will use this program to communicate and plan strategy with the Mayor's office, the City's elected legislative representatives in Sacramento and Washington, D.C., the Metropolitan Transportation Commission (MTC), and other transportation agencies and advocates.

DISCUSSION

The proposed program is presented in the form of principles, not specific bills or legislative initiatives, in order to allow staff the necessary flexibility to respond to legislative proposals and specific policy concerns that may arise over the course of the session. Throughout the legislative session (January through October), we will be reporting on the status of bills that are of significance to the Authority, and developing recommendations for Authority positions as appropriate.

State Legislative Program

Transportation-related legislative activity this year is shaped by the passage of Proposition 1B, a $19.9 billion statewide transportation infrastructure bond, approved by California voters on November 7, 2006. Proposition 1B has a number of funding categories, some of which return funds to local jurisdictions on the basis of pre-established formulas, and others which will be allocated at the discretion of the California Transportation Commission (CTC), Caltrans and the State Legislature. The passage of Proposition 1B has created an opportunity to advance many important transportation projects, though the total amount provided by the bond still falls significantly short of the transportation funding needs of the state, portending a highly competitive environment for projects seeking bond funds. To be an effective competitor for bond funds, San Francisco must adopt a strategy identifying eligible projects and fund targets for each category. The categories include the $4.5 billion Corridor Mobility Improvement Account (CMIA), the strategy for which was adopted by the Authority Board on November 21, 2006; the $1 billion State Local Partnership Program Account (SLPP), which will include the U.S. 101/Harney Way Interchange Project, approved by the Authority Board on December 12, 2006; the $750-million Highway Safety, Rehabilitation and Preservation Account; and the $125 million Local Bridge Seismic Retrofit Account. The Authority will continue to cooperate with transit providers, City agencies and other stakeholders to advocate San Francisco's priorities, and continue to leverage these funds through a comprehensive and inclusive strategy.

Another important legislative milestone in 2006 saw the closing of the Proposition 42 "loophole." Proposition 42, approved in March 2002 by nearly 70% of voters, requires the transfer of the state sales tax on gasoline from the General Fund to the Transportation Investment Fund to fund California's transportation improvements. Provisions in subsequent years allowed the Legislature to suspend these transfers, which resulted in a total of siphoning over $2 billion away from transportation. Proposition 1A, approved by the voters in 2006, stated that the funds could only be loaned to the State's General Fund, and specified a repayment schedule for previous suspensions. The Authority will continue advocating to guarantee the gasoline sales tax remains a revenue source for transportation, as well as continue to support repayment.

The Authority's State Legislative Program reflects key principles, gathered from our common positions with the Self Help Counties Coalition (the other local transportation sales tax authorities around the state) as well as our understanding of the most pressing issues facing MUNI, other transit providers serving the City and other City departments charged with delivering transportation projects, and are consistent with the advocacy approaches of the Mayor's office and the Municipal Transportation Agency

Two areas where we continue advocacy are: project delivery, where we will work for initiatives to allow more contracting out of transportation project delivery, to try to avoid the delays likely to result from reductions in Caltrans project development staff and resources, and innovative financing and funding. Local jurisdictions will be advocating for maximum flexibility to be able to deliver as much as possible, and we will see initiatives to further increase local options for transportation funding. Public-Private Partnerships, Design-Build authority and roadway pricing authority are examples of innovative and flexible ways to increase options for the funding and delivery of projects.

The specific areas of advocacy for the Authority's proposed 2007 State Legislative Program are shown in the attachment.

Federal Program

In August 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (better known as SAFETEA-LU). The bill authorized $255.5 billion in federal funding for surface transportation programs covering five fiscal years (2005-2009). Transit was allotted between $9 and $10 billion in each of those years, nationwide. At the time of signing, a total of $734.4 million in special earmarks for Bay Area projects, including several in San Francisco, such as Doyle Drive, the Transbay Terminal, the Glen Park Station project, and several for Muni maintenance facilities. With the recent changes in Congress, we expect that there will be redoubled scrutiny of earmark proposals, as well as further conditions placed on Federal participation in the funding of transportation projects. We also expect that roadway pricing programs will be a very significant feature of the Administration's approach to investing in transportation through 2008/9. We will continue to work very closely with MUNI, the Mayor's office, the City's DC legislative advocates and the legislative delegation to ensure that San Francisco's transportation priorities are upheld, and to maximize the capture of federal dollars.

One important aspect of legislative activity at the Federal level during this year will undoubtedly be the start of discussions about the next Surface Transportation Act (the successor to SAFETEA-LU.) The issue is particularly time sensitive because Congress approved SAFETEA-LU almost three years late, effectively cutting back the life of the 6-year Act to only three. The discussion of a successor act is likely to be heavily influenced by pricing programs and demonstration funding. San Francisco has already received a major federal grant for a feasibility study of Congestion Pricing, from the Value Pricing Program at the Federal Highway Administration, and is well positioned to receive additional funds in this area.

We are seeking a recommendation to approve the 2007 State and Federal Legislative Programs.

ALTERNATIVES

1. Recommend approval of the 2007 State and Federal Legislative Program.
2. Recommend approval of the 2007 State and Federal Legislative Program with modifications.
3. Defer action, pending additional information or further staff analysis.

CAC POSITION

The CAC will be briefed on this item at its February meeting.

FINANCIAL IMPACTS

There is not impact on the Authority's budget from the proposed action.

RECOMMENDATION

Recommend approval for the 2007 State and Federal Legislative Program, as presented.

STATE AND FEDERAL LEGISLATIVE PROGRAM FOR 2007

STATE PROGRAM

A number of pressing transportation issues are expected to be discussed in the 2007 session of the State Legislature. A few of these key issues are highlighted below: Infrastructure Bonds, Proposition 42, Public-Private Partnerships, Design-Build Authority, and PTA "Spillover". Following these is discussion of several additional ongoing areas of legislative interest.

Infrastructure Bonds

In 2006, voters approved more than $44 billion in infrastructure bonds constituting the single largest investment in state infrastructure in decades.

Of this, Proposition 1B allocates over $19 billion for transportation purposes and will be the subject of implementing legislation in the 2007 legislative session. The California Transportation Commission (CTC) has already established five working groups to direct the implementation effort. These five working groups are currently discussing the details of the programs established in the bond, including the corridor mobility program, goods movement, the state-local partnership program, performance measures, and public-private partnerships. The Authority is actively involved in this effort. In 2007, SFCTA will:

a) Support legislation that secures or increases funding directed towards Authority projects.
b) Support legislation that enables faster, more efficient delivery of transportation projects in San Francisco.

Proposition 42

Approved by nearly 70 percent of voters in March 2002, Proposition 42 requires the transfer of the state sales tax on gasoline from the General Fund to the Transportation Investment Fund (TIF,) to fund transportation improvements around the state. However, loopholes in the Proposition 42 language have permitted the Legislature to suspend this transfer of revenue in any fiscal year with a two-thirds vote. Since its passage in 2002, Proposition 42 has been fully or partially suspended twice, diverting more than $2 billion away from transportation purposes.

Proposition 1A, approved by the voters in 2006, closed the "loophole" in Proposition 42 by only permitting loans to the General Fund, rather than full or partial suspensions. These loans would be required to be repaid with interest within three years. Loans are now only permitted twice in a 10-year period and each loan has to be fully repaid before subsequent loans can be taken. Lastly, Proposition 1A specifies a repayment schedule for prior Proposition 42 suspensions. In 2007, Authority will continue to:

a) Support efforts to make the sales tax on gasoline a guaranteed revenue source for transportation.
b) Support the expedited repayment of all Proposition 42 loans.
c) Oppose efforts to divert gasoline sales tax revenues from the transportation purposes intended by the voters in approving Proposition 42.

Public-Private Partnerships

While Proposition 1A and 1B provided a much needed infusion of capital for transportation programs and projects, the costs of building, maintaining, and expanding our infrastructure continues to increase. Innovative funding methods have become increasingly necessary to accommodate the growth in transportation system demands in California. Through the effective use of public-private partnerships, such projects as the I-15 Managed Lanes in San Diego County and the 91 Express Lanes in Orange County have provided additional transportation capacity and better travel conditions, and improved transportation choices while being paid for by the system's users.

The infrastructure bond agreement in 2006, included the authority for the California State Department of Transportation (Caltrans) to enter into eight public private partnership agreements for the purposes of goods movement and high occupancy toll (HOT) lanes, with projects being split equally between the north and the south. The authorizing legislation, AB 1467 (Chapter 32, Statutes of 2006), was further clarified by AB 521 (Chapter 542, Statutes of 2006) which details the approval process by the Legislature for these agreements.

In 2007, Authority's advocacy efforts will emphasize the following:

a) Support the use of congestion pricing to increase highway capacity without limiting the ability to improve public facilities.
b) Cooperate with the regional and state transportation agencies on enabling legislation to authorize publicly managed toll facilities.

Design-Build

Historically, California has built public transportation projects using a process known as design-bid-build. This process utilizes separate entities for design and construction of a highway facility. Oftentimes, even the number of entities involved in project delivery alone can create massive delivery delays.

Public pressure to deliver high quality projects in an efficient and effective manner has spurred many states to pass legislation authorizing the use of the design-build process. Unlike the traditional method, where all design aspects must be finished before construction bids can be solicited, design-build places design and construction responsibilities in the hands of one firm. By synchronizing the design and construction phases, a project can be completed much faster than under the conventional method.

The Orange County Transportation Agency used its design-build authority in constructing a transit way, or high occupancy vehicle (HOV) lanes, on the Garden Grove Freeway (State Route 22). By using design-build, the projected completion time of widening State Route 22 (SR-22) was reduced by three to five years. The SR-22 project is expected to be completed on November 30, 2006, on time and on budget - exactly 800-days since the inception of the endeavor.

The Authority should have the option to use design-build as a very efficient delivery mechanism, and should pursue enabling legislation that would make this possible. The Authority will work and coordinate with other authorities that may already be working toward such legislation, for application to transit and roadway projects. In 2006, the Legislature debated legislation which would have provided broader design-build authority to

Caltrans and local/regional transportation commissions but at the end was unable to pull together sufficient consensus to ultimately pass the bill. While discussions will continue in the Legislature in 2007 regarding design-build authority, the Authority will also pursue authorizing legislation that will allow transportation projects to be delivered in a faster, more efficient manner. In 2007, the Authority's advocacy efforts related to design-build will emphasize the following:

a) Support legislation authorizing the use of design-build for transportation infrastructure without limiting the type of funding that can be used on the projects.
b) Support legislation authorizing the use of design-build for installation of homeland security and traffic management technologies.
c) Sponsor and support enabling legislation authorizing the use of design-build and pricing mechanisms in San Francisco, particularly for the Doyle Drive project.

PTA Spillover

Enacted in 1971, the Transportation Development Act (TDA) was designed to enhance transportation funding in California without increasing the overall sales tax rate, by reducing the state sales tax on all goods by one-quarter percent and allowing each county board of supervisors to impose a one-quarter percent sales tax for local transportation purposes. All 58 counties chose to enact the one-quarter percent sales tax. As the reduction in the state sales tax would impact state General Fund revenues, a state sales tax was then imposed on gasoline to mitigate the loss to the General Fund. At the time, the amount of revenue generated by imposing the state sales tax on gasoline was equivalent to the one-quarter percent sales tax on all goods thus holding harmless the General Fund from any loss of revenue.

The following year, as gas prices increased, the state sales tax on gasoline generated more revenue than the state lost through the diversion of the one-quarter cent sales tax on all goods to counties. The imposition of the state sales tax on gasoline was not intended to create a windfall for the General Fund, so legislation was enacted that required any excess revenue be transferred to what is now known as the Public Transportation Account (PTA) to be used for transit purposes. This excess revenue has become known as "spillover."

Voter-approved Proposition 42 which dedicated the state sales tax on gasoline that is transferred to the General Fund to the Transportation Investment Fund for transportation purposes, does not capture "spillover" revenues. Since "spillover" goes directly from the Retail Sales Tax Fund to the PTA, it is never transferred to the General Fund, and therefore, is not available for the purposes of Proposition 42. The Legislature has used "spillover" in the past to balance the state budget and cover the cost over-runs on the Bay Bridge. "Spillover" continues to be vulnerable to legislative diversion, despite the protections offered by Proposition 42 to other transportation funding.

Finally, the Governor's proposed 2007-08 Budget makes massive transfers from transit agency funding, including redirection of nearly $1.1 billion in total spillover funds projected for 2006-07 and 2007-08 to non-transportation programs. Therefore, the Authority will:

a) Support the elimination of the statute that requires the "spillover" set-aside, thus allowing all gasoline sales tax funds to flow to Proposition 42.

b) Oppose the Governor's Budget proposal to redirect spillover funds to non-transportation purposes.

I. State Budget

With continued state budget deficits, the Authority remains concerned about the status of transportation funding in California. Transportation loans, transfers, and suspensions totaling over $5 billion in the last six years have exacerbated the existing demand for transportation investment in California. In fact, the CTC has identified over $120 billion in unfunded rehabilitation needs alone on California's highways, local streets and roads, and public transit over the next decade.

Consequently, the Authority will be alert to the further erosion of state funding, as well as state attempts to shift costs to local entities, or to secure a larger state share of federal transportation funding. Key actions by the Authority will include:

a) Oppose further loans from state highway and transit accounts to the state General Fund, deferral of existing loan repayment provisions, taking of "spillover" revenue from the Public Transportation Account, or relaxation of payback with interest provisions.
b) Oppose unfunded mandates for transportation agencies and local governments in providing transportation improvements and services.
c) Oppose cost shifts or changes in responsibility for projects funded by the state to the local transportation entities.

II. STIP Reform

The State Transportation Improvement Program (STIP), substantially amended by SB 45, (Kopp) (Chapter 622, Statues of 1997), is a programming document that establishes the funding priorities and project commitments for transportation capital improvements in California. The STIP is primarily funded from the State Highway Account (SHA).
SB 45 placed decision-making closest to the problem by providing project selection for 75 percent of the funding in the Regional Transportation Improvement Program (RTIP). This funding is distributed to counties based on an allocation formula. The remaining 25 percent of the funds is programmed by Caltrans in the Interregional Transportation Improvement Program (ITIP). Key provisions to be sought by the Authority include:

a) Support legislation to guarantee reimbursement of project costs advanced with local funds for projects approved by the CTC in the STIP.

III. Administration/General

General administrative issues arise every session that could affect the Authority's ability to operate efficiently. Key positions include:

a) Oppose legislation and regulations adversely affecting the Authority's ability to efficiently and effectively contract for goods and services, conduct business and limit or transfer the risk of liability.

IV. Environmental Policies

Changes in environmental laws can affect the Authority's ability to plan, develop, and build transit, rail, and highway projects. While the Authority has been a leading advocate for new, cleaner transit technologies and the efficient use of transportation alternatives, it also remains attuned to new, conflicting, or overly prescriptive environmental statute changes, as well as to attempts to weaken environmental protections.

Key positions include:

a) Support an income tax credit to employers for subsidizing employee transit passes.

b) Support legislation to further integrate state and federal environmental impact studies.

c) Work closely with the California Air Resources Board (CARB) on regulations governing greenhouse gas emission reductions as established by AB 32 (Chapter 488, Statutes of 2006).

FEDERAL PROGRAM

The federal transportation policy landscape is likely to be very dynamic over the next year, due to the convergence of several key factors: the recent changes in Congress, which will put additional scrutiny on earmarks, the need to begin discussions on the successor of SAFETEA-LU, the 6-year federal surface transportation act, a number of recent changes to key funding programs like New Starts and Small Starts, which provide funding for urban rail and bus rapid transit projects, and the Bush Administration's recent focus on pricing mechanisms and public/private partnerships.

I. Federal Surface Act Reauthoritzation

Congress and the Bush Administration argued for three years about the shape of SAFETEA-LU, and kept transportation funding flowing through continuing resolutions. By the time SAFETEA-LU was adopted, three of the six years it covers were already elapsed. As a result, even though SAFETEA-LU was approved recently, we are in a position to have to initiate the debate about the next federal surface transportation act.

The Authority will continue to coordinate input from relevant City departments and the Mayor's office and be actively involved in shaping the next surface act through participation in policy development committees in the region and at the national level, particularly through the Transportation Research Board, the American Public Transportation Association and other professional organizations that have proven track record of effectiveness in advocacy on behalf of transportation improvements.

II. New Starts and Small Starts Program

The Authority will actively advocate on behalf of San Francisco's New Starts and Small Starts projects, including the Central Subway and BRT projects, as appropriate given local policy decisions affecting the different development phases of those projects.

III. Value Pricing Program and Related Initiatives

The Authority will continue to participate actively in the Value Pricing program and will seek to secure funding from the Urban Partnership Program or other programs that the Administration or Congress may create or authorize, to leverage Prop K local sales taxes for programs, projects and policy initiatives already authorized in the sales tax. In particular, the Authority will ensure that San Francisco is included in and benefits from any exemptions from regulation that federal agencies may be willing to provide to local jurisdiction as incentives to the implementation of innovative congestion relief, project delivery or system management initiatives.

IV. Project-Specific Advocacy

The Authority will actively advocate for the certification by the Federal government of the environmental impact study for the Doyle Drive Replacement project, and for the funding needs of all Prop K funded projects, consistent with the Prop K Expenditure Plan and Countywide Transportation Plan priorities.