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AMENDED IN SENATE AUGUST 26, 2002
AMENDED IN SENATE AUGUST 19, 2002
AMENDED IN ASSEMBLY JANUARY 17, 2002
AMENDED IN ASSEMBLY JANUARY 7, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1010

**Introduced by Assembly Members Correa, Daucher,
Negrete McLeod, Robert Pacheco, and Rod Pacheco**
(Principal coauthor: ~~Assembly Member Robert Pacheco~~)
(Coauthors: Assembly Members *Bill Campbell, Harman, Kelley,*
and Longville)
(Coauthors: Senators Haynes, Johnson, *Morrow*, and Soto)

February 23, 2001

An act to amend Section 130240 of the Public Utilities Code, and to amend Section 143 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1010, as amended, Correa. Transportation: franchise agreements.

(1) Existing law authorizes the Department of Transportation to enter into agreements with private entities for the construction by and lease to private entities of 4 transportation demonstration projects, including at least one in northern California and one in southern

California. Existing law authorizes these private entities to charge tolls for the use of the privately constructed facilities. Existing law requires that any excess toll revenue be applied to any debt the entity incurred building the facilities to be paid into the State Highway Account in the State Transportation Fund. Existing law provides that the department may continue to charge tolls for use of these facilities after the lease held by the private entity has expired.

This bill would provide that the collection of tolls for the use of these facilities would terminate at the expiration of the franchise agreement. The bill would also ~~decrease the number of these transportation demonstration projects authorized by existing law from 4 to 2 and would delete the provisions specifying their~~ *the location of the demonstration projects and would preclude the department from entering into a new agreement for these projects after January 1, 2003.*

(2) Existing law authorizes the Orange County Transportation Authority to acquire, construct, develop, lease, or dispose of rights-of-way, rail lines, buslines, and other facilities necessary for transit purposes.

This bill would additionally authorize the authority with respect to the segment of State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55 only, to acquire streets, highways, bridges, tunnels, and connector roads necessary for transit or transportation purposes. The bill would require the department, *if requested by the Orange County Transportation Authority*, to approve the assignment of a franchise agreement between the department and the California Private Transportation Company for State Highway Route 91 to the Orange County Transportation Authority. *The bill would provide that the authority shall not sell or assign its interest in the franchise agreement without approval of the Legislature by the enactment of a statute.* The bill would authorize the authority to impose tolls on State Highway Route 91 to be used for specified purposes. The bill would specify that the authority's authorization to impose the toll would terminate upon its payment in full of certain bonded indebtedness *or on December 31, 2030, whichever occurs earlier*, and that the segment of State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55 would revert to the department at that time. *The bill would provide that neither the state nor any other public agency is liable for any debt of the authority.* The bill would create an advisory committee composed of 5 voting members each from the board of the Orange County Transportation Authority and



the Riverside County Transportation Commission, and 3 nonvoting members from the San Bernardino Associated Governments and the department to review and make recommendations to the authority regarding the facilities acquired, tolls imposed, and the maintenance and operations of State Highway Route 91. The bill would make the exercise of the authority’s powers in Riverside County subject to the approval of the Board of Supervisors of Riverside County and the Riverside County Transportation Commission and in consultation with the advisory committee. *The bill would specify that all costs associated with the advisory committee would be paid by the Orange County Transportation Authority.*

~~Because the bill would require the Riverside County Transportation Commission to appoint 5 of its members to the advisory committee and the San Bernardino Associated Governments to appoint one member to the advisory committee, the bill would impose a state-mandated local program.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: *yes no*.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) It is essential for the economic well-being of the state and
- 4 the maintenance of a high quality of life that the people of
- 5 California have an efficient transportation system.
- 6 (b) The Department of Transportation (hereafter the
- 7 department) is a party to a franchise agreement with the California
- 8 Private Transportation Company, L.P. (CPTC), as authorized by



1 Section 143 of the Streets and Highways Code, providing for
2 privately financed transportation facilities within State Highway
3 Route 91 (hereafter Route 91), with transportation facility
4 development rights extending from Interstate 15 in Riverside
5 County to the Los Angeles County and Orange County boundary.
6 The completed facilities include two lanes in each direction for
7 approximately 10 miles in the County of Orange. Tolls are
8 imposed for use of the facilities to provide a revenue stream for the
9 CPTC to finance the costs of construction and operation of the
10 transportation facilities and to earn a profit consistent with the
11 provisions of the franchise agreement. The franchise agreement
12 extends to the year 2030 and includes provisions prohibiting
13 improvements to Route 91 in order to protect the investment in the
14 privately financed facilities (hereafter noncompete provisions).

15 (c) The County of Riverside is currently challenging the
16 legality of the noncompete provisions in a legal proceeding against
17 the department and the CPTC.

18 (d) Current congestion on Route 91 and projections for future
19 vehicle traffic and transportation demand through this corridor
20 make it imperative that Route 91 improvements be planned and
21 constructed as soon as possible.

22 (e) The Orange County Transportation Authority (OCTA) has
23 determined that acquisition of the CPTC interest in the franchise
24 agreement is desirable and is the most appropriate means to
25 eliminate the noncompete provisions of the franchise agreement.
26 By replacing private control of the franchise agreement and
27 bringing the transportation facilities under public ownership,
28 OCTA will restore the authority to public agencies, including
29 OCTA, the department, and the Riverside County Transportation
30 Commission (hereafter RCTC), to make much needed
31 improvements in the heavily congested Route 91 corridor and for
32 OCTA to manage the transportation facilities to maximize
33 throughput of vehicles and passengers rather than profits.

34 (f) The noncompete provisions shall be eliminated through the
35 sale of CPTC's interest in the franchise agreement to the OCTA.
36 This will facilitate the end of the litigation and enable planning and
37 construction of critically needed transportation improvements to
38 Route 91 through the Counties of Orange and Riverside.

39 (g) In pursuing the acquisition of the franchise agreement,
40 OCTA undertook a rigorous valuation process that was comprised



1 of three discrete elements. First, OCTA staff examined pertinent
2 traffic and related revenue projections provided by CPTC and
3 determined a value of the CPTC enterprise based on a discounted
4 cashflow, a business valuation method in common use and
5 believed to be most appropriate in this circumstance in the absence
6 of other comparative business enterprises operating privately
7 controlled toll lanes in public highways. This produced a valuation
8 range between two hundred ten million dollars (\$210,000,000)
9 and two hundred fifteen million dollars (\$215,000,000). Second,
10 OCTA examined the cost to replace the transportation facility at
11 today's construction costs. This produced a valuation estimate of
12 two hundred million dollars (\$200,000,000). Finally, OCTA
13 engaged an outside accounting firm to prepare an independent
14 third-party fairness opinion on the valuation process, which
15 validated the OCTA valuation methods and produced a valuation
16 estimate of the transportation facility in a range between two
17 hundred two million dollars (\$202,000,000) and two hundred
18 twenty million dollars (\$220,000,000).

19 (h) OCTA used the valuation range produced as a guideline in
20 bilateral negotiations with CPTC to acquire the franchise
21 agreement rights. A purchase price was negotiated with a value of
22 two hundred seven million five hundred thousand dollars
23 (\$207,500,000). Based on this purchase price, OCTA has
24 structured a financing plan that would have OCTA assume existing
25 CPTC debt of one hundred thirty-five million dollars
26 (\$135,000,000), supplemented by an additional payment by
27 OCTA to CPTC of seventy-two million five hundred thousand
28 dollars (\$72,500,000) in cash from existing reserves available to
29 OCTA. As a result of the proposed transaction, OCTA will replace
30 CPTC as the holder of the franchise agreement and the authority
31 for CPTC to collect tolls will terminate.

32 (i) Current tolls should be reduced and to the extent feasible,
33 the duration of the imposition of tolls should be minimized, but
34 tolls shall be adequate to assure the payment of all financing
35 required to acquire the facilities, and tolls shall be eliminated no
36 later than the year 2030, consistent with the terms of the franchise
37 agreement and Section 143 of the Streets and Highways Code.

38 SEC. 2. Section 130240 of the Public Utilities Code is
39 amended to read:

40 130240. (a) "Transit" means as defined in Section 40005.



1 ~~(b) (1) With respect to the segment of State Highway Route 91~~
 2 ~~between Interstate Highway Route 15 and State Highway Route 55~~
 3 ~~only, the Orange County Transportation Authority may acquire,~~
 4 ~~construct, develop, lease, jointly develop, own, operate, maintain,~~
 5 ~~control, use, jointly use, or dispose of rights-of-way, streets,~~
 6 ~~highways, bridges, connector roads, rail lines, monorails,~~
 7 ~~guideways, buslines, stations, platforms, switches, yards,~~
 8 ~~terminals, parking lots, air rights, land rights, development rights,~~
 9 ~~entrances and exits, and any and all other facilities for, incidental~~
 10 ~~to, necessary for, or convenient for transportation or transit~~
 11 ~~service, including, but not limited to, facilities and structures~~
 12 ~~physically or functionally related to transportation or transit~~
 13 ~~service, within or partly without the county, underground, upon,~~
 14 ~~or above the ground and under, upon or over public streets,~~
 15 ~~highways, bridges, or other public ways or waterways, together~~
 16 ~~with all physical structures necessary for, incidental to, or~~
 17 ~~convenient for the access of persons and vehicles thereto, and may~~
 18 ~~acquire, lease, sell, or otherwise contract with respect to any~~
 19 ~~interest in or rights to the use or joint use of any or all of the~~
 20 ~~foregoing. However, installations on state freeways are subject to~~
 21 ~~the approval of the Department of Transportation (department)~~
 22 ~~and installations in other state highways are subject to Article 2~~
 23 ~~(commencing with Section 670) of Chapter 3 of Division 1 of the~~
 24 ~~Streets and Highways Code.~~

25 ~~(2)~~
 26 *(b) (1) The Orange County Transportation Authority may*
 27 *acquire, construct, develop, lease, jointly develop, own, operate,*
 28 *maintain, control, use, jointly use, or dispose of rights-of-way, rail*
 29 *lines, monorails, guideways, buslines, stations, platforms,*
 30 *switches, yards, terminals, parking lots, air rights, land rights,*
 31 *development rights, entrances and exits, and any and all other*
 32 *facilities for, incidental to, necessary for, or convenient for transit*
 33 *service, including, but not limited to, facilities and structures*
 34 *physically or functionally related to transit service, within or*
 35 *partly without the county, underground, upon, or above the ground*
 36 *and under, upon or over public streets, highways, bridges, or other*
 37 *public ways or waterways, together with all physical structures*
 38 *necessary for, incidental to, or convenient for the access of persons*
 39 *and vehicles thereto, and may acquire, lease, sell, or otherwise*
 40 *contract with respect to any interest in or rights to the use or joint*



1 use of any or all of the foregoing. However, installations on state
2 freeways are subject to the approval of the Department of
3 Transportation and installations in other state highways are
4 subject to Article 2 (commencing with Section 670) of Chapter 3
5 of Division 1 of the Streets and Highways Code.

6 (2) With respect to the segment of State Highway Route 91
7 between Interstate Highway Route 15 and State Highway Route 55
8 only, the Orange County Transportation Authority may exercise
9 all of the powers contained in paragraph (1) that apply to streets,
10 highways, bridges, and connector roads.

11 (3) The exercise of the powers provided to the Orange County
12 Transportation Authority in paragraph ~~(1)~~ (2) is subject to
13 approval by the Board of Supervisors of Riverside County and the
14 Riverside County Transportation Commission and in consultation
15 with the advisory committee described in paragraph (1) of
16 subdivision (h) as it relates to the use of those powers in Riverside
17 County under the terms of the franchise agreement described in
18 subdivision (c).

19 ~~The~~ *If the Orange County Transportation Authority*
20 *requests, the department shall approve the assignment to the*
21 *Orange County Transportation Authority of the Amended and*
22 *Restated Development Franchise Agreement, as amended,*
23 *between the department and the California Private Transportation*
24 *Company, L.P. (CPTC) for the State Highway Route 91 median*
25 *improvements as authorized by Section 143 of the Streets and*
26 *Highways Code, subject to the requirement that subdivisions (a)*
27 *to (f), inclusive, of Section 2 of Article 3 of the restated franchise*
28 *agreement be deleted in their entirety in the event that CPTC and*
29 *the authority agree to the assignment of all of CPTC's interests in*
30 *the franchise agreement to the authority.*

31 (d) The Orange County Transportation Authority shall have the
32 authority to impose tolls for use of the State Highway Route 91
33 facilities as authorized by the franchise agreement. After the bonds
34 issued pursuant to subdivision (f) are paid in their entirety *or on*
35 *December 31, 2030, whichever occurs earlier,* the Orange County
36 Transportation Authority shall have no further authority to impose
37 or to collect a toll for the use of the segment of State Highway
38 Route 91 between Interstate Highway Route 15 and State Highway
39 Route 55, and that segment of State Highway Route 91 shall revert
40 to the department at that time. *and State Highway Route 55.*



1 (e) Toll revenues from the use of State Highway Route 91
2 facilities between Interstate Highway Route 15 and State Highway
3 Route 55 shall only be used by the Orange County Transportation
4 Authority for capital and operating expenses, including payment
5 of purchase costs, debt service, and satisfaction of other covenants
6 and obligations relating to indebtedness, and for transportation
7 related to State Highway Route 91 between Interstate Highway
8 Route 15 and State Highway Route 55, excluding other toll roads.
9 Prior to July 1, 2003, the Orange County Transportation Authority,
10 in consultation with the department and the Riverside County
11 Transportation Commission, shall issue a plan and a proposed
12 completion schedule for the improvements on State Highway
13 Route 91 between Interstate Highway Route 15 and State Highway
14 Route 55. The Orange County Transportation Authority shall
15 update the plan on an annual basis until all improvements
16 described in the plan have been completed.

17 ~~(f) The provisions of Chapter 5 (commencing with Section~~
18 ~~130500) of Division 12 shall apply with full force and effect to the~~
19 ~~Orange County Transportation Authority to the same extent and in~~
20 ~~the same manner as the provisions apply to the Los Angeles~~
21 ~~Metropolitan Transportation Authority, except that actions taken~~
22 ~~pursuant to this subdivision shall be limited to the purposes of this~~
23 ~~section. "Transit," as used in that chapter, shall mean and include~~
24 ~~"transit" as defined in subdivision (a).~~

25 *(f) The Orange County Transportation Authority may incur*
26 *indebtedness and obligations, and may issue bonds, refund bonds,*
27 *and assume existing bonds for purposes authorized by this section*
28 *for a period not to extend beyond the year 2030. Indebtedness and*
29 *bonds issued under this section do not constitute a debt or liability*
30 *of the state or any other public agency, other than the authority, or*
31 *a pledge of the faith and credit of the state or any other public*
32 *agency, other than the authority. Bonds issued under this section*
33 *shall not be deemed to constitute a debt or liability of the state or*
34 *any political subdivision thereof, other than the bank and the*
35 *authority, or a pledge of the faith and credit of the state or of any*
36 *political subdivision, but shall be payable solely from the revenues*
37 *and assets pledged to the repayment of the bonds. All bonds issued*
38 *under this section shall contain on the face of the bond a statement*
39 *to the same effect.*



1 (g) Notwithstanding Section 143 of the Streets and Highways
2 Code, the State Highway Route 91 facility constructed and
3 operated under the authority of a franchise agreement approved
4 pursuant to that section shall revert to the state at the expiration of
5 the lease or termination of the franchise agreement at no cost to the
6 state.

7 (h) (1) An advisory committee shall be created to review
8 issues and make recommendations to the Orange County
9 Transportation Authority regarding the transportation facilities
10 acquired from CPTC, including tolls imposed, operations,
11 maintenance, and use of toll revenues, and improvements in the
12 area of State Highway Route 91 between Interstate Highway
13 Route 15 and State Highway Route 55, including the identification
14 and siting of alternative highways. The committee shall consist of
15 10 voting members and three nonvoting members, as follows:

16 (A) Five members of the board of directors of the Orange
17 County Transportation Authority appointed by that board.

18 (B) Five members of the Riverside County Transportation
19 Commission appointed by that commission.

20 (C) One member of the San Bernardino Associated
21 Governments appointed by that body and the district directors of
22 Districts 8 and 12 of the Department of Transportation, all of
23 whom shall be nonvoting members.

24 (2) When reviewing the initial toll structure proposed by the
25 Orange County Transportation Authority or any changes to the toll
26 structure, the advisory committee shall place an information item
27 on a regularly scheduled agenda for due public comment and
28 consideration of the advisory committee.

29 (3) The Orange County Transportation Authority shall conduct
30 an audit on an annual basis of the toll revenues collected and
31 expenditures made during the term of franchise agreement. The
32 audit shall review revenues and expenditures for consistency with
33 the provisions of this section and shall be provided to the advisory
34 committee.

35 (4) *The Orange County Transportation Authority shall pay all*
36 *costs associated with the requirements of this subdivision.*

37 (i) The Orange County Transportation Authority shall not
38 impose tolls for the use of nor construct and operate State Highway
39 Route 91 facilities in the County of Riverside without prior
40 approval by the Board of Supervisors of the County of Riverside,



1 the Riverside County Transportation Commission, and the
2 advisory committee.

3 (j) ~~(1)~~—The Orange County Transportation Authority shall not
4 sell or assign its interest in the franchise agreement without
5 approval by the ~~department~~ *Legislature by enactment of a statute*
6 *provided that approval shall not be required in connection with*
7 *granting rights and remedies to lenders under Article 16 of the*
8 *restated franchise agreement.*

9 ~~(2)~~

10 (k) *After the bonds issued pursuant to this section are paid off*
11 *in their entirety, or on December 31, 2030, whichever occurs*
12 *earlier, that segment of State Highway Route 91 between Interstate*
13 *Highway Route 15 and State Highway Route 55 shall revert to the*
14 *department.*

15 (l) In the event that the Orange County Transportation
16 Authority decides to sell or assign its interest in the franchise
17 agreement, the Orange County Transportation Authority shall
18 provide written notice at least 90 days in advance of the date they
19 submit their request for approval by the department pursuant to
20 this subdivision. The written notice shall be provided to the
21 advisory committee and the Riverside County Transportation
22 Commission.

23 SEC. 3. Section 143 of the Streets and Highways Code is
24 amended to read:

25 143. (a) The department may solicit proposals and enter into
26 agreements with private entities, or consortia thereof, for the
27 construction by, and lease to, private entities of two public
28 transportation demonstration projects. *The department shall not*
29 *enter into an agreement for any new proposals under this authority*
30 *after January 1, 2003.*

31 (b) For the purpose of facilitating those projects, the
32 agreements may include provisions for the lease of rights-of-way
33 in, and airspace over or under, state highways, for the granting of
34 necessary easements, and for the issuance of permits or other
35 authorizations to enable the private entity to construct
36 transportation facilities supplemental to existing state-owned
37 transportation facilities. Facilities constructed by a private entity
38 pursuant to this section shall, at all times, be owned by the state.
39 The agreement shall provide for the lease of those facilities to the
40 private entity for up to 35 years. In consideration therefor, the



1 agreement shall provide for complete reversion of the privately
2 constructed facility to the state at the expiration of the lease at no
3 charge to the state.

4 (c) The department may exercise any power possessed by it
5 with respect to the development and construction of state
6 transportation projects to facilitate the development and
7 construction of transportation projects pursuant to this section.
8 Agreements for maintenance and police services entered into
9 pursuant to this section shall provide for full reimbursement for
10 services rendered by the department or other state agencies. The
11 department may provide services for which it is reimbursed with
12 respect to preliminary planning, environmental certification, and
13 preliminary design of the demonstration projects.

14 (d) (1) Agreements entered into pursuant to this section shall
15 authorize the private entity to impose tolls for use of a facility
16 constructed by it, and shall require that over the term of the lease
17 the toll revenues be applied to payment of the private entity's
18 capital outlay costs for the project, the costs associated with
19 operations, toll collection, administration of the facility,
20 reimbursement to the state for the costs of maintenance and police
21 services, and a reasonable return on investment to the private
22 entity. The agreement shall require that any excess toll revenue
23 either be applied to any indebtedness incurred by the private entity
24 with respect to the project or be paid into the State Highway
25 Account, or both.

26 (2) The authority to collect tolls for the use of these facilities
27 shall terminate at the expiration of the franchise agreement.

28 (e) The plans and specifications for each project constructed
29 pursuant to this section shall comply with the department's
30 standards for state transportation projects. A facility constructed
31 by and leased to a private entity shall, during the term of the lease,
32 be deemed to be a part of the state highway system for purposes
33 of identification, maintenance, enforcement of traffic laws, and for
34 the purposes of Division 3.6 (commencing with Section 810) of
35 Title 1 of the Government Code.

36 (f) *The assignment authorized by subdivision (c) of Section*
37 *130240 of the Public Utilities Code is consistent with this section.*

38 SEC. 4. Notwithstanding Section 17610 of the Government
39 Code, if the Commission on State Mandates determines that this
40 act contains costs mandated by the state, reimbursement to local



1 agencies and school districts for those costs shall be made pursuant
2 to Part 7 (commencing with Section 17500) of Division 4 of Title
3 2 of the Government Code. If the statewide cost of the claim for
4 reimbursement does not exceed one million dollars (\$1,000,000),
5 reimbursement shall be made from the State Mandates Claims
6 Fund.

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8 CORRECTIONS

9 **Digest — Page 2.**

10 **Text — Pages 5, 10.**

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