

AMENDED IN ASSEMBLY SEPTEMBER 9, 2011

AMENDED IN ASSEMBLY AUGUST 25, 2011

SENATE BILL

No. 791

Introduced by Senator Steinberg Simitian
(Principal coauthor: Senator Alquist)
(Coauthor: Senator Runner)

February 18, 2011

~~An act to add Chapter 2 (commencing with Section 55830) to Part 3 of Division 2 of Title 5 of the Government Code, relating to transportation.~~ *An act to add and repeal Section 123222.3 of the Health and Safety Code, relating to mammograms.*

LEGISLATIVE COUNSEL'S DIGEST

SB 791, as amended, ~~Steinberg Simitian. Regional congestion reduction charge.~~ *Health care: mammograms.*

Existing law requires specified information to be sent to patients regarding their health care. Existing federal law requires a written report of the results of each mammography examination and requires a summary of that report to be sent to the patient within a specified time period.

This bill, from April 1, 2012, until January 1, 2018, would require, under specified circumstances, a health facility at which a mammography examination is performed to include in the summary of the written report sent to the patient a specified notice on breast density.

~~Existing law provides various funding sources for transportation programs and capital improvement projects. Existing law provides for designation of transportation planning agencies throughout the state with various transportation planning and programming responsibilities, including preparation of a regional transportation plan. Certain of these~~

agencies are also designated as metropolitan planning organizations under federal law.

~~This bill would authorize a metropolitan planning organization, subject to majority voter approval, to impose, for up to 30 years, a regional transportation congestion reduction charge on purchasers of motor vehicle fuel in all or part of its jurisdiction, which would be collected by the fuel retailer or wholesaler and transmitted to the State Board of Equalization. The bill would define motor vehicle fuel for these purposes to include gasoline and diesel. A corresponding vehicle registration charge would be imposed on electric vehicles licensed to be driven on public roads, which would be collected by the Department of Motor Vehicles. Prior to adopting a regional congestion reduction charge, the metropolitan planning organization would be required to make certain determinations, including that the transportation demand reduction projects funded by the charge would directly and specifically benefit motorists within the region by reducing vehicle congestion so as to increase overall mobility for motorists who are paying the charge. The bill would impose various other requirements.~~

~~The bill would provide for revenues from the regional transportation congestion reduction charge to be transferred by the State Board of Equalization or the Department of Motor Vehicles, as applicable, to the appropriate metropolitan planning organization. The bill would authorize use of the revenues for certain transportation projects and programs that have been identified in the regional transportation plan, as specified. The bill would require the board of supervisors in a county in the jurisdiction of the metropolitan planning organization where the charge is to be imposed, upon request of the organization, to submit the proposed charge to the voters, and would require the organization to reimburse the associated election costs. In certain counties, the charge would be imposed by a county transportation commission rather than the metropolitan planning organization.~~

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

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

- 1 *SECTION 1. Section 123222.3 is added to the Health and*
- 2 *Safety Code, to read:*
- 3 *123222.3. (a) A health facility at which a mammography*
- 4 *examination is performed shall, if a patient is categorized by the*

1 facility as having heterogeneously dense breasts or extremely
2 dense breasts, based on the Breast Imaging Reporting and Data
3 System established by the American College of Radiology, include
4 in the summary of the written report that is sent to the patient, as
5 required by federal law, the following notice:

6
7 “Because your mammogram demonstrates that you have dense
8 breast tissue, which could hide small abnormalities, you might
9 benefit from supplementary screening tests, depending on your
10 individual risk factors. A report of your mammography results,
11 which contains information about your breast density, has been
12 sent to your physician’s office and you should contact your
13 physician if you have any questions or concerns about this notice.”

14
15 (b) This section shall become operative on April 1, 2012.

16 (c) Nothing in this section shall be construed to create or impose
17 liability on a health care facility for failing to comply with the
18 requirements of this section prior to April 1, 2012.

19 (d) This section shall remain in effect only until January 1, 2018,
20 and as of that date is repealed, unless a later enacted statute, that
21 is enacted before January 1, 2018, deletes or extends that date.

22 SECTION 1. The Legislature finds and declares all of the
23 following:

24 (a) ~~Section 65080 of the Government Code requires each~~
25 ~~transportation planning agency designated under Section 29532~~
26 ~~or 29532.1 of that code to prepare and adopt a regional~~
27 ~~transportation plan directed at achieving a coordinated and balanced~~
28 ~~regional transportation system, including, but not limited to, mass~~
29 ~~transportation, highway, railroad, maritime, bicycle, pedestrian,~~
30 ~~goods movement, and aviation facilities and services.~~

31 (b) ~~Federal law also requires metropolitan planning~~
32 ~~organizations to prepare regional transportation plans that consider~~
33 ~~the need to relieve congestion and to prevent congestion from~~
34 ~~occurring and to consider congestion management strategies or~~
35 ~~actions that improve the mobility of people and goods (23 C.F.R.~~
36 ~~450.316).~~

37 (c) ~~Achieving increased mobility within California’s~~
38 ~~metropolitan regions is essential for their economic growth and~~
39 ~~environmental quality. Free movement of vehicles, goods, and~~

1 services within a region is a key goal of the regional transportation
2 plan.

3 ~~(d) In attempting to achieve a coordinated and balanced regional~~
4 ~~transportation system that will achieve the greatest mobility for~~
5 ~~individuals and businesses within the region, the transportation~~
6 ~~planning agency must consider projects, taking into account land~~
7 ~~use and other effects, including induced demand and induced~~
8 ~~growth, that reduce vehicle congestion by increasing roadway and~~
9 ~~freeway capacity, as well as projects that reduce vehicle congestion~~
10 ~~by decreasing demand for roadway and freeway use.~~

11 ~~(e) In many of California's urbanized areas, it is not practical~~
12 ~~to increase roadway or freeway capacity because of land or~~
13 ~~environmental constraints. In other parts of the state, the benefits~~
14 ~~of increased roadway and freeway capacity can be short lived~~
15 ~~because often land use changes occur that result in additional~~
16 ~~driving that absorbs the new capacity. In those areas, projects to~~
17 ~~reduce demand for roadway and freeway use, by providing alternate~~
18 ~~means of transportation, may be the most practical way to achieve~~
19 ~~reduced vehicle congestion.~~

20 ~~(f) At the November 2, 2010, statewide general election, the~~
21 ~~voters of California approved Proposition 26, which amended~~
22 ~~Section 3 of Article XIII A and Section 1 of Article XIII C of the~~
23 ~~California Constitution. Section 3 of Article XIII A of the California~~
24 ~~Constitution requires a two-thirds vote of the Legislature for any~~
25 ~~change in a state statute that results in any taxpayer paying a higher~~
26 ~~tax. Exceptions to the definition of "tax" were also adopted. Section~~
27 ~~1 of Article XIII C of the California Constitution adopts new~~
28 ~~definitions, including a new definition of "special tax." Exceptions~~
29 ~~to the definition of "special tax" were also adopted.~~

30 ~~(g) An exception both to the definition of "tax" in Section 3 of~~
31 ~~Article XIII A of the California Constitution, and to the definition~~
32 ~~of "special tax" in Section 1 of Article XIII C of the California~~
33 ~~Constitution, is a charge imposed for a specific benefit conferred~~
34 ~~or privilege granted directly to the payor that is not provided to~~
35 ~~those not charged, and which does not exceed the reasonable costs~~
36 ~~to the state or local government of conferring the benefit or~~
37 ~~granting the privilege.~~

38 ~~(h) Proposition 26 also imposes a requirement on any charge~~
39 ~~enacted without a two-thirds vote that the government "bears the~~
40 ~~burden of proving by a preponderance of the evidence that a levy,~~

1 charge, or other exaction is not a tax, that the amount is no more
2 than necessary to cover the reasonable costs of the governmental
3 activity, and that the manner in which those costs are allocated to
4 a payor bear a fair or reasonable relationship to the payor's burdens
5 on, or benefits received from, the governmental activity”
6 (subdivision (d) of Section 3 of Article XIII A of the California
7 Constitution; Section 1 of Article XIII C of the California
8 Constitution).

9 (i) The requirements that the amount is not more than necessary
10 to cover the reasonable costs of the governmental activity and that
11 the manner in which those costs are allocated to a payor bear a fair
12 or reasonable relationship to the payor's burden on or benefits
13 received from the governmental activity restate language from the
14 *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th
15 866, line of cases (see also *California Farm Bureau v. State Water*
16 *Resources Control Board* (2011) 51 Cal.4th 421, 437-439).

17 (j) Under this standard, a regulatory fee does not become a tax
18 simply because the fee may be disproportionate to the service
19 rendered to individual payors. The question of proportionality is
20 not measured on an individual basis. Rather, it is measured
21 collectively, considering all rate payors (*California Assn. of*
22 *Professional Scientists v. Department of Fish & Game* (2000) 79
23 *Cal.App.4th 935, 948*). Thus, permissible fees must be related to
24 the overall cost of the government regulation. They need not be
25 finely calibrated to the precise benefit each individual fee payor
26 might derive (*California Farm Bureau v. State Water Resources*
27 *Control Board*, *supra*, at p. 438).

28 (k) Freeway and roadway users receive a specific benefit from
29 programs and projects that reduce vehicle congestion within a
30 region and, therefore, it is appropriate for transportation planning
31 agencies that are federally designated metropolitan planning
32 organizations to impose regional charges on such freeway and
33 roadway users that do not exceed the reasonable cost of reducing
34 vehicle congestion. Congestion reduction is a specific benefit
35 provided to the users of freeways and roadways that is particular
36 and distinct to those users over and above general benefits provided
37 to the public at large. The Legislature also finds that regional
38 vehicle charges are an appropriate method to charge freeway and
39 roadway users for receiving the specific benefit of reduced
40 congestion, and that individuals and businesses that do not pay

1 regional vehicle charges will not receive the specific benefit of
2 reduced vehicle congestion.

3 (f) Freeway and roadway users also receive a specific benefit
4 from funding for maintenance and repair of those facilities, a
5 specific benefit to those users that is not enjoyed by the general
6 public.

7 SEC. 2.— Chapter 2 (commencing with Section 55830) is added
8 to Part 3 of Division 2 of Title 5 of the Government Code, to read:

9

10 CHAPTER 2. REGIONAL CONGESTION REDUCTION CHARGE

11

12 55830.—(a) Subject to the approval of the voters pursuant to
13 subdivision (f), a metropolitan planning organization designated
14 pursuant to Section 134 of Title 23 of the United States Code may
15 impose a regional congestion reduction charge in all or part of its
16 jurisdiction pursuant to this section. The charge shall become
17 operative on the first day of the first calendar quarter commencing
18 more than 90 days after voter approval.

19 (b) A regional congestion reduction charge imposed pursuant
20 to this chapter must satisfy all of the following:

21 (1) (A) The transportation projects and programs funded by
22 the charge would directly and specifically benefit motorists within
23 the region by reducing vehicle congestion and by providing capital
24 improvements for maintenance, safety, and rehabilitation so as to
25 increase overall mobility for motorists within the region who are
26 paying the charge.

27 (B) The metropolitan planning organization shall consider both
28 increased ridership on transit services as well as changes in land
29 use patterns during the planning horizon of the regional
30 transportation plan in determining the congestion relief that would
31 result from the transportation demand reduction projects.

32 (C) The metropolitan planning organization shall use travel
33 demand models consistent with Section 14522.1 and guidelines
34 adopted by the California Transportation Commission for
35 transportation demand models in making this determination.

36 (D) For purposes of this subdivision, “vehicle congestion” means
37 peak period travel speeds on regional freeways, thoroughfares,
38 major and minor arterials, and major connectors that are less than
39 60 percent of the free flow speeds.

- 1 ~~(2) The specific benefits of reduced vehicle congestion are not~~
2 ~~provided to those not charged.~~
- 3 ~~(3) The amount of the charge does not exceed the reasonable~~
4 ~~costs of providing the congestion reduction benefits identified in~~
5 ~~the regional transportation plan.~~
- 6 ~~(4) The manner in which the charge is allocated to a payor bears~~
7 ~~a fair or reasonable relationship to the payor's congestion relief~~
8 ~~benefit on regional freeways, thoroughfares, major and minor~~
9 ~~arterials, and major connectors.~~
- 10 ~~(5) The metropolitan planning organization shall adopt any~~
11 ~~additional findings necessary to establish that the charge satisfies~~
12 ~~the requirements of paragraph (1) of subdivision (c) of Section 1~~
13 ~~of Article XIII C of the California Constitution.~~
- 14 ~~(e) The charge shall be in addition to any other levies that the~~
15 ~~metropolitan planning organization is authorized to impose.~~
- 16 ~~(1) The charge may be implemented for a period not to exceed~~
17 ~~30 years on all purchasers of motor vehicle fuels sold in all or part~~
18 ~~of the jurisdiction of the metropolitan planning organization. The~~
19 ~~rate of the charge shall be established by the metropolitan planning~~
20 ~~organization on a per gallon basis.~~
- 21 ~~(2) With respect to electric vehicles that are licensed to be driven~~
22 ~~on public roads and that do not utilize motor vehicle fuel, the~~
23 ~~charge may be imposed on the vehicle registration for vehicles~~
24 ~~with a registration address in that part of the region where the~~
25 ~~charge on motor vehicle fuel is imposed. The charge shall be for~~
26 ~~the same period of time as the charge on motor vehicle fuel. The~~
27 ~~surcharge shall be collected by the Department of Motor Vehicles~~
28 ~~and, after deducting the department's administrative costs, the net~~
29 ~~revenues shall be transferred quarterly to the metropolitan planning~~
30 ~~organization.~~
- 31 ~~(3) As used in this section, motor vehicle fuel includes, but is~~
32 ~~not limited to, gasoline and diesel fuel, which shall have the same~~
33 ~~meanings set forth in Sections 7316 and 60022, respectively, of~~
34 ~~the Revenue and Taxation Code.~~
- 35 ~~(d) (1) Revenues from the charge may be expended for (A)~~
36 ~~transit capital, operations, and maintenance costs, (B) bicycle and~~
37 ~~pedestrian programs and projects, (C) programs and projects that~~
38 ~~would demonstrably reduce the region's rate of growth from 2005~~
39 ~~levels in vehicle miles traveled by single-occupant vehicles, (D)~~
40 ~~conversion of high-occupancy vehicle lanes to high occupancy~~

1 toll lanes or other variably tolled express lanes, (E) capital
2 improvements relative to maintenance, safety, and rehabilitation
3 of state highways and bridges as described in subdivision (a) of
4 Section 14526.5 and equivalent projects on local streets and roads,
5 and (F) related administrative costs. A metropolitan planning
6 organization that includes a regional congestion reduction charge
7 in its regional transportation plan shall identify the programs and
8 projects that would be funded by the charge in the financial element
9 of the regional transportation plan. The financial element shall
10 also identify the eligible transit operators and other recipients and
11 the amount of funds that would be needed from all sources,
12 including the regional congestion reduction charge, for each year
13 of the programs through the planning horizon of the regional
14 transportation plan.

15 (2) A charge authorized by this section shall provide sufficient
16 funding, together with other funding sources realistically projected
17 to be available, to complete each project or program, or to operate
18 and maintain each program for the duration of the project or
19 program as identified in the regional transportation plan.

20 (e) (1) Following the adoption by the metropolitan planning
21 organization of a regional transportation plan, or an amendment
22 to a regional transportation plan, that provides for a charge pursuant
23 to this section, the board of supervisors of each county and city
24 and county in the jurisdiction of the metropolitan planning
25 organization where the charge is to be imposed shall, upon the
26 request of the metropolitan planning organization, submit to the
27 voters at a local election consolidated with a statewide primary or
28 general election specified by the metropolitan planning
29 organization, a measure, adopted by the organization, authorizing
30 the organization to impose the charge within all or part of the
31 region consistent with subdivision (c).

32 (2) The metropolitan planning organization shall reimburse each
33 county or city and county in the affected part of the region for the
34 cost of submitting the measure to the voters. These costs shall be
35 reimbursed from revenues derived from the charge if the measure
36 is approved by the voters or, if the measure is not approved, from
37 any funds of the metropolitan planning organization that may be
38 lawfully used for that purpose.

39 (f) (1) Upon approval of the measure by a majority of the voters
40 voting at an election within the region or the affected part of the

1 region where the charge is to be imposed, the metropolitan planning
2 organization may impose the charge. The charge shall be imposed
3 on the purchaser of motor vehicle fuel at the point of retail or
4 wholesale sale in each county or city and county within the region
5 where the charge is imposed, and shall be collected from the
6 purchaser by the retailer or wholesaler and transmitted to the State
7 Board of Equalization. The measure shall provide for refund, by
8 the board, of charges paid for motor vehicle fuel that is not used
9 in a vehicle on public roads.

10 (2) The motor vehicle fuel charge required to be collected by
11 the retailer or wholesaler, and any amount unreturned to the
12 customer which is not the charge but was collected from the
13 customer under the representation that it was the charge, constitute
14 debts owed by the retailer or the wholesaler to the state.

15 (3) The motor vehicle fuel charges imposed by this section are
16 due and payable quarterly on or before the last day of the month
17 next succeeding each calendar quarter. The payment shall be
18 accompanied by a return in the form prescribed by the State Board
19 of Equalization.

20 (g) (1) The metropolitan planning organization shall contract
21 with the State Board of Equalization for the administration of the
22 motor vehicle fuel charge imposed under this section, and the board
23 shall be reimbursed for its actual cost in the administration of the
24 charge, including administration of refunds, and for its actual cost
25 of preparation to administer the charge based upon an independent
26 audit.

27 (2) The State Board of Equalization shall collect the motor
28 vehicle fuel charges pursuant to the Fee Collection Procedures
29 Law (Part 30 (commencing with Section 55001) of Division 2 of
30 the Revenue and Taxation Code).

31 (3) After deducting its cost of administering the motor vehicle
32 fuel charge, the State Board of Equalization shall periodically
33 transmit the net revenues, less refunds, to the metropolitan planning
34 organization as promptly as possible. Transmittal of those revenues
35 shall be made at least twice in each calendar quarter.

36 (h) The net revenues of the motor vehicle fuel and electric
37 vehicle registration charge shall be deposited into a Regional
38 Congestion Reduction Fund, to be created and administered by
39 the metropolitan planning organization, and shall be expended in
40 accordance with this section.

1 (i) ~~(1) In an area where a charge has been approved by the~~
2 ~~voters, the metropolitan planning organization shall appoint an~~
3 ~~independent taxpayers' oversight committee to audit and oversee~~
4 ~~the programs and projects funded by the charge to ensure that~~
5 ~~expenditures are consistent with this chapter and with the measure~~
6 ~~submitted to the voters.~~

7 ~~(2) The committee shall be comprised of three persons, each of~~
8 ~~whom shall be a retired federal or state judge. Committee members~~
9 ~~shall be selected in a public meeting by the board of the~~
10 ~~metropolitan planning organization. No person currently serving~~
11 ~~as an elected or appointed city, county, special district, state, or~~
12 ~~federal public officeholder shall be eligible to serve as a member~~
13 ~~of the committee. The committee shall select no fewer than six~~
14 ~~taxpayers representing a fair cross section of the public to serve~~
15 ~~on an advisory committee.~~

16 (j) ~~(1) The metropolitan planning organization may issue bonds~~
17 ~~backed solely by revenues from the charge authorized by this~~
18 ~~section. Revenues from the charge may be pledged for payment~~
19 ~~of debt service on those bonds.~~

20 ~~(2) For purposes of this section, "bonds" means indebtedness~~
21 ~~and securities of any kind or class, including bonds, notes, bond~~
22 ~~anticipation notes, and commercial paper.~~

23 ~~(3) The metropolitan planning organization may issue bonds~~
24 ~~payable from the revenues from the charge authorized by this~~
25 ~~section at any time or from time to time. The bonds may be secured~~
26 ~~by a pledge of those revenues. The metropolitan planning~~
27 ~~organization may issue bonds to refund, purchase, or otherwise~~
28 ~~acquire bonds on terms and conditions as it shall approve.~~

29 ~~(4) The bonds may be sold at public or private sale in the forms~~
30 ~~and on such terms and conditions as the metropolitan planning~~
31 ~~organization shall approve. The metropolitan planning organization~~
32 ~~may pledge all or any part of the revenues from the charge to secure~~
33 ~~any repayment or reimbursement obligations of the metropolitan~~
34 ~~planning organization to any provider of insurance or a guarantee~~
35 ~~of liquidity or credit facility entered into to provide for the payment~~
36 ~~of the bonds. The metropolitan planning organization may employ~~
37 ~~and compensate bond counsel, financial consultants, and other~~
38 ~~advisers determined necessary by it in connection with the issuance~~
39 ~~and sale of the bonds.~~

1 ~~(5) Bonds issued under this chapter shall not be a debt or liability~~
2 ~~of any political subdivision of this state, or a pledge of the full~~
3 ~~faith and credit of the state or of any political subdivision, but shall~~
4 ~~be payable solely from the funds provided in this chapter.~~

5 ~~(6) Bonds issued by the metropolitan planning organization are~~
6 ~~legal investments for all trust funds, the funds of all insurance~~
7 ~~companies, banks, trust companies, executors, administrators,~~
8 ~~trustees, and other fiduciaries. The bonds are securities that may~~
9 ~~legally be deposited with, and received by, any state or municipal~~
10 ~~officer or agency or political subdivision of the state for any~~
11 ~~purpose for which the deposit of bonds or obligations of the state~~
12 ~~is now, or may hereafter be, authorized by law, including deposits~~
13 ~~to secure public funds.~~

14 ~~(7) Interest earned on any bonds issued under this chapter shall~~
15 ~~at all times be free from state personal income tax and corporate~~
16 ~~income tax.~~

17 ~~(8) The state hereby pledges to and agrees with the holders of~~
18 ~~bonds issued by the metropolitan planning organization that the~~
19 ~~state will not limit, alter, or restrict the rights hereby vested in the~~
20 ~~metropolitan planning organization to fulfill each pledge of~~
21 ~~revenues and any other terms of any agreement made with or for~~
22 ~~the benefit of the holders of bonds or in any way impair the rights~~
23 ~~or remedies of the holders of bonds.~~

24 ~~(k) Notwithstanding any other provision of this section, in the~~
25 ~~region served by the multicounty transportation planning agency~~
26 ~~described in Section 130004 of the Public Utilities Code, a county~~
27 ~~transportation commission may impose the charge within the~~
28 ~~county of its jurisdiction if approved by a majority of the voters~~
29 ~~in that county. The requirements of subdivision (b) shall apply to~~
30 ~~the county within the region specified in this subdivision. In this~~
31 ~~case, the county transportation commission, rather than the~~
32 ~~metropolitan planning organization, shall exercise all of the powers~~
33 ~~under this section relative to imposition of the charge.~~

34 ~~(l) (1) The requirement for voter approval pursuant to~~
35 ~~subdivision (f) is a requirement for a charge imposed specifically~~
36 ~~pursuant to this section and is not a requirement of the California~~
37 ~~Constitution.~~

1 ~~(2) The provisions of this chapter shall not limit the rights of~~
2 ~~local governments to impose any fee or charge otherwise permitted~~
3 ~~under the California Constitution.~~

O