

Assembly Bill No. 20

Passed the Assembly March 26, 2009

Chief Clerk of the Assembly

Passed the Senate March 23, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Article 12 (commencing with Section 8879.77) to Chapter 12.491 of Division 1 of Title 2 of the Government Code, and to add Chapter 9.5 (commencing with Section 2420) to Division 3 of the Streets and Highways Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

AB 20, Bass. Federal transportation economic stimulus funds.

Existing law generally provides for programming and allocation of state and federal transportation capital improvement program funds pursuant to the state transportation improvement program process administered by the California Transportation Commission. Under these provisions, 25% of available funds are available for interregional improvement projects nominated by the Department of Transportation, subject to a requirement that 60% of these funds be available for projects in nonurbanized areas on the interregional road system and for intercity rail projects. The remaining 75% of available funds are available for regional improvement projects nominated by regional agencies. All funds programmed through the state transportation improvement program process are subject to the north-south split, and the regional improvement funds are further subject to the county shares formula.

Existing law provides for allocation of certain other transportation capital improvement funds outside the state transportation improvement program process, including federal regional surface transportation improvement program funds, state bond funds, funds set aside for state highway rehabilitation under the state highway operation and protection program, and funds from various other sources.

This bill would appropriate to the department, and provide for programming and apportionment of, federal economic stimulus funds made available to the state for highway purposes under the American Recovery and Reinvestment Act of 2009. The bill would provide for 37.5% of the funds to be programmed by the department for allocation by the commission, and for 62.5% of

the funds to be apportioned to the regional agencies based on the existing formula for allocation of federal regional surface transportation improvement program funds. The bill would require a portion of these funds to be programmed and allocated for transportation enhancement activities and would establish priorities in that regard. The bill would require the department, from the funds to be programmed by the department, to program a minimum of \$935,000,000 for projects in the state highway operation and protection program and would authorize not more than \$310,000,000 of those funds to be temporarily loaned by the department to advance bond-funded projects pursuant to the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 that meet certain requirements.

The bill would also provide for regional agency sponsors of projects receiving bond funds under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, if federal funds, or federal funds and other funds under the control of the regional or local agency, are used instead of the bond funds, to select replacement projects for those bond funds. The bill would enact reporting requirements and other related provisions.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Article 12 (commencing with Section 8879.77) is added to Chapter 12.491 of Division 1 of Title 2 of the Government Code, to read:

Article 12. Federal Transportation Economic Stimulus Funds

8879.77. (a) The department, with the approval of the Director of Finance, may make a loan or loans from the State Highway Account of federal funds made available to it pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 2423 of the Streets and Highways Code for purposes of advancing a project, or a portion of a project, that has been programmed, on or before February 17, 2009, to be funded by Chapter 12.49 (commencing with Section 8879.20) and that is ready to be obligated within 120 days of federal apportionment. The board, as defined in subdivision (a) of Section 8879.22, may request the department to make a loan or loans. The aggregate amount of the request shall not exceed the amount of the unsold bonds that the committee, as defined in subdivision (b) of Section 8879.22, has, by resolution, authorized to be sold, less any amount loaned pursuant to Section 8879.31 or withdrawn pursuant to Section 8879.32. Any amount loaned shall be deposited in the fund, as defined by subdivision (c) of Section 8879.22, and shall be transferred to the appropriate account for the project, or portion of a project, being advanced. Contracts for projects to be advanced with loan funds shall be awarded within 180 days of federal apportionment. The loan or loans shall be repaid without interest to the State Highway Account from the proceeds of bonds sold pursuant to Chapter 12.49 (commencing with Section 8879.20). The board shall execute any documents as required by the department to obtain and repay the loan or loans.

(b) Federal funds made available to the department pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 2423 of the Streets and Highways Code, except for funds to be loaned to eligible projects described in Section 8879.52, shall be allocated in the manner provided in Section 188 of the Streets and Highways Code. A loan may not be made pursuant to subdivision (a) if it would necessarily result in the aggregate of those federal funds, excluding funds to be loaned to eligible projects described in Section 8879.52, being allocated contrary to this subdivision.

(c) Upon repayment of a loan made pursuant to subdivision (a), those funds are hereby appropriated to the department for use on projects in the state highway operations and protection program.

8879.78. If a metropolitan planning organization, county transportation commission, regional transportation planning agency, or other local agency uses funds made available to it pursuant to Section 2423 of the Streets and Highways Code, or pursuant to that section and from other sources, to fund any project to which bond funds were previously programed under this chapter with the effect of displacing the need for those bond funds on the project, the commission shall allocate funds for one or more qualifying projects in the appropriate program under this chapter, in the jurisdiction of that agency, and in the same amount of the displaced bond funds. Nothing in this section shall limit or modify the requirements of any program under Chapter 12.49 (commencing with Section 8879.20).

SEC. 2. Chapter 9.5 (commencing with Section 2420) is added to Division 3 of the Streets and Highways Code, to read:

CHAPTER 9.5. FEDERAL TRANSPORTATION ECONOMIC STIMULUS FUNDS

2420. This chapter may be cited as the Transportation Economic Stimulus Act of 2009.

2421. The Legislature finds and declares all of the following:

(a) Congress has enacted the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), which provides in part for supplemental federal funding to the states for purposes of the federal-aid highway program.

(b) It is in the interest of the state to ensure that the highway infrastructure investment funds apportioned to the state under the federal act are fully obligated within the constraints of that act.

(c) It is the intent of the Legislature that the department, in consultation with the commission, regional transportation planning agencies, counties, and cities, shall have sufficient authority to make full and expeditious use of federal funds apportioned to the state for economic stimulus.

(d) It is the intent of the Legislature that, to the extent allowable under the federal act, priority be given to the use of stimulus funds available for expenditure by the Department of Transportation for projects that repair or rehabilitate the existing transportation system and to advance funds for projects under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 that

have been delayed or are in jeopardy of being canceled due to the state's inability to issue general obligation bonds in the short term. In the programming of these funds, consideration shall be given to activities that put Californians to work and provide needed economic stimulus throughout the state.

(e) It is the intent of the Legislature that highway infrastructure investment funds made available under the American Recovery and Reinvestment Act of 2009 are used to contribute to a transportation system that is in sound structural condition, accommodates all users, is environmentally sustainable, and allows for the efficient mobility of goods and people.

(f) It is the intent of the Legislature that the deadlines for obligating and liquidating funds established by the American Recovery and Reinvestment Act of 2009 apply to all federal funds appropriated by this chapter.

(g) It is the intent of the Legislature that the recipients of highway infrastructure investment funds made available under the federal act, including state, regional, and local agencies, shall adhere to principles and policies that ensure government oversight and management of the contracting process to ensure taxpayer funds are spent wisely; contracts are not wasteful, inefficient, or subject to misuse; unnecessary no-bid and cost-plus contracts are avoided; and contracts are awarded according to the best interests of California taxpayers.

(h) As used in this chapter, "federal act" shall mean the American Recovery and Reinvestment Act of 2009.

2422. (a) Notwithstanding any other provision of law, the Legislature hereby appropriates to the department the sum of two billion five hundred sixty-nine million five hundred sixty-eight thousand three hundred twenty dollars (\$2,569,568,320), and any additional funds, made available to the state as highway infrastructure investment funds pursuant to Title XII of Division A of the American Recovery and Reinvestment Act of 2009 and apportioned to the state pursuant to Title 23 of the United States Code to carry out projects eligible under that act and in accordance with this chapter.

(b) The funds appropriated by this section shall be available for obligation and expenditure by the dates specified in the federal requirements implementing the federal act.

(c) It is the intent of the Legislature to allow for such flexibility as is necessary to permit the successful implementation of the appropriations made by this section. The Legislature hereby authorizes the Department of Finance to appropriately itemize and schedule these appropriations, or to make adjustments as are necessary, in order to successfully carry out the intent of the federal act.

(d) The Director of Finance shall, within 90 days after the enactment of this chapter, furnish the chairpersons of the committees in each house of the Legislature that consider appropriations and the state budget, and the Chairperson of the Joint Legislative Budget Committee, with a report that describes the schedule of funding. The Director of Finance shall provide notification to the Legislature of any changes in that schedule 30 days prior to any change taking effect.

2423. (a) The federal highway infrastructure investment funds made available to the state under the formula apportionments of the American Recovery and Reinvestment Act of 2009 shall be considered part of the surface transportation program as set forth in paragraphs (3) and (4) of subdivision (d) of Section 133 of Title 23 of the United States Code. These formula funds shall be apportioned 37.5 percent for expenditure by the state to be programmed by the department and allocated by the commission, and 62.5 percent to the metropolitan planning organizations, county transportation commissions, and regional transportation planning agencies in accordance with subdivisions (b) and (c) of Section 182.6.

(b) (1) Funds available to be programmed by the department pursuant to subdivision (a) shall be programmed for eligible projects consistent with the federal act and this chapter.

(2) (A) A minimum of nine hundred thirty-five million dollars (\$935,000,000) of the funds available pursuant to paragraph (1) shall be programmed for projects in the state highway operations and protection program.

(B) Not more than three hundred ten million dollars (\$310,000,000) of the funds available pursuant to subparagraph (A) may be loaned pursuant to Section 8879.77 of the Government Code to advance projects to be funded with moneys from the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006.

(c) Pursuant to the American Recovery and Reinvestment Act of 2009, 3 percent of the federal funds, which is approximately seventy-seven million dollars (\$77,000,000), made available to the state shall be used for transportation enhancement activities. Funds allocated pursuant to this section for transportation enhancement activities are not subject to the requirements of the state transportation improvement program. Any funds apportioned to the state pursuant to paragraph (2) of subdivision (d) of Section 133 of Title 23 of the United States Code shall be distributed such that 37.5 percent of these funds shall be made available to the department and allocated by the commission and 62.5 percent shall be made available to the metropolitan planning organizations, county transportation commissions, and regional transportation planning agencies in accordance with the formula in subdivisions (b) and (c) of Section 182.6.

(1) In programming and allocating these funds, the department and the metropolitan planning organizations, county transportation commissions, and regional transportation agencies shall give priority to the sponsors of eligible projects that partner with, or commit to employ the services of, a community conservation corps or the California Conservation Corps to construct or undertake the project, provided those projects meet the requirements of the American Recovery and Reinvestment Act of 2009.

(2) After all eligible projects have been selected pursuant to paragraph (1), the department and the metropolitan planning organizations, county transportation commissions, and regional transportation agencies shall next give priority to projects that provide facilities for pedestrians and bicyclists, provided those projects meet the requirements of the American Recovery and Reinvestment Act of 2009.

(3) After all eligible projects have been selected pursuant to paragraph (2), the department and the metropolitan planning organizations, county transportation commissions, and regional transportation agencies may fund any project eligible in accordance with paragraph (35) of subdivision (a) of Section 101 of Title 23 of the United States Code.

(d) It is the intent of the Legislature that at least 40 percent of the funds apportioned to a metropolitan planning organization, county transportation commission, or regional transportation planning agency be available for suballocation by that entity to a

city, county, or city and county for projects that meet the requirements of the American Recovery and Reinvestment Act of 2009 and this chapter.

(1) Any funds suballocated by a metropolitan planning organization, county transportation commission, or regional transportation planning agency that will not be obligated by a city, county, or city and county by the deadlines specified in the American Recovery and Reinvestment Act of 2009 shall be reallocated and available for expenditure as determined by the metropolitan planning organization, county transportation commission, or regional transportation planning agency.

(2) A metropolitan planning organization, county transportation commission, or regional transportation agency that suballocates funds to a city, county, or city and county under this chapter shall establish reporting procedures for the city, county, or city and county to ensure that funds are obligated and expended in accordance with the American Recovery and Reinvestment Act of 2009 and this chapter.

(e) (1) A metropolitan planning organization, county transportation commission, or regional transportation planning agency receiving funds under this chapter shall notify the department of the projected amount of obligational authority that the entity intends to use, including for funds that the entity suballocated to a city, county, or city and county pursuant to subdivision (d). The report shall include, but not be limited to, a list of projects that will be obligated by the following deadlines:

(A) By June 1, 2009, for the funds required to be obligated within 120 days of federal apportionment.

(B) By February 1, 2010, for any funds that will not be obligated within one year of federal apportionment.

(2) Any federal obligational authority that will not be used shall be redistributed by the department to other projects in a manner that ensures that the state will continue to compete for and receive increased obligational authority during the federal redistribution of obligational authority. To the extent practical, the funds shall be obligated within the geographic areas relinquishing the obligational authority.

(f) Funds apportioned by this chapter are not eligible to be exchanged for nonfederal State Highway Account funds as provided in subdivision (g) or (h) of Section 182.6.

(g) The public participation requirements under Title 23 of the United States Code shall apply to all transportation projects using federal funds made available pursuant to this chapter.

2424. (a) The department, metropolitan planning organizations, county transportation commissions, regional transportation planning agencies, counties, cities, and a city and county shall comply with all reporting requirements to the Federal Highway Administration (FHWA) established in federal law regarding funds made available under the American Recovery and Reinvestment Act of 2009.

(b) In complying with the requirements of subdivision (a), the department, metropolitan planning organizations, county transportation commissions, regional transportation planning agencies, counties, cities, and a city and county shall provide the same data they provide to the FHWA to the department under the same timelines required by the FHWA or federal law. Regional entities shall include in the data provided to the department information on the use of federal funds made available under the American Recovery and Reinvestment Act of 2009 that were suballocated to cities and counties within their jurisdiction.

(c) All jurisdictions that received and obligated or expended federal funds for transportation enhancement activities pursuant to federal law and this chapter shall include in the data they provide to the department pursuant to subdivision (b) a description of the number, value, and type of project that involved the participation of a community conservation corps or the California Conservation Corps.

(d) The department, within 30 days of receiving the information required pursuant to subdivisions (b) and (c), shall compile the information and submit a report to the budget committees and policy committees with jurisdiction over transportation matters in each house of the Legislature.

SEC. 3. This act addresses the fiscal emergency declared by the Governor by proclamation on December 19, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the expenditure of federal transportation funds recently made available by Congress as part of the American Recovery and Reinvestment Act of 2009 as quickly as possible, it is necessary that this act take effect immediately.

Approved _____, 2009

Governor