AMENDED IN ASSEMBLY AUGUST 26, 2011

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JULY 13, 2011

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN ASSEMBLY JUNE 20, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 17, 2011

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE MARCH 29, 2011

SENATE BILL No. 468

Introduced by Senator Kehoe

February 17, 2011

An act to add Sections 103 and 149.10 to the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 468, as amended, Kehoe. Department of Transportation: north coast corridor project: high-occupancy toll lanes.

Existing law provides that the Department of Transportation has full possession and control of the state highway system. Existing law imposes various requirements for the development and implementation of transportation projects.

This bill would impose additional requirements on the department with respect to specified highway projects on State Highway Route 5 in southern California, known collectively as the north coast corridor

project, that are located entirely or partially in the coastal zone, including requiring the department to collaborate with local agencies, the California Coastal Commission, and other affected local, state, and federal agencies to ensure that multimodal transportation options are evaluated and included in the public works plan and, where appropriate, in the project design for the projects. The bill would make these requirements applicable to the San Diego Association of Governments (SANDAG) and would also require SANDAG, for these projects, to establish a safe routes to transit program that integrates the adopted regional bike plan with transit services and, pursuant to SANDAG's agreement, as specified, to commit to dedicate for regional habitat acquisition, management, and monitoring activities a portion of specified taxes approved by the voters in San Diego County. The bill would, for these projects, require the department to suspend a notice of determination relating to environmental impact, issued between January 1, 2011, and January 1, 2012, until it is determined that environmental documents for the projects satisfy the requirements of the bill. The bill would also make legislative findings and declarations.

Existing law authorizes SANDAG to conduct, administer, and operate a value pricing high-occupancy toll (HOT) lane program on 2 corridors included in the high-occupancy vehicle lane system in San Diego County.

This bill would also authorize SANDAG to conduct, administer, and operate a value pricing HOT lane on State Highway Route 5. The bill would require SANDAG to carry out the HOT lane program in cooperation with the department and would require revenues from the program to be used for the costs of the program, for improvement of transit services, and for high-occupancy vehicle facilities.

By imposing additional requirements on SANDAG, this bill would impose a state-mandated local program.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

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

(a) The California coastal zone is a unique natural resource, the protection of which is recognized as a shared responsibility of the state, local governments, and regional entities. State, local, and regional agencies desiring to make investments in transportation infrastructure within the coastal zone have an affirmative obligation to ensure that investments do not compromise or diminish existing natural resources, including the coastal zone flora and fauna, water quality, and unique views.

(b) The coastal zone is also a unique economic resource with both its natural and built environment being a destination for individuals, families, and groups to enjoy the diversity of recreational opportunities.

(c) Contributing to these ends, the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code) establishes policies for the protection and enhancement of resources in the coastal zone as a priority of statewide importance.

(d) Transportation investments to be made in the coastal zone should not erode the very qualities that make it an attractive setting in which to live, work, and recreate.

(e) The California Coastal Act of 1976 is intended to protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources; ensure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state; maximize public access to and along the coast; and encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses in the coastal zone.

(f) In accordance with the California Coastal Act of 1976, future developments that are carefully planned and developed are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.

(g) The north coast corridor project is a 27-mile long series of projects within the coastal zone that includes improvements to a segment of State Highway Route 5, and the Los Angeles-San Diego-San Luis Obispo (LOSSAN) rail corridor, and is projected to take up to 40 years to complete. The north coast corridor portion of the LOSSAN rail corridor operates between the City of Oceanside and the City of San Diego in San Diego County, with stations along its route. The LOSSAN rail corridor is used for intercity and commuter rail passenger service and for freight service and includes a portion of the coastal rail trail. Where applicable, all references to the north coast corridor project in this act are also a reference to the individual projects making up the entire north coast corridor project.

(h) The Department of Transportation (department) and the Federal Highway Administration are responsible for developing an environmental document and constructing improvements to State Highway Route 5, and the department and the Federal Railroad Administration have prepared a programmatic environmental document for the LOSSAN corridor. Nothing in this section is intended to conflict with the authority of the department, the San Diego Association of Governments (SANDAG), or the Federal Railroad Administration to prepare one or more project level environmental documents for all, or a portion of, the LOSSAN corridor.

(i) SANDAG has agreed that it will be responsible for constructing improvements in the LOSSAN corridor and funding portions of the improvements to the LOSSAN corridor and State Highway Route 5 within the north coast corridor using funding from a San Diego County voter-approved transactions and use tax ordinance known as TransNet (Proposition A, 2004). TransNet provides SANDAG with economic benefits funding for use on regional environmental projects such as those needed in the north coast corridor.

(j) The coastal lagoons in the north coast corridor have historically experienced adverse impacts to water quality and to the numerous and varied sensitive habitat areas, and to plant and wildlife species supported within and adjacent to the lagoons. Historical alteration of lagoon areas from construction of highway and rail crossings and realignment or channelization of inland waterways have affected water quality and directly impacted

sensitive habitat areas. These impacts have occurred over decades and require substantial resources and major restoration efforts to remedy.

(k) Revenue from single-occupant-vehicle users of a managed lanes system on State Highway Route 5 in the north coast corridor could provide millions of dollars annually toward the support of transit services and transportation improvements in the corridor.

(*l*) Reduced congestion in the north coast corridor would result in less exhaust emissions per vehicle. Managed lanes and anticipated congestion reduction on corridor general purpose lanes would help reduce emissions per traveler and per trip in the north coast corridor. The most recent air quality determinations for the San Diego region air basin demonstrate that there is an urgency in providing transportation options that will relieve health impacts, reduce existing congestion on State Highway Route 5, and provide enhanced transit services including nonmotorized options in the north coast corridor.

(m) The ability to manage the use and vehicle composition of managed lanes in the north coast corridor would provide flexibility for changing the way the lanes on State Highway Route 5 are used in the future. Changes to the use of managed lanes could address changing technology, land use, travel patterns, travel demand, economic conditions, and other travel characteristics, and allow for higher vehicle occupancy, greater use of transit, or creation of a truck route during certain times of day.

(n) The transportation sector of the economy is the largest contributor of greenhouse gases in California. Activities that would assist the San Diego region in meeting the reduction goals for greenhouse gas emissions described in Assembly Bill 32 (Ch. 488, Stats. 2006) and the objectives of Senate Bill 375 (Ch. 728, Stats. 2008), include the reduction of per capita vehicle miles traveled and integrating transportation and land use to achieve high levels of nonmotorized travel and transit use, achieving regional housing needs, including identified affordable housing needs, reducing the length of commutes, locating housing in closer proximity to job centers, and other required or regionally recognized strategies that address the relationships between land use, transportation, economic considerations, air quality, and climate policy. It is the intent of the Legislature that transportation infrastructure decisions regarding the north coast corridor project achieve a coordinated

and balanced transportation system that considers both the short-term and long-term future, and be consistent with the countywide goals and objectives in the adopted Sustainable Communities Strategy for San Diego County and the greenhouse gas reduction targets established by the State Air Resources Board for San Diego, consistent with Senate Bill 375 (Ch. 728, Stats. 2008), as well as other regional, statewide, and national transportation and environmental quality goals.

(o) The north coast corridor is a major economic corridor carrying about one-third of all freight in the San Diego region. The total value of goods transported on the north coast corridor via rail and State Highway Route 5 is estimated at eighty-nine billion dollars ($89,000,000,000), and increased congestion in the north coast corridor will cause a detrimental constraint on commerce and the economy.

(p) Construction on the north coast corridor project is expected to provide thousands of jobs within the state, as well as increased recreation and goods movement revenue.

(q) Implementation of the objectives of the north coast corridor project is critical to the environment, economy, and welfare of the people in the San Diego region and throughout the state.

(r) Pursuant to Executive Order 13274, signed by President George W. Bush on September 18, 2002, the portion of State Highway Route 5 in the north coast corridor has been designated by the Secretary of Transportation as a high-priority transportation infrastructure project entitled to expedited federal environmental reviews.

(s) The north coast corridor project and its public works plan will meet the public needs of an area greater than that included in any local permitting agency's certified local coastal program and the breadth of those needs was not anticipated by the department and SANDAG when the local coastal programs were certified by the California Coastal Commission.

(t) The Legislature desires to address a balance of social, economic, and environmental interests by providing for the ability of the north coast corridor project to proceed if the project complies with the California Coastal Act of 1976 along with the further specifications in this act.

SEC. 2. Section 103 is added to the Streets and Highways Code, to read:

103. (a) As used in this section, the following terms have the following meanings:

(1) "Multimodal" means transportation options within a transportation corridor, including, but not limited to, highways, rail lines, pedestrian walkways and bike lanes, and commuter transit services.

(2) "North coast corridor project" means a 27-mile long series of projects within the coastal zone that includes improvements to a segment of State Highway Route 5 and the portion of the Los Angeles-San Diego-San Luis Obispo rail corridor between the City of Oceanside and the City of San Diego in San Diego County.

~~(2)~~

(3) "8+4 Buffer Alternative" means the addition of a multimodal managed lane facility consisting of two lanes on either side of State Highway Route 5 within the north coast corridor, separated from general purpose lanes by striping or other approved traffic control devices, and which, to the maximum extent feasible, is built within existing rights-of-way owned by the department. The managed lanes would give priority to high-occupancy vehicles, vanpools, and one or more bus rapid transit routes. Value pricing techniques would allow single-occupant vehicles to use the facility by paying a toll, as long as single-occupant vehicle use does not negatively impact the transit uses of the managed lanes.

~~(3)~~

(4) "Public works plan" means a plan as described in Section 30605 of the Public Resources Code. A public works plan allows for an integrated regulatory review by the California Coastal Commission rather than a project-by-project approval approach, but does not change or abridge any of the California Coastal Commission's existing authorities, including, but not limited to, federal consistency review authorities under the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.). The public works plan allows for an expedited process that describes, evaluates, and provides mitigation measures for coastal access, highway, transit, multimodal and community enhancement, and environmental mitigation projects within the north coast corridor.

(b) A public works plan approved for the north coast corridor project within the coastal zone shall include all of the elements of the north coast corridor project to be carried out by the department or the San Diego Association of Governments (SANDAG),

including coastal access, highway, transit, multimodal, community enhancement, and environmental restoration, and mitigation projects. Once the public works plan for the north coast corridor has been approved and certified by the California Coastal Commission, subsequent review by the California Coastal Commission of a notice of intent to develop for a specific project in the public works plan shall be limited to imposing conditions to ensure consistency of the project with the public works plan. The public works plan shall satisfy all of the following:

(1) Identify the California Coastal Commission's area of original jurisdiction and provide a process for obtaining coastal development permits from the California Coastal Commission directly in those areas.

(2) Contain, but not be limited to, the following elements: the type, size, intensity, and location of all development included in the north coast corridor project; the maximum and minimum size of facilities proposed to be constructed; the standards to which the projects should conform; the thresholds for when amendments to the public works plan may be required; and a proposed timetable and phasing program for all projects.

(3) Establish the mitigation measures that the department and SANDAG will be required to undertake prior to construction of each phase. The mitigation measures shall be described with sufficient detail to allow the department and SANDAG to accurately estimate the cost and effort associated with each particular measure and avoid the need for an amendment to the public works plan unless a project is inconsistent with the project description in the approved public works plan.

(4) Establish the process by which project design and mitigation measures included in the public works plan, and the California Coastal Commission's findings regarding those measures, may be applied to subsequent coastal development permit approvals and other approvals or determinations for subsequent phases of the project.

(c) For all elements of the north coast corridor project that are located, entirely or in part, in the coastal zone, as defined by Sections 30103 and 66610 of the Public Resources Code, the department and SANDAG shall comply with all of the following requirements:

(1) Collaborate with all stakeholders, including local agencies through which the proposed project traverses, the California Coastal Commission, and other affected local, state, and federal agencies to ensure that multimodal transportation options are evaluated and included in the public works plan and, where appropriate, in the project design.

(2) SANDAG shall establish a safe routes to transit program that integrates the adopted regional bike plan with transit services.

(3) SANDAG shall recommend that the department select an alternative no larger than the 8+4 Buffer Alternative as the preferred alternative for the State Highway Route 5 north coast corridor after it makes a finding that it is consistent with TransNet as approved by voters in 2004. The determination of the preferred alternative shall be made by the department and the Federal Highway Administration in their environmental impact report or environmental impact statement, and SANDAG shall include the preferred alternative in its next update to the regional transportation plan.

(4) In order to reduce environmental impacts to the coastal lagoons, both rail and highway bridges crossing each lagoon shall be *planned and* constructed concurrently ~~and the bridge projects for both highway and rail shall be included in the public works plan in accordance with all necessary permits and reviews~~*, unless construction in phases will result in an environmentally superior alternative to concurrent construction*. SANDAG and the department shall ensure that bridges are constructed to their ultimate width and length so that construction impacts to each lagoon are minimized.

(5) The public works plan shall evaluate the traffic impacts of the proposed capacity-increasing highway project on city and county streets and roads within the coastal zone, and the department shall consult with the affected local jurisdictions regarding those impacts and include the results of the consultations within the public works plan.

(6) Environmental consequences of the proposed north coast corridor project shall be monitored to ensure that the benefits from mitigation, as described in the permits issued for the individual projects, are being achieved.

(7) Construction of all or a portion of the capacity-increasing project on State Highway Route 5 shall move forward concurrently

with multimodal projects and environmental mitigation and enhancement projects within each phase, as specified in the public works plan. The phasing plan shall include criteria specified by the California Coastal Commission within the public works plan that shall be met before the next phase of development can occur, and each phase shall include a balance of transit and highway improvements. Although the department and SANDAG shall endeavor to maintain a balance of transit, rail, highway, and environmental improvements in each phase, nothing in this section is intended to limit the ability of the department or SANDAG to seek a public works plan amendment from the California Coastal Commission in order to accelerate a project from a later phase in the public works plan if additional funding is identified to carry out the project at an earlier stage than originally intended.

(8) Prior to a public works plan being submitted to the California Coastal Commission by the department and SANDAG, the department and SANDAG shall provide at least two public hearings on the public works plan for the north coast corridor project.

(9) SANDAG has agreed that it will be responsible for constructing improvements in the Los Angeles-San Diego-San Luis Obispo rail corridor and funding portions of the improvements to that corridor and State Highway Route 5 within the north coast corridor using funding from a San Diego County voter-approved transaction and use tax ordinance known as TransNet. Pursuant to that agreement, SANDAG shall commit to dedicate a portion of the TransNet Regional Habitat Conservation Fund for regional habitat acquisition, management, and monitoring activities necessary to implement habitat conservation plans based on the estimated economic benefits derived from permitting and approval efficiencies on the north coast corridor project as a result of the procedures of this section, with that funding to be released by SANDAG in phases based upon the proportion of project work that has been issued permits, consistency reviews, or other applicable approvals, and in accordance with any other criteria as deemed appropriate by SANDAG taking into account the purpose and intent of TransNet.

(d) The California Coastal Commission, the department, and SANDAG shall work cooperatively toward completing all design approvals, reviews, determinations, and permitting for the north

coast corridor project on an expedited basis. To meet the goals in this section, the following provisions shall apply:

(1) The Legislature finds that it is the California Coastal Commission's role to apply a regional or statewide perspective to land use debates where the use in question is of greater than local significance. To that end, the California Coastal Commission is authorized to utilize Section 30515 of the Public Resources Code for the north coast corridor project and the process referenced in that section may be streamlined pursuant to agreement between the California Coastal Commission and those jurisdictions with an approved local coastal program.

(2) The department and SANDAG shall perform work and complete development consistent with the phasing program adopted in the public works plan pursuant to subdivision (b) unless changes are reviewed and approved by the California Coastal Commission.

(3) A public works plan prepared for the north coast corridor project by the department and SANDAG shall be treated as a long-range development plan to which the provisions in Sections 21080.5 and 21080.9 of the Public Resources Code shall apply.

(4) A permitting agency's decision to review and approve a public works plan, a plan amendment, or related notice of impending development, make a consistency determination, or issue a permit for the north coast corridor project shall be reviewed under the substantial evidence standard.

(5) ~~Consistent with an agreement between~~ *The Legislature finds that* the California Coastal Commission, the department, and SANDAG *have agreed that*, following approval of the public works plan, the California Coastal Commission shall limit its subsequent regulatory review of the rail aspects of the north coast corridor project to federal consistency.

(e) A notice of determination issued pursuant to Section 21108 or 21152 of the Public Resources Code after January 1, 2011, but prior to January 1, 2012, for a project subject to this section shall be suspended by the department until it is determined that the project's environmental documents are consistent with the provisions of this section.

(f) (1) Nothing in this section shall be construed to supersede, or in any way alter or lessen the effect or application of, the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).

(2) Nothing in this section shall be construed to narrow the authority of the California Coastal Commission, at any stage of the approval or review process, to resolve policy conflicts pursuant to Section 30200 of the Public Resources Code.

(3) Nothing in this section is intended to apply to any program, project, or other activity that is not related to the north coast corridor project.

SEC. 3. Section 149.10 is added to the Streets and Highways Code, to read:

149.10. (a) Notwithstanding Sections 149 and 30800 of this code, and Section 21655.5 of the Vehicle Code, the San Diego Association of Governments (SANDAG) may conduct, administer, and operate a value pricing and transit development program on the State Highway Route 5 in managed lanes serving as a high-occupancy vehicle expressway. The program, under the circumstances described in subdivision (b), may direct and authorize the entry and use of the State Highway Route 5 high-occupancy vehicle lanes by single-occupant vehicles during peak periods, as defined by SANDAG, for a fee. The amount of the fee shall be established from time to time by SANDAG, and collected in a manner determined by SANDAG.

(b) Implementation of the program shall ensure that Level of Service C, as measured by the most recent issue of the Highway Capacity Manual, as adopted by the Transportation Research Board, is maintained at all times in the high-occupancy vehicle lanes, except that subject to a written agreement between the department and SANDAG that is based on operating conditions of the high-occupancy vehicle lanes, Level of Service D shall be permitted on the high-occupancy vehicle lanes. If Level of Service D is permitted, the department and SANDAG shall evaluate the impacts of these levels of service of the high-occupancy vehicle lanes, and indicate any effects on the mixed-flow lanes. Continuance of Level of Service D operating conditions shall be subject to the written agreement between the department and SANDAG. Unrestricted access to the lanes by high-occupancy vehicles shall be available at all times. At least annually, the department shall audit the level of service during peak traffic hours and report the results of that audit at meetings of the program management team.

(c) Single-occupant vehicles that are certified or authorized by SANDAG for entry into, and use of, the State Highway Route 5 high-occupancy vehicle lanes are exempt from Section 21655.5 of the Vehicle Code, and the driver shall not be in violation of the Vehicle Code because of that entry and use.

(d) SANDAG shall carry out the program in cooperation with the department and shall consult the department in the operation of the project and on matters related to highway design and construction. With the assistance of the department, SANDAG shall establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles.

(e) (1) Agreements between SANDAG, the department, and the Department of the California Highway Patrol shall identify the respective obligations and liabilities of those entities and assign them responsibilities relating to the program. The agreements entered into pursuant to this section shall be consistent with agreements between the department and the United States Department of Transportation relating to this program and shall include clear and concise procedures for enforcement by the Department of the California Highway Patrol of laws prohibiting the unauthorized use of the high-occupancy vehicle lanes. The agreements shall provide for reimbursement of state agencies, from revenues generated by the program, federal funds specifically allocated to SANDAG for the program by the federal government, or other funding sources that are not otherwise available to state agencies for transportation-related projects, for costs incurred in connection with the implementation or operation of the program. Reimbursement for SANDAG's program-related planning and administrative costs in the operation of the program shall not exceed 3 percent of the revenues.

(2) All remaining revenue shall be used in the State Highway Route 5 corridor exclusively for (A) the improvement of transit service, including, but not limited to, construction of transit facilities and support for transit operations, and (B) high-occupancy vehicle facilities.

(f) SANDAG, the North County Transit District, and the department shall cooperatively develop a single transit improvement plan for the State Highway Route 5 corridor.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

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