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SB-1305 San Bernardino County Transportation Authority. (2015-2016)

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Senate Bill No. 1305

CHAPTER 216

An act to amend Sections 130102, 130108, and 130233 of, to amend and renumber Section 130054 of, to add Chapter 7 (commencing with Section 130800) to Division 12 of, to repeal Section 130102.5 of, and to repeal Division 20 (commencing with Section 190000) of, the Public Utilities Code, and to amend Section 149.11 of the Streets and Highways Code, relating to transportation.

[Approved by Governor August 26, 2016. Filed with Secretary of State August 26, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1305, Morrell. San Bernardino County Transportation Authority.

Existing law authorizes a county board of supervisors to create or otherwise designate local agencies, including a transportation authority, which may impose a transportation sales tax subject to voter approval, a service authority for freeway emergencies, and a transportation congestion management agency, as specified.

The Joint Exercise of Powers Act authorizes the legislative or other governing bodies of 2 or more public agencies to jointly exercise, by agreement, any power common to the contracting parties, as specified.

The County Transportation Commissions Act provides for the creation of county transportation commissions in the Counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura, with various powers and duties relative to transportation planning and funding, as specified.

This bill would create the San Bernardino County Transportation Authority as the successor to the powers, duties, revenues, debts, obligations, liabilities, immunities, and exemptions, expressed or implied, of the San Bernardino County Transportation Commission and the County of San Bernardino local transportation authority, service authority for freeway emergencies, and local congestion management agency, and of the San Bernardino Associated Governments joint powers authority when it was acting on behalf of, or in the capacity of, those entities.

By imposing new duties on local government associated with this consolidation, the 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, 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature that the San Bernardino County Transportation Authority be a unified and comprehensive institution that combines the transportation-related functions and authorities of the San Bernardino County Transportation Commission and the County of San Bernardino local transportation authority, service authority for freeway emergencies, and congestion management agency, which are currently exercised by the San Bernardino Associated Governments joint powers authority by statute or by designation of the San Bernardino County Board of Supervisors. It is the intent of the Legislature that this act vest responsibility and liability for transportation-related functions in the County of San Bernardino in a single entity to promote administrative efficiency, enhance public transparency, and ensure maximum accountability to the people.

SEC. 2. Section 130054 of the Public Utilities Code is amended and renumbered to read:

130807. The San Bernardino County Transportation Commission shall be known as the authority.

SEC. 3. Section 130102 of the Public Utilities Code is amended to read:

130102. A majority of the members of the commission shall constitute a quorum for the transaction of business, and all official acts of the commission shall require the affirmative vote of a majority of the members of the commission.

SEC. 4. Section 130102.5 of the Public Utilities Code is repealed.

SEC. 5. Section 130108 of the Public Utilities Code is amended to read:

130108. (a) Each member of a commission may be compensated at a rate not exceeding one hundred dollars (\$100) for any day attending to the business of the commission, but not to exceed four hundred dollars (\$400) in any month, and the necessary traveling and personal expenses incurred in the performance of his or her duties as authorized by the commission. Members of the San Bernardino County Transportation Authority shall be compensated pursuant to this subdivision. Members of the Los Angeles County Metropolitan Transportation Authority shall be compensated pursuant to subdivision (b).

(b) Each member of the Los Angeles County Metropolitan Transportation Authority shall be compensated at a rate not exceeding one hundred and fifty dollars (\$150) for any day attending to the business of the authority, but not to exceed six hundred dollars (\$600) per month, and other expenses which are directly related to the performance of duties as authorized by the authority.

SEC. 6. Section 130233 of the Public Utilities Code is amended to read:

130233. (a) Except as provided in subdivision (b), if, after rejecting bids received under Section 130232, the commission determines and declares, by a two-thirds vote of all of its members, that the supplies, equipment, or materials may be purchased at a lower price in the open market, the commission may proceed to purchase those supplies, equipment, or materials in the open market without further observance of the provisions in this article regarding contracts, bids, advertisement, or notice.

(b) If, after rejecting bids received under Section 130232, the San Bernardino County Transportation Authority determines and declares, by a majority vote of all of its members, that the supplies, equipment, or materials may be purchased at a lower price in the open market, the authority may proceed to purchase those supplies, equipment, or materials in the open market without further observance of the provisions in this article regarding contracts, bids, advertisement, or notice.

SEC. 7. Chapter 7 (commencing with Section 130800) is added to Division 12 of the Public Utilities Code, to read:

CHAPTER 7. San Bernardino County Transportation Authority Consolidation Act of 2017

130800. This chapter shall be known and may be cited as the San Bernardino County Transportation Authority Consolidation Act of 2017.

130803. For purposes of this chapter, the following definitions shall apply:

(a) "Authority" means the San Bernardino County Transportation Authority established pursuant to Section 130806.

(b) "Local congestion management agency" means a County of San Bernardino congestion management agency established pursuant to subdivision (a) of Section 65089 of the Government Code.

(c) "Local transportation authority" means a County of San Bernardino transportation authority established pursuant to Section 180050.

(d) "San Bernardino Associated Governments" means the joint powers agency established pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code).

(e) "San Bernardino County Consolidated Agencies" means the San Bernardino County Transportation Commission established pursuant to Section 130050, the local transportation authority, service authority for freeway emergencies, and local congestion management agency in existence on December 31, 2016, and the San Bernardino Associated Governments when it was acting on behalf of, or in the capacity of, those entities.

(f) "Service authority for freeway emergencies" means a County of San Bernardino service authority for freeway emergencies established pursuant to Section 2551 of the Streets and Highways Code.

130806. There is hereby created the San Bernardino County Transportation Authority. The authority shall be the successor to the powers, duties, revenues, debts, obligations, liabilities, immunities, and exemptions, expressed or implied, of the San Bernardino County Consolidated Agencies.

130809. (a) The authority may exercise all rights and powers, expressed or implied, including, without limitation, the power to issue bonds, and rely on any immunities or exemptions provided by law to a county transportation commission, a local transportation authority, a service authority for freeway emergencies, or a local congestion management agency.

(b) The authority's powers include, but are not limited to, the power to do all of the following:

(1) To sue and to be sued.

(2) To acquire any property by any means, and to hold, manage, occupy, develop, jointly develop, dispose of, lease, convey, or otherwise encumber property.

(3) To create a leasehold interest in property for the benefit of the authority.

(4) To acquire, by eminent domain, any property necessary to carry out any of its powers or functions.

(5) To merge or split parcels, adjust boundary lines, or take similar actions as part of the acquisition of land or as needed in order to carry out its functions.

(6) To construct, acquire, develop, jointly develop, maintain, operate, lease, and dispose of work, property, rights-of-way, and facilities.

(7) To appoint necessary employees, including counsel, and to define their qualifications and duties.

(8) To enter into and perform all necessary contracts.

(9) To fix and collect fees for any services rendered by it.

(10) To adopt a seal and alter it.

(11) To adopt an annual budget and to fix the compensation of its officers, board members, and employees.

(12) To establish and enforce rules and regulations for the administration, operation, and maintenance of facilities and services.

(13) To enter into joint powers arrangements with other entities.

(14) To provide insurance.

(15) To issue bonds and incur other obligations.

(16) To advance funds from any sources towards a project in anticipation of future funding sources or contributions from other agencies in order to maximize the efficient delivery of projects undertaken by the authority.

(17) To loan moneys from any of the funds or accounts held by the authority to any other fund or account held by the authority, if all of the following occur:

(A) The loan is authorized pursuant to a resolution of the governing board of the authority.

(B) The authority determines that the loan serves the purposes of the authority.

(C) All moneys loaned to the borrowing fund or account are expended for any of the lawful purposes for which the borrowing account was established.

(18) To do any other things necessary or desirable to carry out the purposes of a county transportation commission, a local transportation authority, a service authority for freeway emergencies, or a local congestion management agency.

130812. The authority may bring an action to determine the validity of its bonds, warrants, contracts, obligations, or evidences of indebtedness issued on or after January 1, 2017, pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

130815. (a) The governing body of the authority shall consist of the following members:

- (1) Five members of the San Bernardino County Board of Supervisors.
- (2) One member from each County of San Bernardino incorporated city, who shall be a mayor or a city council member.
- (3) One nonvoting member appointed by the Governor.

(b) Each County of San Bernardino incorporated city may appoint an alternate member to represent it at a meeting, but only if the regular member cannot attend the meeting. The alternate member shall either be a mayor or a city council member.

130818. (a) Any reference to the San Bernardino County Transportation Commission or to a County of San Bernardino transportation commission, local transportation authority, service authority for freeway emergencies, or local congestion management agency, shall be deemed to refer to the authority.

(b) By operation of law, the authority shall act as and assume the rights, obligations, assets, and liabilities of the San Bernardino County Consolidated Agencies, as established by operation of law or under any contract to which any of them is a party and that was entered into before January 1, 2017. All real and personal property owned by any of the San Bernardino County Consolidated Agencies shall be transferred to the authority by operation of law.

(c) The respective legally enforceable debts and liabilities of the San Bernardino County Consolidated Agencies shall transfer to the authority and exist as debts and liabilities of the authority in the same manner as if the authority had itself incurred them.

(d) The respective rights of creditors and all liens upon the property of the San Bernardino County Consolidated Agencies transferred to the authority, including, without limitation, any pledge of revenues or other collateral securing the repayment of bonds, as those terms are defined in Section 5450 of the Government Code, and the other responsibilities of the San Bernardino County Consolidated Agencies transferred to the authority, shall be preserved unimpaired, and those bonds are the valid obligations of the authority, in each case limited in lien or pledge to the property affected by the liens or pledges immediately prior to the transfer of related responsibilities and obligations.

(e) All powers, duties, debts, obligations, liabilities, or claims arising out of or related to the powers, duties, debts, obligations, and liabilities transferred to the authority under this chapter by operation of law shall be transferred to the authority without further recourse to the San Bernardino Associated Governments or its member agencies, as applicable, and the authority may be proceeded against or substituted in the place of any of the San Bernardino County Consolidated Agencies if the action or proceeding pertains to a transferred power, duty, revenue, debt, obligation, liability, or claim.

(f) In order to protect the holders of outstanding, unmatured bonds and other evidences of indebtedness of the San Bernardino County Consolidated Agencies pertaining to the responsibilities and obligations transferred to the authority, the authority shall have the power to take all actions and do all things necessary or required for the protection of those holders and for compliance with the terms of those bonds and other evidences of indebtedness. The authority shall have the power to continue all services that the San Bernardino County Consolidated Agencies, on the date of the transfer, was furnishing and that pertained to the responsibilities and obligations transferred to the authority.

130821. (a) Chapter 1 (commencing with Section 180000), Chapter 5 (commencing with Section 180200), and, except Section 180260, Chapter 6 (commencing with Section 180250) of Division 19 (commencing with Section 180000) shall be equally applicable to the authority as if set forth herein and shall be in addition to the powers and functions of the authority set forth in this division.

(b) Notwithstanding Section 180260, all proceeds of the authority's bonds shall be applied to secure the bonds or for the purposes for which the debt was incurred. However, when the purposes have been accomplished, any moneys remaining shall be either transferred to the fund used for the payment of principal of, and interest on, the bonds, or placed in a fund to be used for the purchase of the outstanding bonds in the open market at prices and in the manner, either at public or private sale or otherwise, as determined by the authority. Bonds so purchased shall be canceled immediately.

130824. (a) After the creation of the authority and on the effective date of a resolution of the Board of Retirement of the San Bernardino County Employees' Retirement Association consenting to membership of the authority's employees pursuant to subdivision (b) of Section 31557 of the Government Code, all then-current employees of the San Bernardino Associated Governments shall be deemed to be employees of the authority and all duties and obligations of the employment relationship shall be assumed by the authority. The status of each employee deemed to have become an employee of the authority by operation of this section, with respect to membership in the retirement system, shall, in all respects, be as if the employee had remained a member of the retirement system without any break in service or change of employer. The authority shall be deemed a "district" as defined by the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) and shall in all respects assume all of the rights, obligations, and status previously occupied by the San Bernardino Associated Governments as a participating district in the retirement system, including, but not limited to, the payment of employer contributions, the payment of unfunded actuarial liability, the withholding of employee contributions, the reporting of compensation earnable and pensionable compensation, record retention and audit compliance, the enrollment of eligible employees in membership, compliance with restrictions on the employment of retired persons, and the pickup of employee contributions pursuant to Section 414(h)(2) of the Internal Revenue Code (26 U.S.C. 414(h)(2)) and any agreement or resolution implementing the same.

(b) The termination of the San Bernardino Associated Governments' status as a participating district in the retirement system shall not trigger withdrawal liability pursuant to Section 31564.2 of the Government Code. The authority shall assume the prior obligations of the San Bernardino Associated Governments for the payment of unfunded actuarial liability, which shall continue to be included in contribution rates calculated and approved pursuant to the County Employees Retirement Law of 1937, including, but not limited to, Sections 31453, 31453.5, 31454, 31581, and 31585 of the Government Code, as if no change in the participating employer had occurred.

(c) The authority shall succeed to the rights, duties, and obligations of the San Bernardino Associated Governments with respect to its replacement benefits program pursuant to Chapter 3.9 (commencing with Section 31899) of Part 3 of Division 4 of Title 3 of the Government Code. The rights of each retirement system member to participate in the replacement benefits program, as those rights exist at the time of the transfer of rights, duties, and obligations to the authority, whether the member is actively employed, deferred, or retired, shall continue as if there had been no change in the status of the employer. The transfer of rights, duties, and responsibilities shall not be deemed the creation of a new replacement benefit program, and the continuation of employees' rights pursuant to the operation of this section shall not be deemed the offering of a new plan to any employee, for purposes of Section 7522.43 and subdivision (c) of Section 31899 of the Government Code.

130827. The authority shall have the power to contract to provide the services of its employees to San Bernardino Associated Governments upon lawful terms and conditions agreed to by the authority and San Bernardino Associated Governments.

SEC. 8. Division 20 (commencing with Section 190000) of the Public Utilities Code is repealed.

SEC. 9. Section 149.11 of the Streets and Highways Code is amended to read:

149.11. (a) (1) Notwithstanding Sections 149 and 30800 of this code, and Section 21655.5 of the Vehicle Code, the San Bernardino County Transportation Authority, created pursuant to Section 130806 of the Public Utilities Code, may conduct, administer, and operate a value-pricing program in the Interstate 10 and Interstate 15 corridors in the County of San Bernardino. The value-pricing program may include high-occupancy toll lanes or other toll facilities. The San Bernardino County Transportation Authority may also extend the program to include the approaching and departing connectors on Interstate 10 extending into the County of Los Angeles, as designated by an agreement with the Los Angeles County Metropolitan Transportation Authority, and the connection to the Interstate 15 express lanes project in the County of Riverside, as designated by an agreement with the Riverside County Transportation Commission. The San Bernardino County Transportation Authority may exercise its existing powers of eminent domain pursuant to Section 130220.5 of the Public Utilities Code to acquire property necessary to carry out the purposes of the value-pricing program.

(2) The value-pricing program authorized pursuant to paragraph (1) may only be implemented upon a determination that the program and the resulting facilities will improve the performance of the affected corridors. Improved performance may be demonstrated by factors that include, but are not limited to, increased passenger throughput or improved travel times. The San Bernardino County Transportation Authority shall make the determination required by this paragraph in a public meeting prior to operation of the value-pricing program.

(3) The San Bernardino County Transportation Authority shall have the authority to set, levy, and collect tolls, user fees, or other similar charges payable for the use of the toll facilities in the County of San Bernardino and any other incidental or related fees or charges, and to collect those revenues, in a manner determined by the San Bernardino County Transportation Authority, in amounts as required for the following expenditures relative to the program and for the purposes of paragraph (4):

(A) Development, including the costs of design, construction, right-of-way acquisition, and utilities adjustment.

(B) Operations and maintenance, including, but not limited to, insurance, collection, and enforcement of tolls, fees, and charges.

(C) Repair, rehabilitation, and reconstruction.

(D) Indebtedness incurred and internal loans and advances, including related financial costs.

(E) Administration, which shall not exceed 3 percent of the revenues of toll facilities and associated transportation facilities.

(F) Reserves for the purposes described in subparagraphs (A) to (E), inclusive.

(4) All revenue generated pursuant to paragraph (3) in excess of the expenditure needs of that paragraph shall be used exclusively for the benefit of the transportation corridors included in the value-pricing program created pursuant to this section. These excess revenue expenditures shall be described in an excess revenue expenditure plan developed in consultation with the department and adopted and periodically updated by the board of directors of the San Bernardino County Transportation Authority and may include, but need not be limited to, the following eligible expenditures:

(A) Expenditures to enhance transit service designed to reduce traffic congestion within the transportation corridors included in the value-pricing program created pursuant to this section. Eligible expenditures include, but are not limited to, transit operating assistance, the acquisition of transit vehicles, and transit capital improvements otherwise eligible to be funded under the state transportation improvement program pursuant to Section 164.

(B) Expenditures to make operational or capacity improvements designed to reduce traffic congestion or improve the flow of traffic in the transportation corridors included in the value-pricing program created pursuant to this section. Eligible expenditures include, but are not limited to, any phase of project delivery to make capital improvements to on ramps, off ramps, connector roads, roadways, bridges, or other structures that are necessary for or related to the tolled or nontolled transportation facilities in the transportation corridors included in the value-pricing program created pursuant to this section.

(5) To the extent the San Bernardino County Transportation Authority plans to extend the value-pricing program into the Counties of Los Angeles or Riverside, it shall enter into an agreement with the Los Angeles County Metropolitan Transportation Authority or the Riverside County Transportation Commission, as applicable, subject to approval of the board of directors of the San Bernardino County Transportation Authority and the board of directors of the affected entity. If the value-pricing program developed and operated by the San Bernardino County Transportation Authority connects to, or is near, similar toll facilities constructed and operated by the Los Angeles County Metropolitan Transportation Authority or the Riverside County Transportation Commission, the respective entities shall enter into an agreement providing for the coordination of the toll facilities operated by each entity.

(b) (1) The San Bernardino County Transportation Authority shall carry out the program in cooperation with the Department of the California Highway Patrol pursuant to an agreement that addresses all matters related to enforcement on state highway system facilities in connection with the value-pricing program, and with the department pursuant to an agreement that addresses all matters related to the design, construction, maintenance, and operation of state highway system facilities in connection with the value-pricing program, including, but not limited to, financing, repair, rehabilitation, and reconstruction.

(2) The San Bernardino County Transportation Authority shall be responsible for reimbursing the department and the Department of the California Highway Patrol for costs related to the toll facility pursuant to an agreement between the San Bernardino County Transportation Authority and the department and between the San Bernardino County Transportation Authority and the Department of the California Highway Patrol.

(c) Single-occupant vehicles that are certified or authorized by the San Bernardino County Transportation Authority for entry into, and use of, the high-occupancy toll lanes implemented pursuant to this section 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) (1) The San Bernardino County Transportation Authority may issue bonds at any time to finance any costs necessary to implement the program established pursuant to this section and any expenditures provided for in paragraphs (3) and (4) of subdivision (a), payable from the revenues generated from the program and any other sources of revenues available to the San Bernardino County Transportation Authority that may be used for these purposes, including, but not limited to, sales tax revenue, development impact fees, or state and federal grants.

(2) The maximum bonded indebtedness that may be outstanding at any one time shall not exceed an amount that may be serviced from the projected revenues available as described in paragraph (1).

(3) The bonds shall bear interest at a rate or rates not exceeding the maximum allowable by law, payable at intervals determined by the San Bernardino County Transportation Authority.

(4) Any bond issued pursuant to this subdivision shall contain on its face a statement to the following effect:

"Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of principal of, or interest on, this bond."

(5) Bonds shall be issued pursuant to a resolution of the governing board of the San Bernardino County Transportation Authority adopted by a majority vote of its governing board. The resolution or bond authorizing instrument shall state all of the following:

- (A) The purposes for which the proposed debt is to be incurred.
- (B) The estimated cost of accomplishing those purposes.
- (C) The amount of the principal of the indebtedness.
- (D) The maximum term of the bonds and the maximum interest rate.
- (E) The denomination or denominations of the bonds, which shall not be less than five thousand dollars (\$5,000).
- (F) The form of the bonds.

(e) Not later than three years after either the San Bernardino County Transportation Commission or the San Bernardino County Transportation Authority first collects revenues from the program authorized by this section, the San Bernardino County Transportation Authority shall submit a report to the Legislative Analyst on its findings, conclusions, and recommendations concerning the program. The report shall include an analysis of the effect of the transportation facilities on the adjacent mixed-flow lanes and any comments submitted by the department and the Department of the California Highway Patrol regarding operation of the transportation facilities.

(f) This section shall not prevent the department or any local agency from constructing improvements in the transportation corridors that compete with the program, and the San Bernardino County Transportation Authority shall not be entitled to compensation for the adverse effects on toll revenue due to those competing improvements.

(g) If any provision of this section or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this extent the provisions are severable.

(h) Nothing in this section shall authorize the conversion of any existing nontoll or nonuser-fee lanes into tolled or user-fee lanes, except that a high-occupancy vehicle lane may be converted into a high-occupancy toll lane.

SEC. 10. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.