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**SB-985 Otay Mesa East Toll Facility Act.** (2021-2022)

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**Senate Bill No. 985**

**CHAPTER 422**

An act to amend Sections 31460, 31462, 31466, 31467, 31468, 31472, 31474, 31475, 31476, and 31477 of, and to add Section 31483 to, the Streets and Highways Code, relating to transportation.

[ Approved by Governor September 18, 2022. Filed with Secretary of State September 18, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 985, Hueso. Otay Mesa East Toll Facility Act.

(1) The Otay Mesa East Toll Facility Act authorizes the San Diego Association of Governments (SANDAG) to carry out a construction project for the State Highway Route 11 corridor, including, among other things, highway improvements and international border crossing facilities, to be operated as a toll facility. The act, among other things, authorizes SANDAG to fix and revise from time to time and charge and collect tolls and other charges. The act requires toll revenues to be used to pay for costs in categories with specified priority given to certain categories.

This bill would authorize SANDAG to instead only impose tolls for entrance to or the use of the corridor, except as specified. The bill would place various requirements on SANDAG's authorized toll authority, including, among other things, requiring SANDAG to review the adequacy of the toll rates established to cover the aggregate costs of all projects within 2 years following the opening of an initial project to be supported by toll revenue and at least biennially after the initial review for so long as SANDAG imposes tolls. The bill would eliminate the priority given to certain categories and would authorize other specified costs to be paid by toll revenues. The bill would additionally revise various references from "project revenues" to "toll revenues."

This bill would authorize SANDAG to enter into an agreement in order to impose and collect tolls, acquire, operate, and maintain tolling facilities, and exercise related powers jointly with the tolling powers of one or more of the federal government of Mexico or a governmental agency or unit thereof. The bill would authorize SANDAG to contract with one or more of the federal government of Mexico or a governmental agency or unit thereof to receive from or provide to the other contracting parties toll collection and remittance functions and services. The bill would require an agreement entered into for these purposes by SANDAG to contain specified provisions. The bill would authorize SANDAG's toll structure to include discounts and premiums to encourage efficient use of any "project," defined as property and related facilities acquired or constructed to facilitate the movement of goods and people along the corridor or at the Otay Mesa East Port of Entry, not just tolled projects.

The bill would revise other provisions in the act, including changing certain terminology and expressly authorizing the use of alternative bidding and building procedures, authorized in existing law under specified conditions for a project, for components of a project under the same conditions.

(2) Existing law requires highway projects constructed pursuant to the act, at all times following construction, to be owned by the department and requires that international port of entry facilities constructed pursuant to the act, at all times following

construction, be owned by a federal agency. The act requires all other property and facilities constructed pursuant to the act to be owned by SANDAG, unless transferred to a state or federal agency upon agreement between SANDAG and the relevant agency.

The bill would require international port of entry facilities constructed pursuant to the act, or the land on which those facilities are constructed, to be owned by either the federal government or by SANDAG, at SANDAG's option, and would require SANDAG, if it chooses to own the land or facilities, to lease the land or facilities to a federal agency. If Department of Transportation property is conveyed to either SANDAG or the federal government under these provisions, the bill would require that it be conveyed free of charge and only upon a finding by the California Transportation Commission that the conveyance is in the state's interest.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

**SECTION 1.** Section 31460 of the Streets and Highways Code is amended to read:

**31460.** The Legislature finds and declares all of the following:

(a) It is essential for the economic well-being of, and the maintenance of a high quality of life in, San Diego County and the State of California that the people of the State of California receive the full benefits of international trade with Mexico.

(b) Trade is a critical component of the San Diego regional economy. Mexico is the United States' third largest trading partner, after Canada and China, and California's number one export market.

(c) Trade passing through San Diego County's portion of the United States-Mexico border region benefits every state in the union and contributes over \$11 billion to the California GDP, and \$26 billion to the United States GDP.

(d) Commercial and passenger traffic between the United States and Mexico using California's ports of entry is placing extreme demands on the state's border transportation assets which were not designed for these purposes.

(e) Congestion at the border causes increased wait times, which in turn increases commercial and noncommercial vehicle emissions.

(f) Inadequate infrastructure capacity at the existing border crossings between San Diego County and Baja California currently creates traffic congestion and delays for crossborder personal trips and freight movements that cost the United States and Mexican economies an estimated \$3.4 billion in foregone gross output and more than 88,000 jobs in 2016.

(g) Public revenues to provide for an efficient border region transportation system have not kept pace with the growth of traffic and goods crossing the international border with Mexico.

(h) The state must seek all reasonable alternatives to address unmet border transportation needs and to improve existing transportation facilities.

(i) Public toll transportation facilities should be encouraged to supplement limited public resources and to support the development of new transportation system capacity.

(j) The port of entry serves, among other things, as a related fixed facility to the public system of streets and roads that facilitates the movement of goods, people, and services.

**SEC. 2.** Section 31462 of the Streets and Highways Code is amended to read:

**31462.** For purposes of this chapter, the following definitions shall apply:

(a) "Board" means the board of directors of SANDAG.

(b) "Bonds" means any bonds, notes, variable rate and variable maturity securities, and any other evidence of indebtedness issued pursuant to this chapter.

(c) "Corridor" means State Route 11 in the County of San Diego, as defined in Section 311.

(d) "Costs" includes the cost of construction or acquisition; the cost of the acquisition of all land, rights-of-way, property, rights, easements, and interests acquired by SANDAG for the construction; the cost of demolishing or removing any buildings or structures on land acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of all machinery and equipment, financing charges, interest before and during construction and, if considered advisable by SANDAG, costs of accounting, consulting, printing, advertising and travel, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, and other expenses necessary or incident to

determining the feasibility or practicability of constructing, repairing, or improving a project; administrative expenses; and such other expenses as may be necessary or incident to the construction, repair, or improvement of a project, the financing of the project, the placing and maintaining of a project in operation, and any payments to an entity to cover all or a portion of the costs described in this chapter. Any money paid or advanced to SANDAG with its approval for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction, repair, or improvement of a project shall be regarded as a part of the cost of a project and may be reimbursed out of the proceeds of the revenue bonds issued for a project as authorized in this chapter. Cost includes the cost to operate, maintain, repair, or improve a project.

(e) "Department" means the Department of Transportation.

(f) "Design-build" means a procurement process in which both the design and construction of a project are procured in a single phase.

(g) "Design sequencing" means a procurement process that enables the sequencing of design activities to permit each construction phase to commence when design for that phase is complete, instead of requiring the design for the entire project to be completed before commencing construction.

(h) "Entity" means the United States or any agency or department of the United States, any State of California agency, department or political subdivision of the state, or any public or private corporation, company, partnership, joint venture, foundation, trust, estate, individual, or other legal business organization.

(i) "Federal agency" means any agency or department of the United States.

(j) "Project" or "projects" means any property and related facilities, whether or not now in existence, acquired or constructed to facilitate the movement of goods and people along the corridor or at the Otay Mesa East Port of Entry, including property suitable for any of the following purposes:

(1) International ports of entry.

(2) International border crossing facilities.

(3) Transportation facilities, including highway and roadway, public transit, and nonmotorized facilities, and other projects supporting any transportation facility.

(4) A bridge or tunnel, overpasses, underpasses, entrance plazas, toll houses, administration, storage and other buildings and facilities, and all equipment therefor, and may include terminal facilities, customs and immigration facilities, and such approaches and approach highways as may be determined by SANDAG to be necessary to facilitate the flow of traffic or to connect a project with the existing highway systems, together with all property, rights, easements, and interests acquired by SANDAG for the construction or operation of a project, including, but not limited to, energy and communication lines.

(k) "Property" means land, improvements to land, buildings, improvements to buildings, machinery and equipment of any kind, operating capital, and any other real or personal property necessary for a project.

(l) "SANDAG" means the San Diego Association of Governments, as referenced in the San Diego Regional Transportation Consolidation Act, Chapter 3 (commencing with Section 132350) of Division 12.7 of the Public Utilities Code.

(m) "Toll" means a toll, fee, or other charge for entrance to or use of the corridor and such toll, fee, or other charge as may be governed by an agreement under Section 31483.

(n) "Trustee" means any financial institution or trust company actually doing business in this state.

**SEC. 3.** Section 31466 of the Streets and Highways Code is amended to read:

**31466.** SANDAG shall have and may exercise all rights and powers, expressed or implied, that are necessary to carry out the purposes and intent of this chapter, including the power to do all of the following:

(a) Issue bonds payable from and secured by a pledge of SANDAG of all or any part of the revenues of SANDAG to finance the activities authorized by this act and for the purpose of financing the cost of acquiring or operating any project or to purchase, refund, or otherwise acquire, at or before maturity, any outstanding bonds meeting the requirements provided in this chapter, and to sell those bonds at public or private sale in the form and on the terms and conditions as SANDAG shall approve.

(b) Consult with counties, cities, towns, and other agencies and political subdivisions of this state and Mexico relating to plans and projects authorized by this chapter.

(c) Fix and revise from time to time and charge and collect tolls and other charges described in Section 31474.

(d) Acquire by dedication, gift, purchase, or eminent domain, and hold and dispose of any interests in property whether real or personal in the exercise of its powers and the performance of its duties under this chapter.

(e) Establish and enforce policies, rules, and regulations for the administration, operation, and maintenance of facilities and services.

(f) Pledge all or any part of the toll revenues to secure bonds and any repayment or reimbursement obligations of SANDAG to any provider of bond insurance or letter of credit or line of credit facility determined to be appropriate by SANDAG to provide for the payment of debt service on any bonds of SANDAG, and the state hereby pledges to, and agrees with, the holders of bonds that the state will not limit, alter, or restrict the rights hereby vested in SANDAG to fulfill each pledge of toll revenues and any other terms of any agreement made with or for the benefit of the holders of bonds or in any way impair the rights or remedies of the holders of the bonds or the providers of bond insurance or letter of credit or line of credit facilities.

(g) Do all acts necessary and convenient for the full exercise of the powers granted in this chapter.

**SEC. 4.** Section 31467 of the Streets and Highways Code is amended to read:

**31467.** (a) Highway projects constructed pursuant to the act shall, at all times following construction, be owned by the department. International port of entry facilities constructed pursuant to the act, or the land on which those facilities will be constructed, shall, at SANDAG's option, be owned either by the federal government or by SANDAG. If SANDAG chooses to own the land or facilities, it shall lease them to a federal agency. Unless prohibited by law, all other property and facilities constructed pursuant to this chapter shall be owned by SANDAG, unless transferred to a state or federal agency upon agreement between SANDAG and the relevant agency. Any department property conveyed to either SANDAG or the federal government pursuant to this section shall be conveyed free of charge and only upon a finding by the California Transportation Commission that the conveyance is in the state's interest.

(b) The plans and specifications for a transportation project developed, maintained, repaired, rehabilitated, reconstructed, or operated pursuant to the act shall comply with the relevant standards of the department for state transportation projects. Ports of entry projects shall meet the relevant federal agency's published design standards and legal requirements. SANDAG may approve the location, design, and the materials of construction for a project constructed pursuant to this chapter after consultation with the department or the relevant federal agency, as applicable.

(c) SANDAG shall carry out its highway projects in cooperation with the department and shall consult the department in the operation of a project and on matters related to highway design and construction.

(d) For the purpose of facilitating a project, the agreements between SANDAG and other entities may include provisions for the lease of rights-of-way in, and airspace over or under, highways, public streets, rail, or related facilities for the granting of necessary easements, and for the issuance of permits or other authorizations to enable the construction or operation of a project.

(e) Agreements between SANDAG, appropriate local, state, or federal agencies, or any other entity may be executed to identify the respective obligations and liabilities of one or more of those entities and assign them responsibilities relating to a project. 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 a project and may include procedures for enforcement by the Department of the California Highway Patrol.

(f) Any project utilizing the department's services shall be included in the department's capital outlay support program for workload purposes.

**SEC. 5.** Section 31468 of the Streets and Highways Code is amended to read:

**31468.** (a) The Legislature has recognized the merits of alternative project delivery methods in the past by authorizing their use for projects undertaken by school districts, the University of California, specified local government projects, state office buildings, and public transit projects.

(b) It is the intent of the Legislature to provide optional, alternative procedures for delivering the project and its components pursuant to this act. SANDAG may utilize an alternative project delivery method authorized in this section on a project or any project component, after comparison of the traditional design, bid, and build process of construction with the proposed alternative project delivery method in a public meeting, if the governing board makes written findings that use of an alternative project delivery method on the specific project or project component under consideration will accomplish at least one of the following objectives: reduce comparable project costs, expedite a project's completion, or provide features not achievable through the traditional design-bid-build method.

(c) SANDAG may utilize the following alternative project delivery methods if the conditions in this section are met:

(1) Design-build.

(2) Design sequencing.

(d) If the conditions in this section for utilizing an alternative delivery method are not met, SANDAG shall use the design-bid-build delivery method for construction of a project.

(e) It is the intent of the Legislature that alternative project delivery methods as authorized in this section shall not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.

**SEC. 6.** Section 31472 of the Streets and Highways Code is amended to read:

**31472.** This chapter does not authorize SANDAG or the department to do either of the following:

(a) Lease or otherwise convey a toll road to a private-sector entity.

(b) Convert any existing nontoll or non-user-fee highway lane into a tolled or user-fee highway lane, except in the corridor or as otherwise permitted by law.

**SEC. 7.** Section 31474 of the Streets and Highways Code is amended to read:

**31474.** (a) SANDAG may only impose tolls under this chapter for entrance to or the use of the corridor. To the extent provided in an agreement under Section 31483, this restriction does not apply to any toll, portion of a toll, or portion of toll revenue transferred by SANDAG to another party to an agreement under Section 31483. This subdivision does not limit uses of toll revenue authorized by this chapter.

(b) SANDAG shall review the adequacy of the toll rates established to cover the aggregate costs of all projects within two years following the opening of the initial project to be supported by toll revenue under this chapter and at least biennially after the initial review for so long as SANDAG imposes tolls under this chapter.

(c) (1) SANDAG's toll structure may include discounts and premiums to encourage efficient use of projects and reduction of congestion and emission of greenhouse gases, including, without limitation, discounts for high-occupancy vehicles, electronic toll collection, and off-peak travel, and premiums for on-peak travel.

(2) SANDAG shall revise or eliminate any free or reduced-rate toll rate schedule adopted pursuant to paragraph (1) as necessary to ensure compliance with obligations described in subdivisions (b) and (f).

(d) SANDAG's toll structure may include adjustments to toll rates to reflect economic factors, including, but not limited to, the Consumer Price Index or other cost indices.

(e) SANDAG's toll structure shall reflect the toll setting policies and procedures set forth in any agreement under Section 31483.

(f) Notwithstanding subdivisions (a) to (e), inclusive, tolls under this chapter shall be maintained at rates sufficient to meet any obligation secured by a pledge of revenues under this chapter, and covenants set forth in any related resolution, indenture, or constituent instrument.

**SEC. 8.** Section 31475 of the Streets and Highways Code is amended to read:

**31475.** (a) Toll revenues under this chapter may be used to reimburse or finance the costs incurred in connection with the implementation, construction, maintenance, or operation of a project, including reimbursement of federal funds specifically allocated to SANDAG for a project or projects by the federal government or other funds from funding sources that are not otherwise available to state agencies for transportation-related projects. SANDAG shall be reimbursed for administrative costs in an amount that shall not exceed 3 percent of toll revenues under this chapter.

(b) Toll revenues shall be used to pay for costs in the following categories:

(1) Payments pursuant to bonds and resolutions, indentures, and other constituent instruments defining the rights of the holders of bonds and any repayment or reimbursement obligations of SANDAG to any providers of bond insurance or letters of credit or lines of credit related to bonds.

(2) SANDAG costs for operations, toll collection, and administration of the projects.

(3) Reimbursement or payment to federal, state, and local agencies for costs incurred by or payable to those agencies for services, equipment, goods, fixtures, operation, maintenance, personnel, or software provided to or in furtherance of a project that are reimbursable pursuant to a written agreement between SANDAG and the respective agency.

(4) Costs for capital improvements to repair or rehabilitate a project, to expand project capacity, to improve project operations, or to increase public transit and nonmotorized options in the corridor.

(5) Costs for projects that increase transportation options along the corridor or at the Otay Mesa East Port of Entry, including, but not limited to, public transit and nonmotorized transportation that would result in reduced vehicle miles traveled, pursuant to the plan approved by the board pursuant to subdivision (b) of Section 31476 that specifies the expenditure of toll revenues.

(6) Payments pursuant to an agreement under Section 31483.

**SEC. 9.** Section 31476 of the Streets and Highways Code is amended to read:

**31476.** (a) At least 30 days prior to setting the initial toll rates for a project, and thereafter when adjustments to the toll rates are proposed, the board shall provide a public comment period regarding the proposed rates. The board shall also take public testimony at one or more public meetings during this time period.

(b) The expenditure plan for toll revenues shall be updated and approved by the board on an annual basis beginning on July 1 following implementation of a toll. Approval of the initial and annual expenditure plan shall take place at a public meeting held by the board following a notice of at least 30 days to the public.

(c) Collection of tolls under this chapter shall cease following repayment of the bonds and other project costs in full unless an extension of the time for toll collection is approved by a two-thirds vote of the board at a public meeting following a notice of at least 30 days to the public.

(d) The board shall arrange for a postaudit of the toll revenues expended pursuant to this chapter to be made at least annually by a certified public accountant.

**SEC. 10.** Section 31477 of the Streets and Highways Code is amended to read:

**31477.** (a) SANDAG may enter into one or more agreements with the County of San Diego or a city within the County of San Diego to accept fees imposed by that city or the county pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) of Division 1 of Title 7 of the Government Code), to reimburse SANDAG for costs it has or will incur to mitigate development that will have a negative impact on the movement of people or goods in or along the State Route 11 corridor or the Otay Mesa East Port of Entry.

(b) Fees paid to a city or the county and transferred to SANDAG pursuant to this section shall be expended by SANDAG solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees transferred from the city or county were collected.

(c) The agreement may provide for the acceptance of considerations in lieu of the payment of fees.

(d) If the provisions of this section, or provisions implementing this section contained in any ordinance adopted pursuant to this section, are held invalid, that invalidity shall not affect other provisions of this section or of the ordinance adopted pursuant thereto, which can be given effect without the invalid provision, and to this end the provisions of this section and of an ordinance adopted pursuant thereto are severable.

**SEC. 11.** Section 31483 is added to the Streets and Highways Code, to read:

**31483.** (a) The Legislature finds and declares both of the following:

(1) Cooperative tolling arrangements can further reduce congestion and wait times at the border and thereby reduce commercial and noncommercial vehicle emissions.

(2) Streamlined cross-border tolling arrangements will preserve public revenues for both the north side and the south side of the Otay Mesa East Port of Entry by providing for a more efficient border region transportation system.

(b) SANDAG shall have and may exercise all rights and powers, expressed or implied, that are necessary to carry out the purposes and intent of this chapter, including the power to do both of the following:

(1) By agreement, exercise one or more of SANDAG's powers to impose and collect tolls, acquire, operate, and maintain tolling facilities, and related powers under this chapter jointly with the tolling powers of one or more of the federal government of Mexico or a governmental agency or unit thereof.

(2) Contract with one or more of the federal government of Mexico or a governmental agency or unit thereof to receive from or provide to the other contracting parties toll collection and remittance functions and services.

(c) Any agreement authorized pursuant subdivision (b) may include provisions to limit or restrict all of the following:

(1) Toll collection to one side of the Otay Mesa East Port of Entry.

(2) Equitable allocation of toll revenues collected by a party to another party or make payments from toll revenues in consideration of covenants made or other value contributed.

(3) Equitable allocation and financing of the operating, maintenance, and capital costs, including financing costs.

(4) Sharing of information regarding toll collections and revenues and information regarding traffic at or near the Otay Mesa East Port of Entry and approaching roadways.

(5) Investment of funds.

(6) Establishment of policies and procedures for toll rate setting in accordance with this chapter.

(7) The time and manner of termination, unwinding, and distribution of property upon termination.

(8) Allocation of liabilities and indemnity.

(9) The adjudication of disputes or disagreements.

(10) The manner that strict accountability of funds will be provided for and auditing.

(11) Other provisions that would enhance the efficiency border crossings at the Otay Mesa East Port of Entry or tolling as well as any other necessary and proper matters agreed upon by the parties.

(d) Toll revenues paid or allocated to a party other than SANDAG under an agreement pursuant this section shall not be subject to the restrictions of this chapter upon transfer to the other party in accordance with the agreement.

(e) This section may only be implemented consistent with federal law, including obtaining any required federal approvals.