

Memorandum

Tab 24

To: CHAIR AND COMMISSIONERS

CTC Meeting: January 20, 2016

Reference No.: 4.9
Information

From: WILL KEMPTON
Executive Director

Subject: **CONSIDERATION OF DRAFT TOLL FACILITY GUIDELINES (AB 194)**

SUMMARY:

To implement Assembly Bill 194 (Frazier, 2015), the Commission must adopt guidelines related to the approval of developing and operating new toll facilities in California. The draft Toll Facility Guidelines attached to this memorandum are presented for purposes of seeking input prior to finalization. Commission staff will address comments received and prepare final draft guidelines for adoption at the Commission's March 16-17, 2016 meeting.

BACKGROUND:

The Legislature passed and Governor Brown signed into law Chapter 687, statutes of 2015 (Assembly Bill or AB 194), delegating to the Commission the legislative responsibility to approve the tolling of transportation facilities in California. Before 2016, tolling authority was typically granted only through legislation specifically authorizing some entity to implement the tolled facility.

Specifically, Section 149.7 of the California Streets and Highways Code, as amended by AB 194, authorizes regional transportation agencies or the California Department of Transportation (Department) to apply to the Commission to develop and operate high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit or freight. Applications for the development and operation of toll facilities are subject to review and approval by the Commission pursuant to criteria set forth in guidelines established by the Commission.

The Commission will consider draft guidelines at its January meeting, and upon addressing any comments received, will consider a final draft of the guidelines for adoption at its March meeting.

Attachment A – Draft Toll Facility Guidelines

DRAFT
CALIFORNIA TRANSPORTATION COMMISSION
Guidelines for
Toll Facility Project Applications

Authority and Purpose

The Legislature passed and Governor Brown signed into law Chapter 687, statutes of 2015 (Assembly Bill or AB 194), delegating to the California Transportation Commission (Commission) the legislative responsibility to approve the tolling of transportation facilities in California. Before 2016, tolling authority was typically granted only through legislation specifically authorizing some entity to implement the tolled facility.

Specifically, Section 149.7 of the California Streets and Highways Code, as amended by AB 194, authorizes regional transportation agencies or the California Department of Transportation (Caltrans) to apply to the Commission to develop and operate high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit or freight. Applications for the development and operation of toll facilities are subject to review and approval by the Commission pursuant to criteria set forth in guidelines established by the Commission. Prior to approving an application, the Commission will conduct at least one public hearing at or near the proposed toll facility for the purpose of receiving public comment. Upon approval of an application, the regional transportation agencies or Caltrans may develop and operate the proposed toll facility, subject to the minimum requirements defined in statute.

The purpose of these guidelines is to set forth the Commission's policy for carrying out its role in implementing AB 194 and to assist the regional transportation agencies and Caltrans when contemplating an application to the Commission for approval to develop and operate high-occupancy toll lanes or other toll facilities. This Commission policy is not a regulation and should not be construed as imposing any requirement or imposing any deadline on any agency. References to timeframes in this guidance are statements of Commission intent and not deadlines or restrictions for either the Commission itself or for other agencies. Further, references to the contents of submittals from other agencies are statements of what the Commission expects that it will need in order to carry out its own responsibilities for project approval.

Timing of Application

The timing of application submission may vary, but the Commission expects that the project in any submitted application will be far enough through the development process to fulfill the minimum criteria identified in AB 194. For example, the project should be developed enough for the application to include quantifiable evidence of the corridor performance improvement to be

provided from the toll facility, a project initiation document, and a realistic and comprehensive funding plan for the project.

Applicants are encouraged to discuss developing proposals with the Commission prior to submittal. Commission staff will perform a preliminary review of each conceptual application to determine whether the application appears to comprehensively address the requirements set forth in these guidelines. Applications that appear incomplete will be returned to the applicant for revision.

The Commission does not intend to unduly delay any project through the application process. Therefore, upon receipt of a comprehensive toll facility application, the Commission will place the application on its agenda when the Commission office receives the application at least 45 days prior to the meeting. This commitment is not a guarantee but a statement of intention, and may vary based on many factors, such as the complexity or completeness of the application, or the timing of the next Commission meeting.

Reimbursement Contract

At the time of application submission, regional transportation agency applicants must submit a signed agreement to reimburse the Commission for the Commission's costs and expenses incurred in processing the application, as required by AB 194. The full cost of goods or services includes all costs attributable directly to processing the application plus a fair share of indirect costs which can be ascribed reasonably to the effort. Section 8752.1 of California's State Administrative Manual discusses the cost elements included in the calculation. The Commission expects the cost to be at a minimum \$15,000 and not to exceed \$100,000, depending on the complexity of the application. Further, the applicant will be notified of consultant service costs required for reimbursement should the Commission determine technical expertise is required.

Further, the Commission expects that Caltrans will submit a signed agreement to reimburse the Commission for any consultant costs necessary to evaluate a Caltrans application.

Complete Funding Plan

AB 194 requires demonstration that a complete funding plan has been prepared for any proposed toll facility project. The Commission interprets this to mean that all funding sources are identified and the applicant has a plan for securing these funds. A complete funding plan does not mean that all financing has been secured, as it is possible some financing sources may not be available until the project sponsor has authority to develop and operate the toll facility, which is granted only upon approval by the Commission.

Review and Approval of a Caltrans Expenditure Plan

According to AB 194, the revenue generated from the operation of a toll facility shall be available to the sponsoring agency in this order: (1) for direct expenses related to any debt issued to construct, repair, rehabilitate, or reconstruct the toll facility, (2) for the development,

maintenance, repair, rehabilitation, improvement, reconstruction, administration, and operation of the toll facility, including toll collection and enforcement, and (3) reserves for the first two identified purposes. All remaining revenue generated by the toll facility shall be used in the corridor from which the revenue was generated pursuant to an expenditure plan developed by the sponsoring agency.

AB 194 requires the Commission to review and approve the expenditure plan and any updates for a toll facility sponsored by Caltrans. Therefore, the Commission expects that the expenditure plan for excess revenues from a toll facility sponsored by Caltrans will be submitted to the Commission in conjunction with submittal of a Caltrans application.

For a toll facility sponsored by a regional transportation agency, the governing board of the regional transportation agency will review and approve the expenditure plan and any updates.

Evaluation of Project Eligibility

Once a reimbursement contract is in place, the Commission will review and evaluate each application. The Commission may obtain professional opinions from necessary experts in the evaluation of the detailed application. For example, consultation and opinions could be obtained from expert engineers, accountants, and attorneys as applicable.

Project applications should include documentation to support the development and operation of high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit or freight.

The criteria set forth below will be considered by the Commission in determining whether the Commission should approve a toll facility project application submitted in accordance with AB 194. Applications that do not satisfactorily address the identified criteria will be considered incomplete and will not be recommended for approval.

Minimum Eligibility Criteria

The Commission must find, at a minimum, that the criteria identified in AB 194 are met. Therefore, every application should clearly discuss how it meets the following minimum criteria:

- (1) A demonstration that the proposed toll facility will improve the corridor's performance by, for example, increasing passenger throughput or reducing delays for freight shipments and travelers, especially those traveling by carpool, vanpool, and transit.
- (2) A requirement that the proposed toll facility is contained in the constrained portion of a conforming regional transportation plan prepared pursuant to Section 65080 of the Government Code.
- (3) For projects involving the state highway system, evidence of cooperation between the applicable regional transportation agency and Caltrans. Examples of acceptable

evidence of cooperation could be in the form of a completed cooperative agreement or a signed letter between the parties to demonstrate that the parties are working cooperatively on the development of the toll facility.

(4) A discussion of how the proposed toll facility meets the requirements of Streets and Highways Code Section 149.7.

(5) A complete project initiation document for the proposed toll facility.

(6) A complete funding plan for development and operation of the toll facility.

(7) For a toll facility sponsored by Caltrans, submittal of a comprehensive expenditure plan.

Supporting Application Information

In evaluating applications, the Commission will consider all provided information to determine whether to approve the proposed toll facility. Accordingly, in conjunction with responding to the statutorily defined minimum criteria, applications should address the following questions whenever applicable.

Compliance with State Law

Has the applicant demonstrated that the proposed project is consistent with the established standards, requirements, and limitations that apply to the toll facilities in Section 149.7 of the Streets and Highways Code as well as all other applicable sections of state law?

System Compatibility

If on the state system, has the applicant demonstrated that the project is consistent with State Highway System requirements? Does this project propose improvements that are compatible with the present and planned transportation system? Does the project provide continuity with existing and planned state and local facilities?

Corridor Improvement

Has the applicant provided compelling evidence that demonstrates that the proposed toll facility will significantly improve the corridor's performance?

Technical Feasibility

Project Definition – Has the applicant described the proposed facility in sufficient detail to determine the type and size of the project, the location, all proposed interconnections with other transportation facilities, the communities that may be affected, and alternatives (e.g. alignments) that may need to be evaluated?

Proposed Project Timeline – Is the time frame for project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the project? Does the proposal contain adequate assurances that the project will be completed on time?

Operation – Has the applicant presented a reasonable statement setting forth plans for operation of the facility?

Federal Involvement – Is the project outside the purview of federal oversight, or will it require some level of federal involvement due to its location on the National Highway System or Federal Interstate System or because federal permits are required? If so, has the applicant provided a reasonable plan for addressing all federal responsibilities?

Maintenance – Is there a process in place to clearly define assumptions and responsibilities during the operational phase including law enforcement, toll collection, and maintenance?

Financial Feasibility

Funding Plan – Is the funding plan built on a reasonable basis for funding project development and operations? For example, are the assumptions on which the plan is based well defined and reasonable in nature? Are the plan's risk factors identified and dealt with sufficiently? Are the planned sources of funding and financing realistic? Has the applicant demonstrated evidence of its ability to obtain the necessary financing? Does the applicant have the ability to fund shortfalls if revenues do not meet projections?

Cost Estimates – Is the estimated cost of the facility reasonable in relation to the cost of similar projects?

Expenditure Plan for Excess Revenues – If an expenditure plan for excess revenues has not yet been adopted by the appropriate governing entity, has the applicant included a discussion of its intentions for revenues collected beyond those necessary for any debt service, operations, and reserved as defined in AB 194?

Regional Transportation Plan & Community Support

Consistency with Existing Plans – Is the project consistent with the relevant city and county comprehensive plans? If not, are steps proposed that will achieve consistency with such plans?

Consideration of Impacts – Does the applicant explicitly consider the potential diversions of vehicles onto adjacent routes that could lead to congestion, safety problems, and infrastructure damage due to the imposition of tolls on particular facilities?

Fulfilling Policies and Goals – In what ways does the proposed project help achieve performance, safety, mobility, economic, or transportation demand management goals?

Environmental Considerations – Is the proposed project consistent with applicable state and federal environmental statutes and regulations? Does the proposal adequately address or improve air quality and other environmental concerns?

Community/Stakeholder Support – What is the extent of support or opposition for the project? Does the project proposal demonstrate an understanding of the national and regional transportation issues and needs, as well as the impacts this project may have on those needs? Is there a demonstrated ability to work with the affected communities? Have all affected local jurisdictions provided clear written statements of the extent of their support for the project?

Public Hearings & Final Approval/Rejection

AB 194 requires that, prior to approving an application, the Commission conduct at least one public hearing at or near the proposed toll facility for the purpose of receiving public comment.

Upon final evaluation of the project application against the eligibility criteria, and after the required public hearing, the Commission will approve or reject the application. If the Commission approves an application, it will do so through the adoption of a resolution at a regularly scheduled Commission meeting.

Report to the Legislature

Annually the Commission, in cooperation with the Legislative Analyst, is statutorily required to report to the Legislature on the progress of the development and operation of each toll facility approved under these guidelines. To inform the Commission's Annual Report to the Legislature due December 15th, the Commission expects an annual report from every sponsoring agency describing the progress of each approved toll facility no later than October 1st of each year. In order to facilitate thorough reporting, at a minimum, this report should include a discussion of the following:

- (A) A progress report for the project.
- (B) A comparison of the project baseline budget and the current or projected budget.
- (C) A comparison of the current or projected schedule and the baseline schedule.
- (D) If construction is complete and operations have begun, a discussion of the operations of the facility and how actual performance compares to the project's original expected performance.
- (E) A discussion of any other issues identified and actions taken to address those issues.

Projects Requiring Future Commission Actions

Section 149.7 does not modify nor does this guidance address the Commission's authority to program and allocate state funds. No application approval in accordance with AB 194 or these guidelines can be considered as binding the Commission to take any programming or allocating action in the future in relation to any application.

Specifically, the Commission's approval of a toll facility project application does not in and of itself create a new commitment of state transportation revenues or create an undue risk to state transportation revenues committed to other projects.

Project Changes after Approval

After the Commission has approved a project, it will have no further role in reviewing or approving changes to the project except at the request of the sponsor agency. If Caltrans or the regional transportation agency finds it necessary or appropriate to make changes to the toll facility project after approval, the Commission expects that the agency will request approval of the change by submitting a supplement to the project application setting forth a description of the change and the reasons for it. A change approval request is only necessary if the change substantially alters the scope, schedule, or terms of the approved project. The Commission will approve the change if it finds that the revised project meets the evaluation criteria set forth in this guidance.



AFFILIATED AGENCIES

*Orange County
Transit District*

*Local Transportation
Authority*

*Service Authority for
Freeway Emergencies*

*Consolidated Transportation
Service Agency*

*Congestion Management
Agency*

*Service Authority for
Abandoned Vehicles*

January 19, 2016

Ms. Lucetta Dunn
Chair
California Transportation Commission
1120 N Street, MS-52
Sacramento, CA 95814

Subject: Comments on Draft Guidelines for Toll Facility Project Applications

Dear Chair Dunn,

The Orange County Transportation Authority (OCTA) Board of Directors appreciates the opportunity to offer comments on the Draft Guidelines for Toll Facility Project Applications, as required by AB 194 (Chapter 687, Statutes of 2015). The passage of AB 194 provided a framework for implementing future toll facilities that both allows for operating discretion to the agency assuming the financial risk for the facility, and provides broad policy goals for all facilities.

OCTA is currently undertaking one of the largest, most complex transportation projects in the state, a \$1.7 billion project along Interstate 405, which will add one general purpose lane in each direction, and a two-lane express lane facility, and allow for numerous bridge and arterial improvements. When finished, the project will provide multiple corridor improvements, including improved travel times and increased mobility options. This project is almost exclusively to be funded by Orange County's local sales tax measure, Measure M2.

The guidelines for implanting AB 194 will be critical to ensure that we can deliver the totality of this project, including the express lane facility, on budget and on time, while also protecting local control over the management, operations, and decision making of the express lane facility. The guidelines should, therefore, be drafted in a manner that allows for a streamlined application process consistent with AB 194, flexibility for different types of projects that may be put forward, and with room for deference to the lead agency that is taking the financial risk for the facility.

The initial draft guidelines include some provisions consistent with these objectives, including efforts to provide for an expedited schedule for approval of a facility and language recognizing the complexity of developing a funding plan. However, there are areas where improvement and clarification are needed. This includes the need for further discretion to the lead agency related to expenditure plan development and demonstration of community support, and additional flexibility in demonstrating

Ms. Lucetta Dunn
January 19, 2016
Page 2

cooperation with the California Department of Transportation that recognizes the stage of project development. A complete list of comments from OCTA is to this letter.

OCTA appreciates the time and effort the California Transportation Commission (CTC) staff has made early on to review the key objectives for these guidelines. Going forward, OCTA hopes to continue discussions with the CTC, and develop collaborative solutions that will allow successful implementation of this critical legislation. If you or your staff have any questions regarding OCTA's comments on the draft toll guidelines, please contact Kristin Essner, Principal Government Relations Representative, at (714) 560-5754.

Sincerely,



Darrell Johnson
Chief Executive Officer

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Attachment

c: Members, California Transportation Commission
Will Kempton, Executive Director, California Transportation Commission
Platinum Advisors, LLC

Orange County Transportation Authority Comments on Draft Guidelines for Toll Facility Project Applications

Application Process

1. It would be helpful to also have a draft application template to see how the guidelines will specifically be used.
2. On page 2 of the guidelines, when discussing the timing of the guidelines, the term "conceptual application" and "comprehensive toll facility application" are both used. Does this mean there will be two stages to the application process? We would urge that only one application be submitted, and that upon California Transportation Commission (CTC) review, if the application appears to present compliance/completeness issues, then the CTC can work with the applicant to address the issues. Otherwise, this could lead to timing issues in having the applications approved.

Reimbursement Requirement

3. The language related to requiring a reimbursement agreement to be completed is good, allowing some predictability to this requirement. However, the guidelines seem to go beyond the scope of what is needed in this section, including requiring reimbursement of indirect costs. There are restrictions on the use of state and federal funding for such purposes which could complicate how reimbursement will occur, with not all local agencies having local dollars for this purpose. In addition, it is unclear how we determine the need and costs associated with outside consultants. The guidelines should be simplified to defer to a reimbursement agreement mutually agreed to between the lead applicant and the CTC for costs associated with processing an application.

Definition of Complete Funding Plan

4. The language recognizing that having a complete funding plan does not mean that all financing must be secured is good, and consistent with previous comments.

Expenditure Plan Development

5. Appreciate language in guidelines deferring to the regional transportation agency's (RTA) Board approval of the expenditure plan, consistent with AB 194 (Chapter 687, Statutes of 2015).

Supporting Application Information

Overall, this section includes multiple criteria that go beyond the scope of what is required under AB 194. Clarity is needed on how these different criteria will be used, weighed and balanced. Focus should be on the criteria specifically required under AB 194. In some cases, answering the questions will prove difficult due to the newness of this program. In other cases, more deference should be given to the local agency's Board in addressing various goals. Specific issues include the following:

Orange County Transportation Authority Comments on Draft Guidelines for Toll Facility Project Applications

6. In demonstrating evidence of cooperation between the RTA and Caltrans (page 3-4), more flexibility should be granted pending the stage of project implementation. For instance, a record of decision for a final environmental document should suffice to demonstrate the RTA and Caltrans both are both cooperating in pursuing the project alternative.

7. While there is no direct objection to a final project initiation document (PID) being submitted, the PID may not provide the full scope of the project. For agencies that may be later in the project planning processing, an option should be provided for the applicant to also submit the final environmental document to supplement the information contained in the PID.

8. In demonstrating the corridor improvement benefits (page 4), the terms "compelling evidence" and "significantly improve" appear to go above and beyond the requirements of AB 194, imposing a heightened standard on each project. It is unclear why this is necessary.

9. In analyzing the cost estimates, with the limited toll facilities in existence, it is unclear how an agency determines that the cost of a specific facility is reasonable in comparison to others. This question also does not account for the different approval mechanisms used for past facilities that may have allowed for grant funding or private sector contributions. Moreover, if a project is being funded almost completely by local funds, this question may not be as relevant.

10. Requesting information about a RTA's expenditure plan prior to that agency's Board having a discussion on the matter appears to be preemptive and may interfere with the Board's discretion on the matter. CTC review of a regional agency's process is not required under AB 194, and instead, the statute specifically defers to the Board of Directors for that regional agency. In almost all cases, a Board of Directors will likely not have a discussion about an expenditure plan until after approval of the facility by the CTC.

11. In demonstrating consistency with existing plans (page 5), the question should be about the consistency of the project with the Regional Transportation plan, and potentially the Long Range Transportation Plan. The statute's focus is on the RTP, and not local plans. It is also unclear what constitutes a "relevant city or county comprehensive plan."

12. In considering other impacts, can an applicant defer to an environmental document, or is this question asking that new analysis be conducted? If the latter, that will create additional delay in the application process,

13. In demonstrating community/stakeholder support, this is best accomplished through the community hearing process required under AB 194. The guidelines seem to suggest it will be required of the applicant to submit support comments of every local jurisdiction impacted by the project, which will be incredibly burdensome on applicants. This process was already engaged in as part of the environmental process conducted by the RTA and

Orange County Transportation Authority Comments on Draft Guidelines for Toll Facility
Project Applications

Caltrans, and is best handled at the local level where the agencies can more immediately respond to direct comments.

Reporting Requirements

14. In the reports to the CTC on the progress of the project, it is unclear how long the reporting requirement will be enforced. Does CTC anticipate oversight over the actual operations of the facility?