

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: June 2, 2023

From: TANISHA TAYLOR, Interim Executive Director

Reference Number: 4.1, Action

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Subject: Finding to Hold Special Meeting Pursuant to Government Code Section 11125.4 of the Bagley-Keene Open Meeting Act

## **Recommendation:**

Staff recommends the California Transportation Commission (Commission) make a finding, pursuant to the Bagley-Keene Open Meeting Act, that immediate action is required to protect the public interest by allocating funds from the federal Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) of 2020 to critical transportation projects across the state. Without this action, California regional transportation agencies may lose these funds as result of pending federal legislation released on May 28, H.R. 3746 "The Fiscal Responsibility Act of 2023", that would rescind all unobligated CRRSAA immediately upon enactment.

## **Issue:**

The Bagley-Keene Open Meeting Act (Government Code 11121 et. seq.) sets forth requirements for state boards and commissions, including the Commission, to hold public meetings. Under this statute, the Commission typically must provide public notice of a meeting 10 days in advance. However, the Commission may convene a special meeting with 48 hours of notice when compliance with the 10-day notice provisions "would impose a substantial hardship on the state body or when immediate action is required to protect the public interest" and when the meeting pertains to at least one of nine listed purposes, including "to consider proposed legislation." The Commission must adopt a finding related to the need for a special meeting by a two-thirds vote or, if less than two-thirds of the members are present, a unanimous vote of those members present. Attachment A contains relevant provisions from the Bagley-Keene Open Meeting Act related to special meetings.

On May 28, federal legislation, H.R. 3746 "The Fiscal Responsibility Act of 2023", was released that would implement the agreement negotiated by the President and Congressional leaders to adjust the federal debt ceiling limit. Included in this bill is the immediate rescission of unobligated federal COVID relief funds for Highway Infrastructure Programs appropriated in the CRRSAA, whereas without this proposed federal legislation, these funds are not set to

expire until September 2024. It is anticipated that the proposed legislation released on May 28 would need to be enacted prior to June 5 to avoid the U.S. defaulting on its debt. Attachment B contains relevant language from the proposed federal bill.

At its meeting on March 24-25, 2021, the Commission approved distributing \$364.7 million of California's \$911.8 million CRRSAA apportionment to regional agency programs. This \$364.7 million was split equally between the regional share of the State Transportation Improvement Program (STIP) and a new formula program called the CRRSAA Program. As of May 31, \$93 million and \$19 million remain unallocated from the STIP and CRRSAA Program, respectively. These funds are at risk of being rescinded immediately if the federal debt ceiling legislation proposed on May 28 is enacted.

The loss to California of \$112 million in critical transportation funds as the result of proposed legislation would negatively impact the interest of Californians around the state. As an example, Attachment C contains a list of projects provided by the Metropolitan Transportation Commission in the Bay Area at risk of losing funding because of the proposed federal legislation. This list includes interchange improvements, bicycle and pedestrian projects, and high-occupancy vehicle lane extensions.

Attachments:

- Attachment A: Special Meetings Provisions of the Bagley-Keen Open Meeting Act
- Attachment B: CRRSAA Recission Language in the Proposed Federal Debt Ceiling Bill
- Attachment C: Metropolitan Transportation Commission Projects at Risk of Recission

## **Attachment A: Special Meetings Provisions of the Bagley-Keen Open Meeting Act**

### Government Code 11125.4

(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes when compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or when immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall deliver the notice in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet Web site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files

with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

(Amended by Stats. 2007, Ch. 92, Sec. 1. Effective January 1, 2008.)

## **Attachment B: CRRSAA Recission Language in the Proposed Federal Debt Ceiling Bill**

SEC. 1. Each rescission made by this title shall be applied to the unobligated balances for each applicable appropriation as of the date of enactment of this title.

SEC. 20. The unobligated balances of amounts made available under the heading “Federal Highway Administration—Highway Infrastructure Programs” in title IV of division M of Public Law 116–260 are hereby permanently rescinded.

## Attachment C: Metropolitan Transportation Commission Projects at Risk of Recission

### Unobligated State Transportation Improvement Program CRRSAA Projects (\$20M)

County	Sponsor	Project	Balance
Alameda	ACTC	Rt 80, Ashby Interchange Improvements	50,000
Alameda	ACTC	Rt 880 I/Cs, Winton Avenue & A Street	50,000
<b>Alameda County Subtotal</b>			<b>100,000</b>
Contra Costa	BART	Concord Station Modernization:Light/fare Gate Imprvs	4,103,000
<b>Contra Costa County Subtotal</b>			<b>4,103,000</b>
San Francisco	SFMTA	San Francisco Folsom Streetscape	3,043,000
<b>San Francisco City and County Subtotal</b>			<b>3,043,000</b>
San Mateo	Caltrans	SR 92/US 101 Interchange Area Improvement Project	1,685,000
San Mateo	Various	ITS Improvements in Daly City, Brisbane, and Colma	1,412,000
<b>San Mateo County Subtotal</b>			<b>3,097,000</b>
Santa Clara	VTA	US 101 Express Lanes - Phase 5 - Civil	7,099,000
<b>Santa Clara County Subtotal</b>			<b>7,099,000</b>
Solano	STA	Planning, Programming, and Monitoring	98,000
<b>Solano County Subtotal</b>			<b>98,000</b>
Sonoma	Rohnert Park	Southwest Blvd Complete Streets	2,285,000
<b>Sonoma County Subtotal</b>			<b>2,285,000</b>
<b>Grand Total</b>			<b>19,825,000</b>

### Unobligated CRRSAA Program Projects (\$23M)

County	Sponsor	Project	Balance
Alameda	MTC/ACTC	Bay Bridge Forward: I-580 WB HOV Lane Extension	7,000,000
<b>Alameda County Subtotal</b>			<b>7,000,000</b>
Contra Costa	Richmond	Richmond 13th Street Complete Streets	2,821,000
<b>Contra Costa County Subtotal</b>			<b>2,821,000</b>
San Francisco	SFMTA	San Francisco Folsom Streetscape	5,000,000
<b>San Francisco City and County Subtotal</b>			<b>5,000,000</b>
Santa Clara	Mountain View	Mountain View Stierlin Road Bicycle and Pedestrian Improvements	1,486,000
Santa Clara	San Jose	En Movimiento Quick Build Network for East San Jose	1,325,000
Santa Clara	San Jose	San Jose - Downtown Bikeways	4,025,000
Santa Clara	San Jose	San Jose Bascom Avenue Protected Bike Lanes & Complete Street	690,000
Santa Clara	San Jose	San Jose Julian Street & McKee Road Vision Zero Complete Streets	705,000
<b>Santa Clara County Subtotal</b>			<b>8,231,000</b>
<b>Grand Total</b>			<b>23,052,000</b>