



METROPOLITAN  
TRANSPORTATION  
COMMISSION

**Agenda Item 9b**  
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## *Memorandum*

TO: Metropolitan Transportation Commission  
FR: Deputy Executive Director, Policy  
RE: AB 686 (Santiago): Affirmatively Furthering Fair Housing – Oppose Unless Amended

DATE: June 21, 2017  
W. I. 1131

### **Background**

At MTC's May Legislation Committee the committee approved staff's recommendation for an "oppose unless amended" position on Assembly Bill 686, which would extend the federal fair housing regulations to metropolitan planning organizations (MPO) and the development of the sustainable communities strategy (SCS), such as *Plan Bay Area 2040*. As discussed at the Legislation Committee meeting, the staff recommendation was based on significant concerns that the broad scope of AB 686 could expose the agency to litigation regarding land-use matters. The bill is anticipated to be heard in the Senate Transportation and Housing Committee on June 27.

The Commission deferred action on the Legislation Committee's recommendation and instead directed staff to work with the bill author's office and sponsors on our concerns and report back. MTC staff has had extensive communication with the AB 686 author and sponsors and representatives of the California Association of Councils of Government (CALCOG), however we do not yet have a firm commitment on amendments. Given this, staff continues to recommend an "oppose unless amended" position. Staff will provide an update on the status of the bill and negotiations at your meeting.

### **Recommendation: Oppose unless amended**

### **Discussion**

The Commission has been sued a number of times since the late 1990's over the regional transportation plan over many iterations – at a combined cost of at least \$6 million. Given this history and the close scrutiny the Commission regularly faces from diverse advocates across the political spectrum, staff has significant concerns about the current wording of AB 686. Specifically, certain provisions in AB 686 appear to require that every action by a MPO further fair housing. This could open up a potential legal minefield. Provisions requiring a broad "commitment to meaningful action" in the SCS also opens the field for litigation. Although it is impossible to predict all the potential litigation risk, one example is a decision to focus affordable housing and transit funds in a community of concern could be argued as not affirmatively furthering fair housing if the area is not considered a high opportunity area, thereby exposing the agency to litigation.

The city of San Francisco experienced this kind of perverse outcome in 2016 when federal Department of Housing and Urban Development (HUD) officials challenged the city's anti-displacement strategy of giving low-income seniors priority to live in new affordable housing developments in their neighborhoods, asserting that a neighborhood preference would violate federal fair housing laws by limiting equal access and perpetuating segregation. HUD ultimately agreed to an amended anti-displacement preference, but only after formal city appeals, a delegation trip to Washington, D.C. and engagement from Members of Congress.

AB 686 has the laudable policy goal of furthering fair housing opportunity. MTC supports this goal and is not opposed to incorporating into state law a policy that supports materially positive changes that affirmatively further fair housing. However, given that regional agencies have no enforcement authority over land use and housing investment strategies, assigning that obligation to regional planning and the SCS is misplaced.

Over the past month, staff has continued to work in coordination with CALCOG and the AB 686 sponsors and author on amendments to address these concerns. MTC seeks the following key changes:

1. *Removal of MPOs and councils of governments (COGs) from the broad requirement that agency actions affirmatively further fair housing.*

AB 686 would add to the Government Code the following: “12958 (a) Notwithstanding any other law, a public agency shall administer its program and activities related to housing and community development in a manner to affirmatively further fair housing, and shall not take any action that is inconsistent with this obligation.” Staff seeks to remove MPOs and COGs from this definition of “public agency” and strike accompanying references to regional agencies and sustainable communities strategies from the section.

2. *In exchange for #1, add a reasonably-scoped requirement that MPOs or COGs prepare and update on the same timeframe as the SCS a regional fair housing study. We are not opposed to a fair housing assessment, at issue is exposure to litigation.*

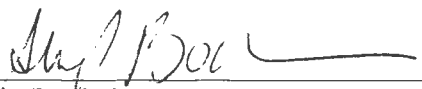
AB 686 proposes to add a new requirement that the SCS include a broad analysis of “barriers that restrict access to opportunity” and a “commitment to specific meaningful actions to affirmatively further fair housing.” Staff seek to limit the scope of a barriers analysis to transportation and housing and either remove or sufficiently focus any “action” requirement to limit exposure to litigation.

The bill’s sponsors seek to retain in the bill a “focused action” requirement that MPOs and COGs make commitments to undertake actions to address barriers to fair housing. The sponsors additionally seek to add a new requirement that COGs incorporate fair housing into the regional housing needs allocation methodology.

These key points remain unresolved as of the date this memorandum was written. Thus, staff recommend the Commission adopt an “oppose unless amended” position on AB 686 and direct staff to continue negotiations.

#### **Known Positions**

See Attached

  
Alix Bockelman

AB:gd

**AB 686 (Santiago) Support and Opposition**

**Support**

National Housing Law Project (co-sponsor)  
Public Advocates (co-sponsor)  
Western Center on Law & Poverty (co-sponsor)  
AFSCME  
Alliance of Californians for Community Empowerment  
Bay Area Legal Aid  
California Environmental Justice Alliance  
California Housing Partnership Corporation  
California Reinvestment Coalition  
Communities for a Better Environment  
Courage Campaign  
Disability Rights California  
Enterprise Community Partners  
Equal Justice Society  
Fair Housing Advocates of Northern California  
Fair Housing Council of Orange County  
Grounded Solutions Network  
Human Equity Law Project  
HERA  
Law Foundation of Silicon Valley  
Lawyers' Committee for Civil Rights Under Law  
Legal Aid Association of California  
Legal Aid Foundation of Los Angeles  
Legal Aid Society of San Diego  
Legal Services of Northern California  
Little Tokyo Service Center  
Mission Economic Development Agency  
National Association of Social Workers  
Non-Profit Housing Association of Northern California  
Peace and Freedom Party of California  
Policy Link  
Project Sentinel  
Public Counsel  
Public Interest Law Project  
Tenants Together

**Support if Amended**

American Planning Association, California Chapter

**Opposition**

California Association of Councils of Governments  
California League of Cities