

**BILL:** SB 1245 (Simitian, D – Palo Alto)  
Introduced February 19, 2010  
Amended April 22, 2010

**SUBJECT:** Prohibits vehicles that meet applicable occupancy level requirements for a high-occupancy vehicle or high-occupancy toll lane from being charged a toll, unless the occupancy level is changed per a specified process

**STATUS:** Passed Senate Transportation and Housing Committee 8-0  
Pending in Senate Appropriations Committee

**SUMMARY AS OF MAY 5, 2010:**

SB 1245 would prohibit any vehicle that meets applicable occupancy level requirements for a high-occupancy vehicle (HOV) lane or high-occupancy toll (HOT) lane from being charged a toll to use that lane. The bill specifically excludes toll bridges from these provisions. In addition, SB 1245 specifies that if the California Department of Transportation (Caltrans) wishes to change the occupancy level requirement on such lanes, they must determine that the change will maximize person throughput on the affected highway, consult with the applicable transportation planning agency or commission, and submit a report to the Legislature on the reasons for the change 30 days prior to the change taking effect.

Under existing law, Caltrans sets vehicle occupancy requirements for HOV lanes throughout the state with consultation and approval from the Federal Highway Administration (FHWA). Currently, most HOV lanes within the state have a 2+ occupancy policy for vehicles to be eligible to use the lanes, with limited lanes having a 3+ occupancy policy. Per the current HOV Guidelines established by Caltrans, if Caltrans wishes to change the vehicle occupancy requirements for a HOV lane, multiple factors are to be considered, including: maximizing vehicle throughput, maintaining specific level of service standards, coordination with other HOV lanes in the region, and encouragement of HOV usage overall.

Federal law currently defines a degraded HOV facility as one with below a minimum average operating speed of 45 miles per hour (mph), for more than 90 percent of the time, over a 180-day period during morning or weekday peak hours. If the facility has a speed limit of less than 50 miles per hour, then the minimum operating speed should be no more than 10 mph below the speed limit. When a state finds one or more of its HOV lanes to be degraded, the state has the discretion to implement policies to improve the throughput of those lanes. Currently, over 40 percent of California's HOV lanes are considered degraded under federal law.

In addition, existing law authorizes the unlimited creation of public-private partnerships (P3) for transportation projects until 2017 under SBX2 4 (Chapter 2, Statutes of 2009). Other provisions of law authorize the creation or conversion of specific HOT lane projects in various regions of the state, including the extension of the 91 Express Lanes



into Riverside County, per SB 1316 (Chapter 714, Statutes of 2008). For many existing HOT lane projects, including the 91 Express Lanes, the occupancy requirements are set per a franchise agreement with Caltrans.

### **EFFECTS ON ORANGE COUNTY:**

The Orange County Transportation Authority (OCTA) is the current operator of the 91 Express Lanes, a ten-mile toll road along the Riverside Freeway (State Route 91). Under OCTA's franchise agreement with Caltrans, the 91 Express Lanes provide free access to vehicles with three or more passengers, except in cases when OCTA is unable to maintain a debt coverage ratio of 1.2. During those times, OCTA can impose discounted tolls on vehicles with three or more passengers. When OCTA is able to maintain a 1.2 debt coverage ratio over a continuous six month period, then those vehicles with three or more passengers are not tolled.

Currently, OCTA allows vehicles with three or more passengers to use the 91 Express Lanes for free at most times, except at the high peak time when traveling eastbound, Monday through Friday between the hours of 4:00 p.m. and 6:00 p.m. At those times, these vehicles are charged a toll at a 50 percent discount from the normal rate. It is expected that sometime in either fiscal year 2012 or 2013, the 91 Express Lanes will be able to maintain a 1.2 debt coverage ratio, at which time vehicles with three or more passengers will be able to use the facility for free at all times. However, if SB 1245 passes, OCTA will likely not have the authority to charge vehicles with three or more passengers starting next year. By not tolling those vehicles, congestion along the lanes may increase. Using the principles of congestion management, in order to ensure free-flowing lanes, tolls may have to increase for all other vehicles.

Where the 91 Express Lanes currently terminate in Orange County, the carpool lanes extending into Riverside County have a 2+ occupancy requirement. Under the terms of SB 1245, when these lanes are converted into HOT lanes (per SB 1316 passed last year authorizing that extension), vehicles with two or more occupants will not be charged a toll. This will establish two different cost structures between Orange and Riverside counties, the result of which will likely require an increase in the tolls for single occupant vehicles, lead to increased congestion, and create a disincentive to use the express lanes.

SB 1245 creates broad limitations on local transportation planning for future HOT lane projects or changes to HOV lane policies. With the implementation of AB 32 (Chapter 488, Statutes of 2006) and SB 375 (Chapter 728, Statutes of 2008), pricing policies are considered to be one method for reducing congestion, of improving air quality, and reducing greenhouse gas emissions. Additionally, with ongoing state transportation funding limitations, other mechanisms for financing and maintaining transportation projects are crucial. By placing strict limitations on the operations of HOV and HOT lanes, the air quality and financing benefits of these projects will also be limited. For OCTA, AB 1245 could have implications for a variety of future projects, including the option currently being considered to create HOT lanes along

the San Diego Freeway (Interstate 405) and the Eastern Toll Road (State Route 241)/Riverside Freeway (State Route 91) connection.

**OCTA POSITION:**

Staff recommends: OPPOSE

**Introduced by Senator Simitian**

February 19, 2010

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An act to add Section 149.10 to the Streets and Highways Code, *and to amend Section 21655.5 of the Vehicle Code*, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1245, as amended, Simitian. High-occupancy vehicle lanes.

Existing law provides for the Department of Transportation and local authorities, with respect to highways under their respective jurisdictions, to authorize or permit exclusive or preferential use of highway lanes for high-occupancy vehicles (HOVs). Existing law authorizes the development and implementation of high-occupancy toll (HOT) lanes under limited circumstances, pursuant to which vehicles that do not meet the vehicle occupancy requirements for use of an HOV lane may use the lane upon payment of a toll.

This bill would ~~require an HOV lane, including, but not limited to, a HOT lane, on a highway or bridge that was free of tolls to HOVs as of January 1, 2010, to remain free of tolls with respect to HOVs provide that a vehicle that meets the applicable occupancy level for a high-occupancy vehicle for use of an HOV lane, including a HOT lane, shall not be charged a toll. The bill would also provide that an increase in the vehicle occupancy level for an HOV lane may only be implemented if the department determines that the change will maximize person throughput with respect to the affected highway. The bill would require the department to obtain the approval of the applicable transportation planning agency and report to the Legislature before implementing the change.~~



Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 149.10 is added to the Streets and Highways Code, to read:

~~149.10. A high-occupancy vehicle lane, including, but not limited to, a high-occupancy toll lane, on a highway or bridge that was free of tolls to high-occupancy vehicles as of January 1, 2010, shall remain free of tolls with respect to those vehicles.~~

*149.10. A vehicle that meets the applicable occupancy level for a high-occupancy vehicle for use of a high-occupancy vehicle lane, including a high-occupancy toll lane, shall not be charged a toll to use that lane. This section shall not apply to toll bridges.*

SEC. 2. Section 21655.5 of the Vehicle Code is amended to read:

21655.5. (a) The Department of Transportation and local authorities, with respect to highways under their respective jurisdictions, may authorize or permit exclusive or preferential use of highway lanes for high-occupancy vehicles. Prior to establishing the lanes, competent engineering estimates shall be made of the effect of the lanes on safety, congestion, and highway capacity.

(b) The Department of Transportation and local authorities, with respect to highways under their respective jurisdictions, shall place and maintain, or cause to be placed and maintained, signs and other official traffic control devices to designate the exclusive or preferential lanes, to advise motorists of the applicable vehicle occupancy levels, and, except where ramp metering and bypass lanes are regulated with the activation of traffic signals, to advise motorists of the hours of high-occupancy vehicle usage. No person shall drive a vehicle upon those lanes except in conformity with the instructions imparted by the official traffic control devices. A motorcycle, a mass transit vehicle, or a paratransit vehicle that is clearly and identifiably marked on all sides of the vehicle with the name of the paratransit provider may be operated upon those exclusive or preferential use lanes unless specifically prohibited by a traffic control device.

(c) *An increase in the vehicle occupancy level to be applicable to an existing exclusive or preferential lane under the jurisdiction*

1 of the department shall only be implemented if the department  
2 determines that the change will maximize person throughput with  
3 respect to the affected highway. The proposed change shall be  
4 subject to approval pursuant to the process set forth in subdivision  
5 (a) of Section 21655.6. The department shall report to the relevant  
6 policy and fiscal committees of the Legislature the basis for making  
7 the change at least 30 days prior to the effective date of the change.

8 ~~(e)~~

9 (d) When responding to an existing emergency or breakdown  
10 in which a mass transit vehicle is blocking an exclusive or  
11 preferential use lane, a clearly marked mass transit vehicle, mass  
12 transit supervisor's vehicle, or mass transit maintenance vehicle  
13 that is responding to the emergency or breakdown may be operated  
14 in the segment of the exclusive or preferential use lane being  
15 blocked by the mass transit vehicle, regardless of the number of  
16 persons in the vehicle responding to the emergency or breakdown,  
17 if both vehicles are owned or operated by the same agency, and  
18 that agency provides public mass transit services.

19 ~~(d)~~

20 (e) For purposes of this section, a "paratransit vehicle" is defined  
21 in Section 462.

22 ~~(e)~~

23 (f) For purposes of this section, a "mass transit vehicle" means  
24 a transit bus regularly used to transport paying passengers in mass  
25 transit service.

26 ~~(f)~~

27 (g) It is the intent of the Legislature, in amending this section,  
28 to stimulate and encourage the development of ways and means  
29 of relieving traffic congestion on California highways and, at the  
30 same time, to encourage individual citizens to pool their vehicular  
31 resources and thereby conserve fuel and lessen emission of air  
32 pollutants.

33 ~~(g)~~

34 (h) The provisions of this section regarding mass transit vehicles  
35 and paratransit vehicles shall only apply if the Director of  
36 Transportation determines that the application will not subject the  
37 state to a reduction in the amount of federal aid for highways.