OCTA

September 15, 2022

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Federal Legislative Status Report

Overview

The Orange County Transportation Authority regularly updates the Legislative and Communications Committee on policy and regulatory issues directly impacting the agency's programs, projects, and operations. This report includes an overview of the recently signed budget reconciliation bill focused on climate change and healthcare policies, the Inflation Reduction Act, and its transportation-related provisions. An update is also provided on the fiscal year 2023 appropriations process.

Recommendation

Receive and file as an information item.

Discussion

Inflation Reduction Act Overview

After months of debate on the potential for a budget reconciliation package largely aimed at targeting climate change and healthcare issues, agreement was finally reached in August after another round of negotiations took place between Senator Chuck Schumer (D-NY) and Senator Joe Manchin (D-WV). The scale of a potential package has varied through the course of negotiations over the last year, with previous iterations proposing as much as $3.5 trillion for various climate change, healthcare, and social welfare programs. While using the reconciliation process afforded the possibility for a party-line vote for passage, due to concerns about the size of the package, potential impacts on inflation trends, and other policy concerns, Senator Manchin signaled his inability to vote for a broader package back in December 2021.

This final agreement represents a streamlined version of initial iterations, no longer including several provisions related to universal pre-kindergarten, child tax credits, and expanded family leave requirements. Also not included were previous proposals to provide funding for transportation improvements related to climate change and equity, and mandates that would have instituted greenhouse gas emission reduction requirements for highway programs.

The final bill signed by President Biden on August 16, 2022, known as the Inflation Reduction Act, is an approximately $750 billion package, with about $450 billion in spending and tax breaks that is largely focused on climate change. Revenues are primarily generated by a 15 percent corporate minimum tax and other tax reform measures. For the transportation sector, some of the most notable provisions include the following:

- The extension of the alternative fuels excise tax credit through 2024. The tax credit expired at the end of 2021. OCTA generally receives about $4 million annually through use of this tax credit for the compressed natural gas fuel used for transit operations. These tax credit funds are then used to help support on-going transit operations services.

- A new tax credit for commercial zero-emission vehicles, up to $40,000 for certain heavy-duty vehicles, starting in 2023 and expiring at the end of 2032. For tax-exempt entities, it is unclear if any benefit will be realized at this time.

- $1 billion for a new Clean Heavy-Duty Vehicles Program, for vehicles with a gross vehicle weight between 19,501 and 33,000 pounds. $400 million of this amount is set-aside for non-attainment areas. These grants could be used for vehicle replacement, zero-emission infrastructure, workforce development and training, and planning and technical activities. However, only states, municipalities, Indian tribes, and certain contractors are eligible for these grants. Therefore, it is unclear if many transit agencies like OCTA, who do not fall into one of those groups, will be able to compete for these funds despite transit buses clearly falling within this category.

- $3.2 billion for Neighborhood Access and Equity Grants, administered by the Federal Highway Administration (FHWA), providing competitive grants to states, local governments, Indian tribes, public authorities with a transportation function, and metropolitan planning organizations. Eligible uses include projects that improve walkability, safety, and affordable transportation access, mitigation or remediation for impacts from surface transportation facilities that create an obstacle to connectivity within a community or a source of pollution or other burden to disadvantaged communities, and planning in disadvantaged communities. Projects that increase travel lanes for single-occupant vehicles are not eligible for funding.

- $2 billion for a new Low-Carbon Transportation Materials grant program, administered by FHWA, to reimburse or provide incentives to states, local governments, Indian tribes, public authorities, and metropolitan planning organizations for the use of construction materials and products that have reduced greenhouse gas emissions. Projects that result in increased travel lanes for single-occupant passenger vehicles are not eligible for this funding.

- $350 million for the Federal Permitting Improvement Steering Council Environmental Review Improvement Fund to help coordinate a more efficient and effective environmental review and permit authorization process for major infrastructure projects.

- $100 million for FHWA development and review of environmental review documents for proposed surface transportation projects, including administrative expenses for FHWA. Eligible entities include states, unit of local government, political subdivisions of states, or metropolitan planning organizations. Eligible activities include funding to conduct environmental review processes, permitting activities, and outreach.

Beyond the aforementioned provisions, the package also includes significant tax credits for the purchase of electric vehicles with associated manufacturing requirements, investment in renewable fuel production, and caps on prescription pricing for those on Medicare. As part of the agreement between Senators Schumer and Manchin, future legislation is to be pursued to expedite permits for certain energy projects, including for fossil fuels. However, it is unclear whether consensus exists in Congress to allow for passage of such proposal.

Fiscal Year 2023 Senate Appropriations Update

Prior to the start of August recess, on July 28, 2022, the Senate Appropriations Committee released a draft fiscal year (FY) 2023 Transportation, and Housing and Urban Development (THUD) appropriations proposal. This proposal essentially represents the draft developed by the majority members of the committee. No markup was scheduled, and actual negotiations on the appropriations bill are likely not to occur until after the November election. The release of the draft Senate THUD proposal comes after the House took action on their THUD bill on July 20, 2022, passing it by a vote of 220-207. While both the House and Senate THUD proposals maintain contract authority for transportation programs, and do not adjust the advanced appropriations included in the Infrastructure Investment and Jobs Act (IIJA), there are some differences:

- The House proposed $4.6 billion for the Capital Investment Grants (CIG) program, $3 billion which would come from annual appropriations and $1.6 billion from the IIJA advanced appropriations. Within the $3 billion from the House appropriations bill, $1.9 billion would be for New Starts projects, $41 million for Core Capacity projects, $94 million for Small Starts projects, and $350 million for Expedited Project Delivery for the CIG Pilot Program. In addition, $600 million is set aside for existing CIG projects with full funding agreements that received a FY 2022 allocation and have either a CIG share of 40 percent or less or a signed full funding agreement under the previous administration. The Senate THUD proposal, on the other hand, includes $4.1 billion for CIG, including the $1.6 billion from IIJA advanced appropriations. Notably absent is any set-aside for existing CIG projects and only $100 million proposed for the Expedited Project Delivery for the CIG Pilot Program. Meanwhile, the Senate proposes increased resources for Core Capacity and Small Starts, at $100 million and $411 million respectively.

- The House bill includes $2.3 billion for the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) competitive grant program, including $775 million from the proposed appropriations bill, and the remainder from IIJA advanced appropriations. The Senate increases the proposed funding for RAISE for a total of $2.53 billion, $1.09 billion which would come from the annual proposed appropriation.

- The Senate proposes $535 million for Consolidated Rail Infrastructure and Safety Improvement (CRISI) grants, compared to $630 million in the House bill. The Senate bill also includes language that allows CRISI grants to be used for commuter rail projects that implement or sustain positive train control projects.

- The Senate THUD proposal includes $1.43 billion for Bus and Bus Facilities grants, more than the $1.35 billion included in the House bill. This difference is due to $110 million more being included in the Senate proposal for BBF formula grants and $60 million more in Low or No Emission Bus competitive grants, with a slight reduction of $30 million in BBF competitive grants.

- The Senate THUD proposal includes $200 million for the Federal-State Partnership for Intercity Passenger Rail grants, compared to $555 million in the House bill. This does not include the $7.2 billion included in advanced appropriations this year from the IIJA.

- The Senate proposal, similar to the FY 2022 appropriations bill, includes significant funding for the Bridge formula program, at $1.38 billion. The

House bill did not propose additional funding for this program. This does not include advanced appropriations included in the IIJA.

- The Senate THUD proposal includes $628.7 million in proposed community project funding requests, compared to $1.275 billion included in the House bill. Notably absent in the Senate THUD proposal are projects within Orange County proposed by Senator Feinstein (D-CA) and Senator Padilla (D-CA), including funding for zero-emission buses. However, the Senate proposal does not impact the projects included for Orange County in the House bill.

It is expected that when Congress returns in September, work will begin on a short-term continuing resolution to maintain current funding levels through the November election. At that point, negotiations will occur on the FY 2023 appropriations bill. OCTA staff will continue to provide updates as more information becomes available.

Summary

A summary is provided of the Inflation Reduction Act and an update on the fiscal year 2023 appropriations process.

Attachments

A. Potomac Partners DC, Monthly Legislative Report – July 2022
B. Potomac Partners DC, Monthly Legislative Report – August 2022

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