June 18, 2020

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Federal Legislative Status Report

Overview

Updates are provided on federal funding efforts to assist in the response to the novel coronavirus pandemic, surface transportation reauthorization legislation, and litigation on recent air quality regulations. Summaries of two transportation hearings are also provided.

Recommendation

Receive and file as an information item.

Discussion

Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act

On May 15, 2020, the House of Representatives passed the HEROES Act, which would provide approximately $3.5 trillion in funding and economic stimulus incentives in response to the novel coronavirus (COVID-19) pandemic. Of specific importance to the Orange County Transportation Authority (OCTA), the HEROES Act would provide tens of billions of dollars in transportation funding. As of the writing of this staff report, the HEROES Act had not yet been taken up in the Senate, and reports indicated that the version of the bill that passed the House was not likely to be enacted, although it will likely form the basis of negotiations for future economic stimulus legislation.

The HEROES Act would provide $15.75 billion in supplemental Federal Transit Administration (FTA) funding, in addition to the $25 billion of transit funding provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act earlier this year. The HEROES Act would appropriate $11.75 billion to the two largest transit formula programs, the FTA 5307 Urbanized Area Formula Grants program, and the FTA 5337 State of Good Repair Grants. Unlike the CARES Act, the HEROES Act limits the distribution of FTA funding to the fourteen largest metropolitan areas. Based on initial staff estimates, Orange County would expect to receive approximately $215 million of the formula transit funding in the HEROES Act with almost $138 million directed to OCTA bus operations and over $76 million allocated to Metrolink, although these preliminary estimates are subject to change. The remaining $4 billion of FTA funding in the HEROES Act would be awarded under a new competitive program with awards prioritized for those transit agencies facing the largest revenue losses. By comparison, Orange County's share of the $25 billion of transit funding from the CARES Act was approximately $230 million with about $158 million for OCTA bus operations and approximately $68 million for Metrolink.

In order to maintain eligibility for the funding provided, the HEROES Act mandates that transit operators take specified measures to protect passengers and coach operators during the COVID-19 pandemic. Specifically, the bill mandates that transit operators require passengers to wear masks or protective face coverings while on board a public transportation vehicle. The bill also requires that transit operators provide masks or protective face coverings, gloves, and hand sanitizer to employees and contractors interacting with passengers, sanitize vehicles and stations in accordance with federal guidance, and develop a system for notifying public transportation employees of positive COVID-19 cases.

The HEROES Act would also provide $15 billion in supplemental Federal Highway Administration (FHWA) funding, whereas the CARES Act did not provide highway funding. The HEROES Act allocates almost all of the additional highway funding to states for projects eligible under the Surface Transportation Block Grant program, one of the most flexible federal transportation funding sources, as well as administrative and operating expenses. The HEROES Act contains language distributing these funds based on the apportionment used in previous funding bills. Based on previous apportionments, OCTA's share of the supplemental highway funding is estimated to be approximately $60 million, although this estimate, too, is subject to change.

While the HEROES Act will likely not move forward, the bill's formula funding would provide much-needed fiscal certainty as OCTA continues to respond to the COVID-19 pandemic. These additional resources will likely be necessary given the sharp decreases in sales and gas tax revenues as people stay home due to social distancing guidelines. Staff estimates that revenues from Orange County's sales tax dedicated to transportation improvements, Measure M2, may decline by as much as much as $4.7 billion over the life of the measure, which runs through 2041. State sales tax revenues, which traditionally fund about half of OCTA's transit operations, may decrease by as much as 27 percent this fiscal year, if using estimates from the Governor's May Revise of the state budget. With these assumptions, even with the CARES Act funding, OCTA could face a $115 million annual structural deficit on its transit operations.

Given the significant fiscal pressures facing OCTA, correspondence was transmitted to the Orange County Congressional delegation emphasizing the agency's support for the supplemental transportation funding in the HEROES Act. One of these letters is included for reference as Attachment A. The letter encourages Congress to consider providing supplemental transportation funding through existing formulas to maximize funding certainty in these uncertain times. OCTA's support for formula funding distributions is consistent both with the OCTA Federal Legislative Platform and the Surface Transportation Reauthorization Principles adopted by the OCTA Board of Directors (Board) on February 24, 2020. Additional updates will be provided on these efforts and on any further economic stimulus proposals as more information becomes available.

Surface Transportation Reauthorization Legislation

The Fixing America's Surface Transportation (FAST) Act, the current bill authorizing federal transportation programs, expires on September 30, 2020. The tremendous budgetary pressures resulting from the COVID-19 pandemic could lead to one, or possibly a series, of short-term extensions for federal transportation programs while Congress works on long-term surface transportation reauthorization legislation. As previously reported to the Board, the Senate Environment and Public Works Committee passed legislation last year that would authorize $287 billion for only highway programs over five years, and the House had previously circulated an outline of its principles for surface transportation legislation.

On June 3, 2020, the House released draft legislative text for its version of a surface transportation reauthorization bill, called the Investing in a New Vision for the Environment and Surface Transportation (INVEST) in America Act. The INVEST in America Act would authorize $494 billion for federal transportation programs over five years, a nearly 62 percent increase over FAST Act authorization levels. The INVEST in America Act would also provide $83.1 billion in emergency supplemental transit and highway funding to respond to the COVID-19 pandemic, including policy flexibilities to ensure this funding is used expediently. The $494 billion in the INVEST in America Act would be distributed to the following programs:

- $319 billion for FHWA highway programs – While the bill largely provides funding through existing highway programs, there are added policy provisions, discussed in greater detail below, that will change how these programs are administered.
- $105 billion for FTA transit programs – The INVEST in America Act would provide a more than 50 percent increase for transit programs. The bill would increase bus funding by 150 percent, including a fivefold increase for the Low or No Emission Vehicle program, a discretionary grant program that funds zero-emission bus technology.

- $60 billion for rail programs – The bill triples funding for Amtrak and creates a new rail modernization program.
- $4.6 billion for safety programs under the National Highway Traffic Safety Administration.
- $5.3 billion for motor carrier safety programs under the Federal Motor Carrier Safety Administration.

The bill's funding increases, while they would benefit OCTA, face significant obstacles as the bill works its way through Congress. According to the Congressional Budget Office, the Highway Trust Fund (HTF) faces a $14 billion revenue shortfall this year alone, and over the next ten years, funding transportation programs at their current levels would result in a $189 billon cumulative deficit for the HTF. Unfortunately, these estimates do not account for the decrease in gas tax revenues as a result of the COVID-19 pandemic, making the House bill's proposed funding increases more challenging. The INVEST in America Act would increase funding for HTF programs by 46 percent, further exasperating the long-term revenue shortfall. Despite the increases in mandatory HTF programs, the INVEST in America Act would also give appropriators more power over transportation funding. The draft bill would subject almost 17 percent of transportation funding to the appropriations process, more than twice the percentage of FAST Act authorizations subject to annual funding bills. Recognizing the ongoing HTF solvency issue, the INVEST in America Act doubles funding for vehicle miles traveled pilot programs, with the goal to find long-term solution to the HTF's structural revenue deficit.

Similar to the outline of House principles released earlier this year, the INVEST in America Act contains significant legislative language to address climate change. The bill would require federal greenhouse gas emissions targets, which could conflict with state emissions laws in California. Staff is reviewing how the bill's two new climate change programs, a $6.25 billion resiliency program and an $8.3 billion carbon reduction program, might affect existing federal transportation programs.

The bill also includes policy changes to the administration of funding programs, including a stronger focus on fix-it-first priorities, expanded eligibility for the use of funds from the Congestion Mitigation and Air Quality program, reforms to the Capital Investment Grants program, and revisions to Buy America requirements. There are also several new funding programs created, including one for metropolitan planning organizations and another focused on projects of national and regional significance. Staff continues to review the legislation to determine implications for OCTA's ability to deliver transportation improvements and services.

As of the writing of this staff report, the bill had not yet been officially introduced. The House Transportation and Infrastructure Committee is reportedly planning to host a hearing and a markup on the INVEST in America Act in the month of June. However, many members have criticized the bill as being a partisan effort. Ultimately, the House bill will have to be reconciled with the legislation considered in the Senate. While the Senate Environment and Public Works Committee has passed a highway title, the Senate Banking, Housing, and Urban Affairs Committee and Senate Commerce, Science, and Transportation Committee must still pass transit and rail titles, respectively. Staff will continue monitoring surface transportation reauthorization proposals and provide additional details as they become available, including a verbal report on the latest developments at the June 18, 2020, meeting of the Legislative and Communications Committee.

Litigation Pertaining to Air Quality Regulations

On May 27, 2020, the State of California, on behalf of the California Air Resources Board, filed a lawsuit against the Environmental Protection Agency and the Department of Transportation challenging recent air quality regulations. The lawsuit, filed in conjunction with 22 other states, the District of Columbia, the City of Los Angeles, and other localities across the country, contests the legality of Part Two of the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule. As previously reported to the Board, the State had already filed a lawsuit against Part One of the SAFE Vehicles Rule. The first lawsuit is focused on California's legal authority to set its own air quality and greenhouse gas emissions standards. The latest lawsuit challenges the fuel standards for passenger cars and light trucks set by Part Two of the SAFE Vehicles Rule. The complex litigation situation is expected to take years to resolve. Staff will continue to provide updates on significant developments that may impact OCTA.

Summaries of Transportation Hearings

On June 3, 2020, the Senate Commerce, Science, and Transportation Committee held a hearing entitled, "The State of Transportation and Critical Infrastructure: Examining the Impact of the COVID-19 Pandemic." At the hearing, the Senators and witnesses discussed the importance of the CARES Act in facilitating the transportation industry's response to the COVID-19 pandemic. The discussion focused on the need to protect and strengthen supply chains, essential workers, and transportation infrastructure, including a consensus for action on infrastructure legislation. There was some disagreement, however, about the specifics of paying for infrastructure investments. The Senators and witnesses also focused on liability protections for certain industries, although detailed proposals were not discussed.

On June 4, 2020, the Senate Environment and Public Works Committee held a hearing entitled “Infrastructure: The Road to Recovery.” The Senators and witnesses discussed how infrastructure legislation could create economic growth and provide certainty for transportation projects and services moving forward. There was consensus that it is an opportune moment to pass a bi-partisan long-term surface transportation legislation to spur the economy and provide the necessary predictability for transportation projects, helping prevent any disruption or delay to transportation projects, and mitigate job losses. Several times, Senators pointed to the highway legislation the committee passed last year as an example of how this could be done, with recognition of the need for it to be combined with funding for multi-modal improvements. However, there was disagreement about how to pay for such a bill, especially considering the current economic situation. While many witnesses emphasized the need to find a long-term funding solution, rather than borrowing or short-term influxes of funding, no specific funding mechanism was endorsed as the best solution. That said, several mechanisms were discussed that could be considered going forward, including a vehicle miles traveled charge, the gas tax, and tolling. Senators and witnesses largely agreed that swift action on a surface transportation bill would fund transportation improvements in communities across the country, stimulating job creation creating jobs for the tens of millions of Americans out of work as a result of the COVID-19 pandemic.

Summary

Updates are provided on the HEROES Act, surface transportation reauthorization, and air quality regulations. Summaries of two transportation hearings are also provided.

Attachments

A. Letter from Steve Jones, Chairman, Orange County Transportation Authority Board of Directors, to Representative Harley Rouda, United States House of Representatives, dated June 5, 2020, re: Support for Transportation Funding in Future Stimulus Legislation
B. Potomac Partners DC, Monthly Legislative Report – May 2020

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