OCTA

August 15, 2019

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Federal Legislative Status Report

Overview

Updates are provided on the federal budget, surface transportation reauthorization, and a pending rulemaking on fuel efficiency standards. Overviews of oversight efforts on federally-funded transportation projects and the implementation of positive train control are also included.

Recommendation

Receive and file as an information item.

Discussion

Federal Funding Update

On July 22, 2019, the President, the Secretary of the Treasury, and the Speaker of the House announced a two-year budget deal to remove any potential procedural hurdles from the budget process for the remainder of the 116th Congress. The compromise increased procedural limits on discretionary spending, known as sequestration, and raised the debt ceiling. Absent a deal, the procedural spending limits would have greatly constrained funding bills, both for defense and non-defense programs. The budget deal increases the spending limits for non-defense programs by $24.5 billion for the upcoming fiscal year, an approximately four percent increase over current non-defense spending levels. The budget deal also provided a roughly similar increase for the following fiscal year as well. This additional spending capacity will allow for more funding to be utilized for federal transportation programs over the course of the next two years. In addition, the budget deal also suspended the debt limit until July 31, 2021, avoiding the financial consequences of a default for years to come.

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The budget deal passed the House on July 25, 2019, by a vote of 284-149. The Senate passed the measure on August 1, 2019, by a vote of 67-28, and it was signed by the President on August 2, 2019. Since budget agreements do not obligate funds, Congress must still pass funding bills before the end of the fiscal year on September 30, 2019, to avoid a partial government shutdown. It is worth noting, however, that the budget deal removes a potentially complex procedural hurdle that could make it more difficult to pass a transportation funding bill. Staff will continue to monitor the appropriations process and provide updates as funding bills continue to move through the legislative process.

Beginning of the Surface Transportation Reauthorization Process

On July 30, 2019, the Senate Environment and Public Works Committee held a markup of its portion of a surface transportation reauthorization bill, notably the provisions governing federal highway programs. This markup is the first legislative activity in the surface transportation reauthorization process. The bill considered at the markup would provide $287 billion over five years solely for highway programs. By comparison, the last surface transportation bill, the Fixing America's Surface Transportation (FAST) Act, authorized $305 billion for all federal transportation programs over a similar timeframe. The bill would reauthorize, and increase funding capacity, for existing federal highway programs, notably the Surface Transportation Block Grant and the Congestion Mitigation and Air Quality Improvement Program, that the Orange County Transportation Authority (OCTA) uses to improve freeways, streets, and roads in Orange County. While the bill makes minor changes, it does not significantly alter the structure of federal highway programs. Aside from the funding increases, the bill also contained the following provisions:

- The bill would streamline the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program. The reforms were based on a bill supported by OCTA, S. 353 (Cornyn, R-TX), and other recommendations that OCTA made to Congressional staff. Perhaps most importantly, the bill would remove from future TIFIA loans the requirement that public agencies prepay certain secured loans, eliminating a burdensome obligation that undermines the value provided by the TIFIA program and limits investment in additional transportation infrastructure. OCTA is actively involved in the TIFIA policy discussions and will continue to be a leader on this issue throughout the reauthorization process.

- The proposal would also codify the "One Federal Decision" policy in order to streamline the various environmental and project reviews required under federal law so that project sponsors can be issued a single environmental decision within two years. This policy was advocated for by OCTA's Breaking Down Barriers Report and subsequent Follow-on Study.

- The bill marks the first time a reauthorization bill includes a title dedicated to climate resiliency. The bill invests $4.9 billion over five years to protect roads and bridges from natural disasters and $1 billion over the course of the bill for alternative fuel infrastructure. Staff will work with stakeholders to thoroughly analyze the eligibility requirements and consequences of these policies, specifically to ensure that this funding benefits transportation investments.

- The bill would also eliminate the $7.6 billion rescission in the FAST Act. At the markup, a standalone legislative vehicle that would immediately repeal the rescission was approved by a voice vote.

This reauthorization proposal passed through the Environment and Public Works Committee by a unanimous 21 to 0 vote. The bill must be considered by the Banking, Housing, and Urban Affairs Committee; the Commerce, Science, and Technology Committee; and the Finance Committee before it can proceed to the Senate floor. The bill currently does not contain any type of mechanism to address the long-term structural deficit facing the highway trust fund, nor does it provide any details on how to fund the proposed spending increases. Leadership of the tax-writing committees, which are responsible for authorizing such revenues, have not provided concrete funding proposals. How a transportation bill will be funded is largely seen as the most controversial part of passing a surface transportation bill. Congress must enact legislation, or an extension, before the FAST Act's expiration on September 30, 2020. Staff will continue to monitor any developments pertaining to this legislation and provide additional updates as the surface transportation reauthorization process continues.

Update on Pending Rulemaking on Passenger Vehicle Emissions

On July 25, 2019, Governor Gavin Newsom announced that California had reached a voluntary agreement with four automobile manufacturers – Ford, Honda, BMW of North America, and Volkswagen Group of America – on annual reductions for vehicle tailpipe emissions. The pending Safer Affordable Fuel Efficient (SAFE) Vehicles Rule would freeze fuel economy standards for new cars at 2020 levels through model year 2026. Per this agreement, the four automakers would voluntarily continue to improve fuel efficiency through model year 2026, although the fuel efficiency improvements would be less than the reductions envisioned in previous emissions rules. While this compromise would make it easier for California to meet environmental goals, it does not resolve the issues created by the SAFE Vehicles Rule, notably the rescinding of California's preemption waiver and the required approval of the air quality model developed by the Air Resources Board. As such, the final version of the SAFE Vehicles Rule, which had not yet been released as of the writing of this staff report, could still have significant impacts on OCTA's planning activities. Administration officials have derided the compromise reached with the four auto producers, claiming that the SAFE Vehicles Rule is necessary to implement a single, national fuel efficiency standard. Members of the House Energy and Commerce Committee wrote a bipartisan letter, included as Attachment A, urging leaders in both the federal government and California to return to the negotiating table. Unfortunately, litigation on the rule appears likely, which means there is still a great deal of uncertainty on this issue. Staff will continue to provide updates as the situation develops.

Oversight of Federal Transportation Investments

Over the last month, two Government Accountability Office (GAO) reports were released and one Congressional hearing was held that focused on the oversight of federally-funded transportation programs, including, but not limited to, the Capital Investment Grant (CIG) program and the Infrastructure for Rebuilding America (INFRA) discretionary grant program.

On July 16, 2019, the House Transportation and Infrastructure Committee's Subcommittee on Highways and Transit held a hearing entitled, "Oversight of the Federal Transit Administration's (FTA) Implementation of the CIG Program." This hearing was the product of a survey of project sponsors conducted by the Transportation and Infrastructure Committee in order to examine the CIG review process. At the hearing, Acting FTA Administrator K. Jane Williams, as well as another panel of witnesses featuring key stakeholders, answered questions about the FTA's delivery of CIG projects. Chair Peter A. DeFazio (D-OR) expressed concerns over the delays and barriers in the CIG process, while Subcommittee Chair Eleanor Holmes Norton (D-DC) highlighted the increased demand for CIG funds. Acting Administrator Williams shared that FTA is moving projects through the program, providing that several grant agreements have been signed by this Administration. Representative Alan Lowenthal (D-Long Beach) asked about the costs of process delays, specifically referencing the OC Streetcar project. Acting Administrator Williams articulated that there were no projects currently awaiting her approval and that the FTA communicates thoroughly with project sponsors to help control costs increases. There were several actions suggested by the other witnesses, such as establishing a fixed CIG share, clarifying the TIFIA share, and changing the risk assessment process.

Similarly, the GAO has provided recommendations for the Administration through two reports on transportation investments. The first GAO report, entitled "Rail Transit: FTA Could Improve Information on Estimating Project Costs," examined the FTA's role in assisting rail transit project sponsors with cost estimations, largely through the use of CIG project data. The GAO report found that the FTA substantially met a majority of GAO's goals for cost estimate best practices. The report did find, however, that FTA did not meet all of GAO's goals.

The report discusses how FTA does not sufficiently assist project sponsors with the evaluation and incorporation of risk and uncertainty in cost estimates. The report also found that FTA did not include guidelines or other information about how project sponsors should adequately assess a risk factor's effect on cost, also known as a sensitivity analysis. In addition to addressing these issues, the report goes on to recommend that FTA create a "central, easily accessible source" for all of FTA's cost estimate information.

The second GAO report, entitled "Discretionary Transportation Grants: Actions Needed to Improve Consistency and Transparency in the Department of Transportation's Application Evaluations," pertains to the process for reviewing applications under the INFRA discretionary grant program. The report found a lack of transparency in follow-up with project sponsors, including uncertainty as to why certain INFRA applicants were given the opportunity to supplement their applications with additional information. The report also found it difficult to determine how the merit criteria was used in advancing projects to the final award stage. The issues detailed in this report are consistent with previous findings from the GAO about the management of other competitive discretionary grant programs. As such, the GAO has included recommendations for the Administration to both communicate and document the rationale for decisions made during future INFRA funding cycles. The GAO has also noted that Congress should consider including language in the next surface transportation reauthorization bill that would require the development and implementation of transparency measures for the project selection process.

Positive Train Control Implementation

On July 31, 2019, the Senate Commerce, Science and Transportation Committee held a hearing entitled, "Next Steps for Positive Train Control (PTC) Implementation." At the hearing, witnesses from the Federal Railroad Administration (FRA) and GAO spoke about the progress towards and challenges in full PTC implementation by the December 31, 2020, statutory deadline. FRA Administrator Ronald L. Batory testified that PTC systems are in operation on approximately 87 percent of applicable route miles, with revenue service demonstration occurring on at least 718 route miles. Administrator Batory did note significant challenges remain in achieving PTC interoperability, which is defined as successful communication between host and tenant locomotives operating on the same segment of track. Only 17 percent of applicable host-tenant relationships are currently achieving PTC interoperability. At the hearing, witnesses also discussed a recent GAO report, entitled "PTC: As Implementation Progresses, Focus Turns to the Complexities of Achieving System Interoperability." The GAO report found that PTC implementation could be complicated by vendor and software issues. The GAO recommended that a risk-based approach be used to prioritize agency resources given that the FRA faces workload challenges through 2020 in realizing full PTC implementation.

Summary

Updates are provided on federal funding, surface transportation reauthorization, and a pending rulemaking on vehicle emissions. Overviews are also provided of the oversight of federally-funded transportation projects and positive train control implementation.

Attachments

A. Letter from leaders of the House Energy and Commerce Committee to the Honorable Andrew Wheeler and the Honorable Elaine Chao, dated June 25, 2019
B. Potomac Partners DC, Monthly Legislative Report – June 2019
C. Potomac Partners DC, Monthly Legislative Report – July 2019

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