



**March 21, 2024**

**To:** Legislative and Communications Committee

**From:** Darrell E. Johnson, Chief Executive Officer

A handwritten signature in blue ink, appearing to read "Darrell Johnson", is written over the "From:" line of the memo.

**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. An update is provided on the funding deal reached as it pertains to programs included in the Transportation, Housing, and Urban Development appropriations bill. Information is provided on the United States Environmental Protection Agency's proposed disapproval of the South Coast Air Quality Management District contingency measure state implementation plan. A House Transportation and Infrastructure Subcommittee hearing related to the implementation of Buy America is summarized.

**Recommendation**

Receive and file as an information item.

**Discussion**

Overview of HR 4366, the Consolidated Appropriations Act of 2024

On March 8, 2024, the President signed HR 4366 (Carter, R-TX), the Consolidated Appropriations Act of 2024. This appropriations bill, known as a minibus, only includes funding for federal agencies and programs covered by the Transportation Housing and Urban Development (THUD), Agriculture, Energy-Water, and Military Construction. As of writing this staff report, negotiations remain ongoing for the remaining six appropriations bills, preventing Congress from signing a full appropriations bill. However, the signing of this bill avoided the need for another continuing resolution to maintain government operations for these federal agencies and funding programs. The bill passed with the Senate voting 75-22 with the House of Representatives (House) voting 339-85.

Since October 2023, Congress had passed several continuing resolutions to maintain government operations funding, the last of which was to expire on March 8, 2024, for federal agencies and programs covered by THUD, Agriculture, Energy-Water, and Military Construction, with the other appropriations bills set to expire on March 22, 2024. It is important to also remember that the Debt Limit Agreement struck last year that suspended the debt limit through January 1, 2025, establishing budgetary caps and accountability measures for future spending. Specifically, since Congress was not able to agree on any of the annual fiscal year (FY) 2024 appropriations bills this year, and every agency was still operating on stopgap “continuing resolutions” as of January 1, 2024, the spending cap for 2024 was reduced to 99 percent of its 2023 level per the Debt Ceiling Agreement. Further provisions stipulate that if any of the 12 appropriations bills are still not enacted by April 30, 2024, then whatever continuing resolution that is in effect at that time will be subject to further reductions across the board of one percent. Since Congress was able to approve an agreement on these six appropriations bills, including THUD, these cuts will not be realized. However, as of writing this staff report, the other remaining appropriations bills still operating under a continuing resolution would be at risk.

For transportation purposes, the bill funds the majority of federal transportation programs at the Infrastructure Investment and Jobs Act (IIJA) authorized levels. At a high level, this year’s FY 2024 THUD appropriations bill included a \$103 billion budget for the United States Department of Transportation (USDOT), which is \$1.3 billion more than the Senate proposal, \$9.7 billion more than the House proposal, and \$2.0 billion more than what was included in the FY 2023 appropriations bill. Specifically, this includes \$3 billion for Federal Rail Administration programs, \$16.6 billion for Federal Transit Administration programs, and \$63 billion for Federal Highway Administration (FHWA) programs. A listing of significant transportation funding programs, the authorized level, and how much each program received both in advanced and current year appropriations is included as Attachment A. It is worth noting, the THUD appropriations bill, together with the IIJA advance appropriations, provides \$3.8 billion for Capital Investment Grants (CIG), which is \$430 million less than the FY 2023 enacted level. This total CIG funding represents 83 percent of the amount authorized in the IIJA. Additionally, the Rebuilding American Infrastructure with Sustainability and Equity discretionary grant program was only funded at \$345 million, which is less than half of the authorization levels included in the IIJA.

The appropriations bills often include some policy provisions to guide the implementation of this funding. One provision included in this bill prohibits transportation funds from being used to enforce coronavirus mask mandates.

Several policy provisions that were included in the House's originally proposed appropriations package were not included, such as prohibiting funds to go toward the California High-Speed Rail Authority or preventing funds to be used on implementing the FHWA greenhouse gas measurement rule. It also does not include a provision that was proposed in the Senate's version that would have expanded public transit agencies' authority to acquire land prior to competition of National Environmental Policy Act review.

Notable in the FY 2024 appropriations package was the continued inclusion of earmarks – known in the appropriations package as “Community Project Funding” or “Congressionally Directed Spending.” This year, the Orange County Transportation Authority (OCTA) received the following:

- \$4 million for the State Route 91 Improvement Project – submitted by Representative Young Kim (R-Fullerton). The Project will add a new eastbound general purpose lane and reconstruct Kraemer Boulevard and Tustin Avenue overcrossings to include standard lanes, shoulders, and sidewalks in each direction. In the FY 2023 appropriations process, Representative Young Kim also secured a \$5 million Community Project Funding (CPF) for Segment 1 of State Route 91 Improvement Project for OCTA.
- \$4 million for the Coastal Rail Corridor Relocation Study – submitted by Representative Mike Levin (D-Dana Point). This amount has increased from the originally proposed \$3.5 million. This study will examine long-term solutions to address slope failure and beach erosion in south Orange County, including potential relocation of the railroad.
- \$3 million for OC Loop, Segments A and B – submitted by Representative Young Kim (R-Fullerton). The OC Loop includes 66 miles of seamless connections that provide the community opportunities to bike, walk, and connect to some of California's most scenic beaches and inland reaches. This funding would be used to close gaps on the trail that cut off continuous use and enhance existing segments, specifically Segment A in the City of La Habra and Segment B in the City of Brea. In the FY 2023 appropriations process, Representative Young Kim also secured \$3 million in CPF for the OC Loop program.

#### Environmental Protection Agency's Proposed Disapproval of South Coast Air Quality Management District Final Contingency Measure State Implementation Plan

The Clean Air Act established a framework for how federal, state, and local governments should work together to improve air quality. The United States Environmental Protection Agency (EPA) sets air quality standards that must be attained or could result in federal sanctions. Emissions from sources like

refineries and manufacturing are regulated by the South Coast Air Quality Management District (AQMD) while the California Air Resources Board (CARB) regulates mobile sources in California, such as cars and trucks. The federal government regulates other emission sources like aircraft, ships, and locomotives.

Even with stringent regulations implemented by AQMD and CARB, the South Coast Air Basin has been unable to demonstrate the ability to meet the current air quality standards by EPA. Because of this, in 2019, AQMD and CARB submitted a Contingency Measure Plan indicating that more must be done related to federally regulated sources to ultimately meet these goals. On February 2, 2024, EPA published its proposal to disapprove the Contingency Measure Plan as provided. If the disapproval were to be finalized, several sanctions would take place. First, 18 months after this action, permit emission reduction offsets would increase. Second, 24 months after this action, there would be a prohibition on federal highway funding for the region. Exceptions would be provided for projects related to safety or transit. And lastly, 24 months after this action, a Federal Implementation Plan (FIP) would be imposed. A FIP is an air quality plan developed by EPA when states cannot meet the requirements imposed by the Clean Air Act.

The initial comment period was originally posted to close on March 4, 2024. With its regional partners and spearheaded by the Southern California Association of Governments (SCAG), OCTA joined a joint request to extend the comment period for 30 days to provide additional time for evaluation of the impacts. This letter is contained in Attachment B. Because of this effort, the opportunity to comment on this proposal will now conclude on April 3, 2024. OCTA, with its partners, has been closely monitoring this issue and is currently evaluating the potential impacts on OCTA's planned projects. It is difficult to make accurate assessments of which projects could experience impacts due to several uncertainties such as a complicated exemption criterion, the delayed nature of the implementation of the highway funding sanctions, and the unknown duration of these sanctions. However, finalizing this proposed disapproval will jeopardize funding for the region, which could delay critical projects related to rehabilitation and other roadway improvements. The trickle-down impact of these highway sanctions would also impact the economy and availability of high-quality construction jobs throughout Southern California. OCTA is working with its public and private partners, including AQMD, SCAG and Mobility 21, to help inform discussions with EPA to develop a path forward that will lead to timely attainment of the air quality standards, clean air that the area residents deserve, and avoidance of the serious consequences in the South Coast region.

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## Summary of House Transportation and Infrastructure Subcommittee on Highways and Transit Hearing on Buy America

On February 15, 2024, the House Transportation & Infrastructure Subcommittee on Highways and Transit held a hearing entitled “*Implementation of Buy America Provisions: Stakeholder Perspectives*.” The hearing explored the challenges and opportunities of implementing Buy America provisions.

Subcommittee Chairman Crawford (R-AR) opened the subcommittee’s hearing on the implementation of Buy America provisions by sharing the history of Buy America, and its changing requirements and provisions over many years. In 2021, the Buy America framework became more complex with the passage of the IIJA, which included the Build America, Buy America Act (BABA). BABA expanded domestic procurement requirements to cover all infrastructure projects receiving federal funding, regardless of whether they were funded through the IIJA or not. Under the Buy America provisions, waivers are granted in certain circumstances where strict adherence to domestic content requirements may be impractical or contrary to public interest. However, the waiver process can be complex and time-consuming.

Chairman Crawford highlighted confusion over Buy America requirements and the waiver process within Buy America. Crawford shared the example that despite direct legislative language, the Administration took 15 months to publish final guidance on Buy America implementation and compliance. At the same time, USDOT was advancing its own waiver and exemption process guidance for grantees and funding applicants, which included the issuance of a waiver for all Buy America requirements for construction materials for awards obligated over a 180-day period. Chairman Crawford shared that this contradictory guidance on Buy America waivers has and continues to cause project delays and has led to cost increases.

Witness Megan Salrin, Legislative Representative for the United Steelworkers (USW), emphasized the value of product-specific waivers, which allow for a more targeted approach to identify gaps in domestic production. Representative Mann (R-KS) inquired about recommendations to improve the waiver issues. Witness Carlos Braceras, on behalf of the American Association of State and Highway Transportation Officials, noted that obtaining a waiver should not be simple; however, it was highlighted that clear guidance on documentation and reduced wait times for obtaining waivers are important in making the waiver process more seamless. The hearing concluded with discussions on improving the implementation of Buy America provisions, including recommendations such as better understanding of the supply chain, market research, addressing project challenges, and sustaining funding for infrastructure projects. The witnesses emphasized the need for open communication between stakeholders and a long-term commitment to the principles of Buy America.

**Summary**

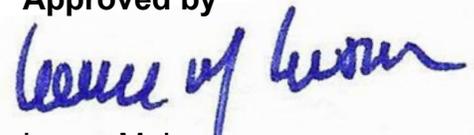
Information is provided on the fiscal year 2024 consolidated appropriations bill. A summary is given of the United States Environmental Protection Agency's recent action to disapprove an air quality plan. A summary is provided for a hearing that discussed implementing provisions under the Buy America Act.

**Attachments**

- A. Fiscal Year 2024 Funding Breakdown
- B. Letter from Kome Ajise, Executive Director, Southern California Association of Governments, and others, to Ginger Vagenas, U.S. Environmental Protection Agency, Region IX, re: Docket ID No. EPA—R09—OAR—2023—0626 Joint Request for a 30-Day Extension of Comment Deadline on EPA Proposed Action to Disapprove South Coast Air Quality Management District Final Contingency Measure State Implementation Plan for the 1997 8-Hour Ozone Standard in the South Coast Air Basin (89 Fed. Reg. 7320), dated February 26, 2024.
- C. Potomac Partners DC, Monthly Legislative Report – January
- D. Potomac Partners DC, Monthly Legislative Report – February

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