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June 26, 2017

Chairman Bill Shuster  
U.S. House of Representatives  
2251 Rayburn House Office Building  
Washington, DC 20515

Chairman Frank A. LoBiondo  
U.S. House of Representatives  
2251 Rayburn House Office Building  
Washington, DC 20515

Ranking Member Peter A. DeFazio  
U.S. House of Representatives  
2164 Rayburn House Office Building  
Washington, DC 20515

Ranking Member Rick Larsen  
U.S. House of Representatives  
2164 Rayburn House Office Building  
Washington, DC 20515

**Subject: SUPPORT LOWENTHAL AND NAPOLITANO FEDERAL AVIATION  
ADMINISTRATION (FAA) AUTHORIZATION AMENDMENT TO  
NEGATE FAA PROPOSED RULE (78 FR 69789)**

Dear Chairman Shuster and LoBiondo, and Ranking Members DeFazio and Larsen:

The Orange County Transportation Authority (OCTA) Board of Directors is pleased to support the amendments requested by Congressman Alan Lowenthal (D-CA) and Congresswoman Grace Napolitano (D-CA), which seeks to clarify an obscure aviation fuel tax issue that has the potential to divert millions of dollars in voter-approved transportation funds to airport improvement projects.

This issue was first created by a Federal Aviation Administration (FAA) rulemaking finalized on December 8, 2014 (79 FR 66282), which reinterpreted its policy and procedures concerning the use of airport revenue to interpret that restrictions on the use of local taxes on aviation fuel enacted after December 30, 1987, now include state and local general sales tax revenue from the sale of aviation fuel. This restriction provides that the taxes generated should be spent on aviation programs, noise mitigation, and airport operating costs.

This reinterpretation is in direct conflict with Congress's original intent when the statutory language was first enacted. In the conference report to the 1987 amendments to the FAA statute, it specifically states that the requirement that local taxes on aviation fuel must be spent on airports "is intended to apply to fuel taxes only, and not to other taxes imposed by local governments, or to state taxes." This is a longstanding interpretation that has been used by state and local tax officials, holding that that the restrictions only apply to fuel taxes, not general sales taxes that extend to aviation fuel.

The Honorables Shuster, LoBiondo, DeFazio, Larsen  
June 26, 2017  
Page 2

The reinterpretation also presents constitutional issues, representing an intrusion of federal power over state and local decision-making, including the expressed will of the voters in enacting locally approved sales tax measures. If the reinterpretation were to move forward, agencies across the country, including OCTA, would see funding diverted from local sales tax measures for voter-approved infrastructure investments. The precedent that this would create could lead to increased voter distrust in enacting these measures, reducing the likelihood for success for future self-help measures. This completely is contrary to existing efforts by the federal government to explore methods for increased federal infrastructure investment.

The amendment proposed by Congresswoman Napolitano and Congressman Lowenthal would simply clarify that general sales taxes, including locally approved sales tax measures are not subject to FAA restrictions, affirming the original intent of Congress and protecting the funds for future infrastructure investment.

A SUPPORT position is consistent with the principles included in OCTA's 2017-18 Federal Legislative Platform that states, "Oppose federal legislative an/or regulatory actions that would divert revenues generated by locally-approved sales taxes, to programs and projects that are not included in the sales tax ordinance."

If you or your staff have any questions regarding OCTA's position on the amendments to the FAA authorization bill, please contact Kristin Essner, Manager of State and Federal Relations, at (714) 560-5754.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Hennessey", with a horizontal line extending from the end of the signature.

Michael Hennessey  
Chairman

MH:ke

c: Darrell Johnson, Chief Executive Officer  
Members, Orange County Congressional Delegation  
Potomac Partners, LLC