



Potomac Partners DC

Monthly Legislative Report – June 2017

President Trump started the month with “Infrastructure Week” that included a series of speeches and events to highlight his upcoming transportation and infrastructure proposal that could be released over the next few months. We are hearing at this point, however, the infrastructure proposal being developed now has shifted focus away from specific projects and/or project lists that were circulating at the beginning of the year to more regulatory reform that accelerates project delivery. For instance, on June 9th the President held an event at the U.S. Department of Transportation (USDOT) in Washington DC where he outlined his goal to reduce permitting time from 10 to 2 years, and streamline regulations that “unjustifiably delay or prevent the completion of surface, maritime, and aviation transportation infrastructure projects”. It is important to note that many of his streamlining proposals we are hearing about follow closely what OCTA had proposed in the Breaking Down Barriers Initiative. Additionally, the President mentioned his administration would be setting up a new office at DOT to help MPOs and transportation stakeholders navigate the red tape, and improve transparency by creating an online dashboard that will allow everyone to track major projects through the approval process. The Council of Environmental Quality at the White House will also be working with USDOT to “root out inefficiency, clarify lines of authority, and streamline federal, state and local procedures so that communities can modernize their aging infrastructure without fear of outdated federal rules getting in the way.” This office would contrast with the traditional mission of the Council of Environmental Quality.

So far the USDOT has not released any additional details on the funding aspects of the infrastructure proposal. The outline we do have from his USDOT speech at the beginning of the month is as follows:

REBUILD AMERICA’S Infrastructure

BY THE NUMBERS

 **\$200 Billion**
INFRASTRUCTURE FUNDING

 **\$15 Billion**
FOR TRANSFORMATIVE PROJECTS

 **8 Year Reduction**
IN PERMIT PROCESS TIME

 **\$100 Billion**
FOR LOCAL PRIORITIZATION OF
INFRASTRUCTURE NEEDS

 **\$25 Billion**
FOR RURAL INFRASTRUCTURE

 **1 Million Apprentices**
IN 2 YEARS

To accelerate the goal of one million apprentices, President Trump did follow up with an Executive Order (EO) this month that would double the amount of apprenticeship grants from \$90M a year to nearly \$200M a year at the Department of Labor. That funding boost is in stark contrast to the President's proposed FY18 budget, which would impose a 36 percent cut to the DOL's job training programs overall. DOL officials said this EO should make it easier for businesses to operate their own unique apprenticeship programs, cutting back red tape at DOL while still providing some basic oversight.

As far as the other funding aspects, it is unclear what "local prioritization of infrastructure needs" will mean and how that \$100B will be allocated. It is also unclear whether the \$15 billion for transformative projects and \$25 billion for rural infrastructure would fall under the \$100 billion for the local prioritization of infrastructure needs. There has also been very little discussion on how much of the \$200B will be for surface transportation projects. The answers to those funding questions will come from Congress.

June Advocacy Meetings

Department of Transportation (DOT) – We facilitated a meeting with the Deputy Assistant Secretary for Intergovernmental Affairs to discuss OCTA's TIFIA loan application. We discussed the importance of the I-405 project locally and the impact it will have regionally. We also discussed next steps for closing the loan at USDOT.

Congresswoman Napolitano – We met with Congresswoman Napolitano and her staff to discuss the 21st Century AIRR Act and the inclusion of an amendment that would address aviation fuel tax issue. We also gave her senior staff an update on OCTA's TIFIA loan application at the DOT and the OC Street Car.

Congressman Alan Lowenthal (D-CA) – We met with Congressman Lowenthal and his senior staff to discuss the aviation fuel tax issue and the impact on Measure M. Because Congresswoman Napolitano would be unable to attend the House T&I Markup of the 21st Century AIRR Act Mr. Lowenthal agreed to speak to the amendment in Committee. We also worked with his office to build support for the amendment. In addition to the aviation fuel tax issue we also provided updates throughout the month on OCTA's TIFIA loan application. Finally, we also discussed a congressional letter of support for OCTA's Low or No Emission Vehicle Program grant a Federal Transit Administration (FTA), which Congressman Lowenthal signed.

Congressman Lou Correa (D-CA) – We met with Congressman Correa's office to discuss the OC street car and the CIG program. We discussed the I-405 highway improvement project and TIFIA loan. We also discussed support for Congressman Lowenthal's amendment to revert the rule back to the 29 years of FAA interpretation that the requirement in federal law on aviation fuel taxes is only applied to excise taxes and not general sales taxes. We also worked with Congressman Correa's office to circulate a congressional letter of support for OCTA's Low or No Emission Vehicle Program grant at FTA.

Congressman Doug LaMalfa (R-CA) – We met with Congressman LaMalfa and his staff to discuss supporting Congressman Lowenthal's amendment to the 21st Century AIRR Act. We discussed the need to support this amendment.

Chairman Jeff Denham (R-CA) – We met with Congressman Denham and his senior staff to discuss the upcoming infrastructure bill and the possibility of including passenger rail projects or policy. We also discussed support for Congressman Lowenthal's amendment for the FAA bill. We also discussed with Mr. Denham's Committee Staff director OCTA's TIFIA loan at USDOT. We were told that the Committee would like to hold a hearing on DOT's TIFIA program sometime this year to discuss ways to improve the program.

Chairman Duncan Hunter (R-CA) – We met with Congressman Hunter to discuss the upcoming infrastructure package and funding for the Capital Investment Grant (CIG) program in the FY 18 Appropriations bill. We also discussed support for Congressman Lowenthal's amendment that would revert back to the 29 years of FAA interpretation that the requirement in federal law on aviation fuel taxes is only applied to excise taxes and not general sales taxes.

Congresswoman Mimi Walters (R-CA) – We met with the Congresswoman and senior staff from the DC office to give an update on the status of OCTA's TIFIA application at the DOT. We discussed expediting final approval through the USDOT Secretary's office and reiterated the need for expedited review and approval before the end of the month. We also discussed a congressional letter of support for OCTA's Low or No Emission Vehicle Program grant.

Congressman Darrell Issa (R-CA) – We met with Congressman Issa's staff to give an update on OCTA's TIFIA loan application at the DOT. We discussed the need for continued congressional support for the Capital Investments Grant (CIG) Program, and specifically support for a FFGA for the OC Streetcar.

Congressman Ed Royce (R-CA) – We met with staff in Congressman Royce's office to give them an update on the I405 improvements and discuss the TIFIA application and our meetings at DOT. In addition, we discussed support for an FFGA for the OC streetcar at the DOT. We also discussed the need for additional funding support for projects of regional and national significance. We also discussed a congressional letter of support for an FTA Low or No Emission Vehicle Program grant.

Congressman Ken Calvert (R-CA) – We met with staff in Congressman Calvert's office to discuss FY18 appropriations and budget and need to include funding for the CIG program. We also discussed the possibility of a consolidated appropriations package before the end of the fiscal year and the inclusion of OCTA priorities into any legislation being seriously considered for passage. We also discussed our progress at the DOT regarding OCTA's TIFIA loan application.

Chairman Sam Graves (R-MO) – We met with Congressman Sam Graves, Chairman of the House Subcommittee on Highways and Transit, and his staff to follow-up on our discussion regarding our priorities for the new infrastructure legislation later this year. We discussed the need for expedited approval of OCTA's TIFIA application. We also discussed support for Congressman Lowenthal's amendment to the 21st Century AIRR Act.

Chairman Mario Diaz-Balart (R-FL) – We met with senior staff in Congressman Diaz-Balart's office to follow-up on bringing the Congressman to Orange County to see firsthand the scope and extent of OCTA's transportation needs. We gave an update on the approval of the I405 TIFIA loan application at the DOT.

Senator Kamala Harris (D-CA) – We met with Senator Harris and her staff to discuss OCTA I405 project and the pending TIFIA loan. We worked with the Senator's transportation staff on follow up questions for Secretary Chao who had previously testified in a Senate Environment and Public Works Committee hearing. Secretary Chao responded earlier this month that the DOT is already working to streamline the application process. However, the Secretary did not reference specifically OCTA's TIFIA application in her written response.

Senator Dianne Feinstein (D-CA) – We met with staff in Senator Feinstein's office several times throughout the month to discuss FY18 appropriations and support for the CIG program, and the projected timing of an FFGA for the OC Streetcar. We also gave an update on our efforts at DOT to expedite the approval of OCTA's TIFIA loan application.

Senate Commerce Committee – We met with key staff on the Senate Commerce Committee to discuss the aviation fuel tax issue. We also discussed support for the Capital Investments Grant (CIG) program and gave the committee an update on OCTA's TIFIA loan application at the DOT, and the importance of the project that addresses one of the most congested stretches of freeway in the Country.

House Transportation and Infrastructure Committee – We continue to meet with key staff at the House T&I Committee to discuss the timing and contents of the infrastructure bill, and the inclusion of key priorities. We discussed the I-405 highway improvement project, including the TIFIA loan application and the Congressional letter of support. We also discussed streamlining provisions being discussed for President Trump's infrastructure package and the inclusion of new financing options.

Senate Environment and Public Works Committee – We met with senior staff on the Senate Environment and Public Works Committee (EPW) to discuss the upcoming infrastructure bill. We discussed the I405 highway expansion and the use of self-help local funding in conjunction with state and federal resources. We also spoke about the need for a streamlined financing process, and discussed our pending TIFIA loan application.

FY 2018 Appropriations & Budget Update

We are still hearing from a number of sources on Capitol Hill that the House could consider an “omnibus” appropriations bill before the August recess. However, with the lack of FY 2018 Budget progress or agreement on spending allocations for each of the 12 Appropriations bills plans for that omnibus in the House could slip into September. As the Appropriations process proceeds, one item we are closely tracking are the funding levels for FTA’s CIG program and the OC streetcar.

As it relates to the budget, the House and Senate held a series of hearings to examine the FY18 Budget Request from President Trump. Where overall spending levels end up remains an open question, but Congress already seems to be funding programs at much higher levels than the Trump budget. Republicans were hoping to adopt a budget resolution with reconciliation instructions for tax reform before the July 4th recess. Ongoing disputes over how much to reduce entitlements such as food stamps, welfare, and Medicaid have delayed plans for that 2018 budget resolution. Consequently, House Budget Committee Chairman Diane Black (R-TN) proposed including instructions in the budget that would include \$200 billion in mandatory cuts through reconciliation procedures. Members of the conservative House Freedom Caucus, whose votes are needed to report the budget from committee, say \$200 billion is not sufficient and have blocked any additional progress this month.

Another issue that will impact these budget negotiations is the need for Congress to address the debt ceiling. On Tuesday June 13th, Secretary of the Treasury Steven Mnuchin told the Senate Budget Committee that Congress may need to act in September to avoid a default, thus increasing the likelihood that a debt-ceiling increase will be tied to a budget agreement before the August recess.

With regard to transportation funding, on June 15th, the House Transportation, Housing, and Urban Development (THUD) Subcommittee on Appropriations held a hearing to examine the fiscal year 2018 (FY18) budget request for the Department of Transportation. The sole witness was Secretary of Transportation Elaine Chao. The primary discussion once again revolved around the President’s plan to privatize the Air Traffic Control system that was the focal point of the House FAA Reauthorization bill marked up in T&I Committee. Ranking Member David Price (D-NC) spoke about the need to preserve the Federal Transit Administration’s Capital Investments Grants Program (New Starts), the TIGER Grant Programs, and State of Good Repair grants. Secretary Chao addressed these concerns by saying that the DOT will be revisiting these programs to find alternative ways to fund these projects moving forward. When questioned about the need to invest in intercity rail and transit Secretary Chao simply restated the four principles outlined in the President’s FY18 budget request.

When asked what would happen if the Appropriations Committees ignored the requests to eliminate the TIGER program and FTA’s New Start programs, Secretary Chao said several times that DOT would “respond to the will of the Congress” and that if there are

future appropriations dictated by Congress, the Department would have no choice but to make those funds available. She cited the line item in the FY 2017 omnibus appropriations bill for the Caltrain electrification project as being the reason that she signed the agreement approving that project.

Congressman David Valadao (R-CA) also brought up the Caltrain Electrification grant funding. He asked the Secretary what would happen to the federal grant if Proposition 1A funds do not become available, and if private funding does not become available for California's High Speed Rail. Secretary Chao responded that she must abide by the legislation of the Appropriations Committee, but that at this time there are no plans to give additional funding to the High-Speed Rail project in California.

Congressman Aguilar (D-CA) discussed the TIGER Grant program and asked the Secretary what data was used in deciding to discontinue the program. The Secretary responded that the TIGER program's "earmark like" nature was a major factor in the decision to eliminate the program. Secretary Chao also said that the DOT would be exploring new criteria that will dictate where the department allocates discretionary funding if the TIGER grant program is not eliminated.

We are also hearing from House Appropriations Committee members that the THUD markup could happen before the end of July. We are already starting to see other appropriations bills be released such as the Energy and Water appropriations bill. The release was in anticipation of a scheduled June 28 subcommittee markup of the bill. This legislation provides a total of \$6.16 billion in appropriations for the civil works (water resources) program of the U.S. Army Corps of Engineers. The appropriators are once again rejecting the cuts proposed by the President in this FY18 Budget. In addition to the funding there are new policy provisions in the bill that authorizes the EPA and the Corps of Engineers to withdraw the controversial 2015 "Waters of the United States" rule immediately, without regard to the Administrative Procedures Act that would require a lengthy comment and study period before withdrawal. (Note: EPA and the Corps already issued a proposed rule on June 27 that would start the notice-and-comment process to withdraw the previous rule.)

FAA Reauthorization & the Aviation Fuel Sales Tax Amendment Update

On June 27th, the House Transportation and Infrastructure Committee held a full committee markup on HR 2997 – The 21st Century Aviation Innovation, Reform, and Reauthorization (AIRR) Act. Chairman Shuster (R-PA) was able to muster a partisan majority to defeat all the major Democratic amendments, and approve the bill, as amended, after almost 7 hours of debate.

During the markup Congressman Alan Lowenthal (D-CA) offered an amendment to the bill to amend 49 U.S.C. §47107 ("grant assurances") that will protect local funding decisions from federal intrusion from this 2014 FAA rulemaking. This is the same amendment that Congresswoman Napolitano (R-CA) offered last year in another FAA

Reauthorization markup that was never finalized before Congress enacted a 14-month extension of the FAA programs in July of 2016.

Chairman Shuster initially opposed Congressman Lowenthal's amendment based on the revenue diversion aspects and the airlines support of the FAA rulemaking. In a colloquy with Mr. Lowenthal, the Chairman said he would be willing to work with Congressman Lowenthal and the cosponsors of the amendment to come up with a mutually agreeable solution. This was one of few amendments that the Chairman offered to work on before the final FAA bill moves to the House floor. The amendment's text is below:

AMENDMENT TO H.R. 2997
Offered By Mr. Lowenthal Of California

Add at the end of title VI, the following:

SEC. 6 __. USE OF REVENUES.

(a) WRITTEN ASSURANCES ON USE OF REVENUE. — Section 47107(b) of title 49, United States Code, is amended—

- (1) in each of paragraphs (1) and (2) by striking "local taxes" and inserting "local excise taxes";
- (2) in paragraph (3) by striking "State tax" and inserting "State excise tax"; and
- (3) by adding at the end the following: "(4) This subsection does not apply to State or local general sales taxes nor to State or local generally applicable sales taxes."

(b) RESTRICTION ON USE OF REVENUES. —Section 47133 of title 49, United States Code, is amended—

- (1) in subsection (a) in the matter preceding paragraph (1) by striking "Local taxes" and inserting "Local excise taxes";
- (2) in subsection (b)(1) by striking "local taxes" and inserting "local excise taxes";
- (3) in subsection (c) by striking "State tax" and inserting "State excise tax"; and
- (4) by adding at the end the following:

"(d) LIMITATION ON APPLICABILITY. —This section does not apply to State or local general sales taxes nor to State or local generally applicable sales taxes."

Despite Chairman Shuster's efforts in Committee, timing of floor activity and passage remains uncertain. Democrats remain unified in their opposition to the bill due to the inclusion of a provision that would privatize the Air Traffic Control (ATC) system that is also largely opposed in the Senate by both Republicans and Democrats. Senate Commerce, Science, and Transportation Committee Chairman John Thune (R-SD) did release his own, more traditional FAA rewrite. The current spending authorization for a number of FAA programs expires on September 30th. Many already expect there will be another short-term extension while the House and Senate leaders determine the best path forward to enact a final bill. Some on Capitol Hill, however, are already starting to speculate that this FAA Reauthorization could become the legislative vehicle to move the larger infrastructure package at some point this year.

H.R. 3001 - The National Multimodal and Sustainable Freight Infrastructure Act
Sponsored by Rep. Alan Lowenthal (D-CA)

Earlier this year during a meeting in D.C. with OCTA board members, Congressman Alan Lowenthal (D-CA) indicated his intention to introduce legislation that would establish a "Freight Transportation Infrastructure Trust Fund." On June 22nd the Congressman introduced H.R. 3001- the National Multimodal And Sustainable Freight Infrastructure Act. This bill would create a national one percent waybill fee on the transportation cost of goods that could raise as much as \$8 billion a year and dedicate this money to freight-related infrastructure projects. The bill would disperse funds through two freight specific grant programs (1) a formula grant in which each state would receive funds each year based on the amount of existing infrastructure within the state, and (2) a competitive grant program that would be open to all local, regional, and state governments. Full text of the bill can be found [here](#).

Original cosponsors in the House include Nanette Barragan (CA-44), Earl Blumenauer (OR-03), Matt Cartwright (PA-17), Judy Chu (CA-27), Robin Kelly (IL-02), Mark Meadows (NC-11), Gwen Moore (WI-04), Grace Napolitano (CA-32), Mark Pocan (WI-02), Dana Rohrabacher (CA-48), and Mark Takano (CA-41).

Passenger Rail Hearings and Updates

On June 22nd, the House Transportation Committee's Subcommittee on Railroads, Pipelines, and Hazardous Materials held a hearing entitled "**Building a 21st Century Infrastructure for America: Challenges and Opportunities for Intercity Passenger Rail Service**". The purpose of the hearing was to examine the results of federal investments in rail over the last decade, new technologies for safety and improved service, and Buy America provisions. Chairman of the Subcommittee, Rep. Jeff Denham (R-CA), spent most of his time discussing the California High-Speed Rail project's \$4 billion in federal investments, rising costs of the project, and whether the money could be better targeted on other projects.

In defending the project, Dan Richard, Chair of the California High-Speed Rail Authority, outlined how they intend to reduce costs for California high-speed rail by operating over Caltrain's tracks from San Jose to San Francisco, and over Metrolink tracks between Burbank and Los Angeles Union Station to Anaheim. It was also pointed out how \$934 million in state funding dedicated to the high-speed rail project will be used to help fund the Caltrain electrification project. Mr. Richard said that California High-Speed Rail could meet all requirements of the bond act with this blended service approach in the end portions of the alignment. He said that speed limitations would only apply in the end portions, in the urban areas. Chairman Denham asked why the California High-Speed Rail Authority asked the DOT for additional funding without informing the Subcommittee. Mr. Richard said that the project would not be asking for more federal funding for the initial operating segment.

Chairman Denham asked Mr. Nissenbaum, Associate Administrator for Railroad Policy and Development, Federal Railroad Administration, if the FRA had conducted an audit of

the California High-Speed rail project. Mr. Nissenbaum replied that Inspector General has conducted 14 audits of the HISPA program, and that the California High-Speed Rail program remains “high-risk”. Chairman Denham said that the Committee would be requesting copies of the guarantee and/or cost-analysis used prior to approving the tapered match before requesting an audit. Both requests will be submitted in writing. Another frequent topic of discussion during the hearing centered on Buy America provisions. Mr. Nissenbaum testified that the FRA will continue to enforce Buy America provisions and that the new administration strongly supports them.

The other focal point of the hearing was the need for improvements to the Northeast Corridor (NEC). According to the NEC Commission, the \$38 billion in investment is needed to bring the NEC to a state of good repair and outlines nine priority projects for 2018-2022 that would total \$22.8 billion. Charles W. “Wick” Moorman IV, President and Chief Executive Officer for Amtrak, urged the Committee to include a robust investment in intercity passenger rail in the infrastructure package that could launch a new area of rebuilding and improvement that would simultaneously jump start the nation’s economy and provide more mobility. He also outlined how Amtrak can continue to make improvements for customer service, safety, infrastructure, and fleet conditions

Just prior to this hearing, Amtrak submitted a budget request to Congress for \$1.6B from the FRA. It also requested a new budget structure in which the 2018 transportation appropriations bill would also include \$3.5 billion in “advance appropriations” to cover Amtrak in FY 2019 and 2020 as well. This contrasts with the \$790 million requested by the Trump administration in their formal FY18 budget request. Amtrak’s total request is the same amount authorized by the FAST Act in 2015. It seems unlikely at this point that the Budget Committees will approve any advance appropriations. In other Amtrak news, on June 26th, it was announced that Richard Anderson would be the next President and Chief Executive Officer (CEO). Mr. Anderson is a former CEO of both Delta and Northwest Airlines and seems to have very little rail experience. He will begin as a Co-CEO on July 12th to ensure a smooth transition with current CEO Wick Moorman through Dec. 31, 2017, at which time Moorman will become an advisor to Amtrak.

Notice of Funding Availability for Infrastructure for Rebuilding America (INFRA) Grants (formerly FASTLANE)

The Department of Transportation (DOT) plans to announce the Infrastructure for Rebuilding America (INFRA) discretionary grant program through a Notice of Funding Opportunity (NOFO) in the Federal Register on June 29.

The INFRA program will make approximately \$1.5 billion available to projects that are in line with the Administration’s principles to help rebuild America’s crumbling infrastructure. INFRA aims at improving a pre-existing grant program established in the FAST Act of 2015 and utilizes updated criteria to evaluate projects that align national and regional economic vitality and leverage more non-federal funding. The new program hopes to grow the impact of projects by leveraging more capital and allowing innovation in the project

delivery and permitting process. INFRA will also target performance and accountability in project execution.

The INFRA Grant program will also offer assistance with permitting for project sponsors. Applicants may resubmit their previous FASTLANE application, but must explain how the project competitively addresses the improved INFRA Grant criteria. This NOFO will remain open for 120 days. In the coming weeks, USDOT will be also be hosting a summit in D.C., webinars, and direct outreach to explain changes in the INFRA program criteria and will also assist the applicants on how to submit new or updated applications.