



July 20, 2017

To: Legislative and Communications Committee

From: Darrell Johnson, Chief Executive Officer

Subject: Federal Legislative Status Report

Overview

An overview is provided of the Orange County Transportation Authority's Breaking Down Barriers initiative, including recent comments submitted to the federal government on methods to improve the project delivery process. Advocacy updates are provided on efforts to stabilize the Highway Trust Fund and issues related to the Federal Aviation Administration reauthorization and local sales tax measures. An update is provided on the federal fiscal year 2018 appropriations process.

Recommendation

Receive and file as an informational item.

Discussion

Breaking Down Barriers Update

At the June 15, 2017, Orange County Transportation Authority (OCTA) Legislative and Communications Committee (Committee) meeting, a request was made by Committee Chairman Shawn Nelson for staff to provide background information on OCTA's Breaking Down Barriers initiative. In March 2011, the OCTA Board of Directors (Board) approved the final draft of a report prepared by Cambridge Systematics entitled "Accelerating Federal Program and Project Delivery," commonly referred to as the Breaking Down Barriers Report. That 2011 report culminated a two-year Board initiative to provide specific proposals for accelerating the federal transportation project approval process. These proposals were identified as methods that, in turn, could save money, expedite job creation, and shorten the estimated 14-year duration between the time of funding availability and project completion.

The recommendations contained in OCTA's 2011 Breaking Down Barriers Report were drafted into legislative language and introduced by Representative Gary Miller (R-CA) in August 2011 as the Breaking Down Barriers Act of 2011 (H.R. 2766). Both the Senate and House versions of the subsequent reauthorization bill, Moving Ahead for Progress in the 21st Century (MAP-21), contained provisions intended to reduce the time and paperwork associated with the delivery of projects, largely taken from H.R. 2766.

When MAP-21 was scheduled to expire in 2014, OCTA recognized the opportunity to once again look at possible legislative provisions to reduce administrative delays and expedite project delivery in order to save money and accelerate job creation. As with the 2011 report, OCTA contracted with the firm of Cambridge Systematics to do a follow-on study to Breaking Down Barriers, using the 2011 study as a baseline. The follow-on study looked at policies from the original 2011 study that had already been enacted by the federal government and analyzed any gaps that existed, suggesting additional areas that could be addressed in future legislation.

Regarding the MAP-21 streamlining provisions, the follow-on study report concluded that 11 of the 23 original high potential actions identified in the 2011 report were addressed by MAP-21. The study recommended that in participating in regulatory implementation, and when providing input with future legislative efforts, OCTA should be guided by four goals:

1. Predictability. Fostering predictability in the federal review processes will accelerate project delivery;
2. Partnership. Improving the partnership between federal agencies and their grantees would create a shared goal of expedited project delivery;
3. Time and Paperwork Reduction. Simplifying federal review, where appropriate, to reduce time and paperwork for project delivery;
4. Confronting Project Risks. Installing strong leadership to help focus federal activity and inspire an environment which allows taking necessary and mitigated risks.

The report also identified five particular areas of further streamlining potential:

1. Overreaching with prescriptive planning requirements that slow down implementation;
2. The need for greater flexibility in advancing right-of-way acquisition;
3. Unified requirements across the U.S. Department of Transportation modes for multimodal projects in order to minimize unnecessary regulatory burden;
4. The continuing need to establish firm and limiting permitting times;

5. The need to allow federal funds to be used earlier in the planning process for detailed planning and engineering.

Based upon this analysis, outreach, and third party reporting, the follow-on study report recommended 16 legislative provisions summarized around the themes of Transparency, Accountability, and Collaboration. These proposals are outlined in Attachment A.

Since the publication of the follow-on study, OCTA sought continued support from Congress and the Administration to help allow the recommendations to be implemented. On June 8, 2017, the USDOT began soliciting comments to identify unnecessary regulatory and administrative hurdles to the delivery of transportation infrastructure projects. In order to inform that process, OCTA submitted a comment letter on July 5, 2017, detailing the findings of the Breaking Down Barriers follow-on study, highlighting the recommendations for administrative and regulatory improvements to streamline project delivery. This letter is included as Attachment B. This process is consistent with the President's Executive Order 13771, which requires federal agencies to scrutinize their regulations to decrease regulatory burden. Staff will continue efforts to promote the policies outlined under the Breaking Down Barriers effort as the Administration and Congress analyze methods for reducing project delivery cost and expedite delivery.

Highway Trust Fund (HTF) Revenue Deficit

The U.S. House of Representatives Committee on Ways and Means started its work on tax reform legislation with its first public hearing on May 18, 2017. The Committee on Ways and Means' efforts highlight the major revenue issues that Congress must address, one of which is the HTF's revenue deficit caused by a federal gas tax that was last raised in 1993 and is not indexed for inflation. Tax reform marks a unique opportunity to permanently address this issue.

On June 12, 2017, Representatives Sam Graves (R-MO) and Eleanor Holmes Norton (R-DC) led a bi-partisan letter to the leadership of the Committee on Ways and Means urging that a long-term fix for the HTF's revenue deficit be included in tax reform legislation. The letter was signed by more than half of the Members of the U.S. House of Representatives. In addition, Congressman Graves wrote an op-ed on the issue in *The Hill* on June 26, 2017, arguing that the revenue issue should be solved now as opposed to waiting for the next surface transportation bill. On June 30, 2017, OCTA wrote a letter to the Committee on Ways and Means leadership supporting the efforts of Representatives Graves and Norton. A support position is consistent with OCTA's Federal Legislative Platform, which supports federal legislation that

adequately and sustainably funds transportation projects. A copy of OCTA's letter is included as Attachment C.

Federal Aviation Administration (FAA) Reauthorization

On June 27, 2017, the U.S. House of Representatives Transportation and Infrastructure Committee approved H.R. 2997, the 21st Century Aviation Innovation, Reform, and Reauthorization Act. During the House Transportation and Infrastructure Committee's markup, Representatives Alan Lowenthal (D-CA) and Grace Napolitano (D-CA) offered an amendment to clarify an aviation fuel tax issue that could divert millions of dollars in voter-approved transportation funds. The amendment addresses an FAA rulemaking on December 8, 2014 (79 FR 66282) that would require state and local general sales tax revenue from the sale of aviation fuel to be reinvested in airport operations.

Representatives Lowenthal and Napolitano also offered an amendment to clarify that general sales taxes, including locally approved sales tax measures, are not subject to the FAA's rules requiring that the funds be reinvested in airports. The amendment's interpretation is consistent with congressional intent as evidenced by comparable conference report language in the 1987 legislation on the use of aviation fuel taxes. OCTA wrote a letter in support of the amendment, consistent with OCTA's 2017-18 Federal Legislative Platform that expresses opposition to federal legislation diverting revenues from locally-approved sales taxes. A copy of the letter is included as Attachment D.

The amendment was ultimately withdrawn at the markup, although House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) engaged in a dialogue with Representative Lowenthal on the issue. Chairman Shuster opposed the amendment, citing the airline industry's support for the rule. In the discussion with Representative Lowenthal, the Chairman recognized that municipal entities must tax themselves to finance transportation projects, and he offered to work with Representative Lowenthal on a mutually agreeable solution. Staff will continue to engage in these discussions in coordination with the Self-Help Counties Coalition.

Update on the Budget Process for Federal Fiscal Year (FFY) 2018

The House Appropriations Committee has begun its work on funding bills for FFY 2018. The five bills introduced thus far have largely ignored many of the spending cuts proposed by the President, increasing spending levels by about \$26.7 billion. With additional bills, including the bill for transportation, to be introduced in the next few weeks, it is expected that this difference will widen. In order to fund many of these expenditures, including the President's request to

increase defense spending, Congress would have to lift the spending caps above existing levels. This discussion is to occur later in 2017. In the meantime, while it is expected Congress will have to pass a continuing resolution in September to allow for an extension of existing funding levels for at least part of 2018, recent discussions indicate that Congress will likely not be following the President's budget request in their appropriations decisions.

Summary

A summary is provided on OCTA's Breaking Down Barriers initiative. Overviews are provided on advocacy related to the Highway Trust Fund and aviation fuel taxation. An update is provided on the federal fiscal year 2018 appropriations process. The June monthly activity report from OCTA's Washington advocate, Potomac Partners DC, is provided as Attachment E.

Attachments

- A. Follow-On Study on Breaking Down Barriers
- B. July 5, 2017, Letter from OCTA to United States Department of Transportation, Transportation Infrastructure: Notice of Review of Policy, Guidance and Regulation
- C. June 30, 2017, Letter from OCTA to House Ways and Means Committee, Support a Long-Term Fix for the Highway Trust Fund Structural Revenue Deficit in Tax Reform Legislation
- D. June 26, 2017, Letter from OCTA to House Transportation and Infrastructure Committee and Subcommittee on Aviation, Support Lowenthal and Napolitano Federal Aviation Administration Authorization Amendment to Negate FAA Proposed Rule (78 FR 69789)
- E. Potomac Partners DC, Monthly Legislative Report, June 2017

Prepared by:

Kristin Essner
Manager, State and Federal Relations
External Affairs
(714) 560-5754

Approved by:

Lance M. Larson
Executive Director,
External Affairs
(714) 560-5908