



Potomac Partners DC

Monthly Legislative Report – July 2017

July Advocacy Meetings

Department of Transportation (DOT) – We met with the Deputy Assistant Secretary for Intergovernmental Affairs, and the Deputy Assistant for Congressional 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. The Department of Transportation signed the TIFIA loan application on July 17th and the loan was closed on July 26th.

Congresswoman Napolitano – We met with Congresswoman Napolitano and her staff to discuss the Aviation Fuel Tax issue and give an update on the issue. We discussed the Senate's THUD report language that would recommend to the FAA to delay the rulemaking for one year, and a strategy for a more permanent solution in the FAA Authorization bill that could be considered in the House in September.

Congressman Alan Lowenthal (D-CA) – We met with Congressman Lowenthal and his senior staff multiple times during the month to discuss OCTA's TIFIA loan application. We also discussed the aviation fuel tax issue and next steps for a legislative solution in the FAA Authorization legislation in the House. We also discussed support for the CIG program and the funding levels in the House and Senate THUD appropriations bill and the report language that was included with the Committee passed bills.

Congressman Lou Correa (D-CA) – We met with Congressman Correa's office to follow-up on our discussion regarding the OC street car and the CIG program. We discussed the I-405 highway improvement project and TIFIA loan status with the Congressman's COS multiple times this month. We also discussed support for legislation like 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 with his staff.

Chairman Jeff Denham (R-CA) – We met with Congressman Denham and his senior staff to discuss the upcoming infrastructure bill and the inclusion of possible funding provisions into the tax reform process expected to begin in the next three months.

Congresswoman Mimi Walters (R-CA) – We discussed with the Congresswoman and senior staff from the DC office the status of OCTA's TIFIA application at the DOT.

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 later gave an update on the loan's approval from 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. We discussed the limited funding in the House THUD bill for the CIG program and the need for ongoing congressional support.

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. Chairman Royce was actively engaged in helping move the TIFIA along at USDOT. In addition, we discussed support for an expedient FFGA for the OC streetcar at the DOT. We also discussed the need for additional funding support for projects of regional and national significance and the current criteria for TIGER and other discretionary grant programs.

Congressman Ken Calvert (R-CA) – We met with staff in Congressman Calvert’s office to discuss FY18 appropriations and budget and the need to include funding for the CIG program. We also discussed the remaining 8 appropriations bills and the schedule for their passage in early September. We also discussed our progress at the DOT regarding OCTA’s TIFIA loan application and later gave an update on the loan’s signature.

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 and later gave the Congressman an update on the loan’s approval. We also discussed support for Congressman Lowenthal’s amendment to the 21st Century AIRR Act and the need to preserve the integrity of locally enacted sales tax measures that provide critical funding to address local highway, transit, and other transportation requirements.

Chairman Mario Diaz-Balart (R-FL) – We met Congressman Diaz-Balart, Chairman of the House THUD Appropriations Subcommittee, and his staff multiple times this month to discuss his FY18 appropriations bill. Early in the month we met with the Congressman to discuss the need for an expeditious decision on OCTA’s TIFIA loan application. We updated the Congressman on the loan’s approval later in the month. We also discussed the need for an FFGA for the OC Streetcar. Finally, we briefed the Congressman on the needs of the County in preparation for his trip to Orange County in August.

Senator Kamala Harris (D-CA) – We met with Senator Harris and her staff to discuss OCTA I405 project and the pending TIFIA loan. We later followed-up with the Senator and her staff on the loan’s approval. We also discussed support for the CIG program and for the Santa Ana Streetcar, which is expecting an FFGA in the Fall.

Senator Dianne Feinstein (D-CA) – We met with staff in Senator Feinstein’s office several times throughout the month to discuss FY18 appropriations and the projected timing of an FFGA for the Santa Ana Streetcar. We also gave an update on OCTA’s TIFIA loan, which was signed in late July.

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 OCTA's TIFIA loan application on multiple occasions before multiple committee hearings this summer.

U.S. DOT Announces a \$628.93 Million Loan to Orange County Transportation Authority Toward Funding the I-405 Improvement Project

On July 26th, Secretary of Transportation Elaine Chao announced that the DOT's Build America Bureau closed a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan that would provide a \$628.93 million Transportation Infrastructure Finance and Innovation Act (TIFIA) loan for the I-405 Improvement Project. The loan is being offered at 2.91% with a term of 35 years. Over the course of the month we met with several key Congressional members and US DOT staff to discuss how the project will replace 18 bridges, add one new general-purpose lane in each direction, and add an additional express lane in each direction. We stressed the fact that the project is estimated to create 42,000 jobs during construction, reduce travel times, increase goods movement efficiency, and improve safety.

Aviation Fuel Excise Tax

We have been working with both Congressman Alan Lowenthal and Congresswoman Grace Napolitano on a long-term solution that effectively 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. The primary legislative vehicle for that language is the FAA Authorization. The House, however, was unable to act on their version of a long-term FAA Reauthorization (H.R. 2997 – 21st Century AIRR Act) before the August recess this month as originally planned. The Senate as well did not have time to pass their version of the FAA Reauthorization (S. 1405 – Federal Aviation

Administration Reauthorization Act of 2017). The Senate is planned to be in session for additional time in August, during which it could consider S. 1405, but seems unlikely at the time of this report. When both the House and Senate return in September it is most likely that they will start working on a short-term extension to give members time to conference differences between the bills.

The Senate THUD appropriations bill did include language recommending a delay in implementing the recent FAA decision to change the definition of “local taxes on aviation fuel.” That language is as follows:

THUD REPORT

Policy and Procedure Concerning the Use of Airport Revenue.

The Committee is aware of several self-help counties that have enacted sales tax measures to fund local transportation improvements. These sales tax measures are difficult to enact and provide critical funding to address local highway, transit, and other transportation requirements. Several of these counties contain airports and have been receiving funds raised on the sales tax associated with the sale of aviation fuel. In 2014, the FAA finalized a rule construing the term “local taxes on aviation fuel” to apply to all sales taxes rather than specific excise taxes on aviation fuel. This change in definition diverts funding away from projects outlined in local sales tax measures, violating promises made to the voters who approved these measures. According to the FAA rules, local transportation sales taxes collected on the sale of aviation fuel would have to be spent in accordance with FAA rules governing such expenditures. The Policy and Procedure Concerning the Use of Airport Revenue [Docket No. FAA-2013-0988] is scheduled to be enforced by the end of December 2017. Given the utility of sales tax measures to address local transportation needs and reduce the burden on Federal spending, the Committee encourages the Secretary to postpone the enforcement of Docket No. FAA-2013-0988 and work with local governments and the FAA to develop a path forward to allow the use of local sales tax revenues generated on the sale of aviation fuel to be used in a manner consistent with their enactment.

This short-term delay would provide time to continue working on compromise FAA Authorization language that would provide a long-term solution for OCTA. The timing of a final conference between the House and Senate for the FAA Reauthorizations could be as early as late September. We are also considering similar language in tax reform legislation. Chairman Shuster has gone on record saying that he is willing to work with all interested parties on this issue moving forward.

FY 2018 Appropriations & Budget Update

July was a very busy month regarding appropriations and budget activity in the House and Senate. On Tuesday July 18th, the House Budget Committee released a (FY18) Budget Resolution entitled “Building a Better America – A Plan for Fiscal Responsibility.” The overall discretionary spending for FY18 is set at \$1.132 trillion (\$621.5B for defense / \$511B for non-defense).

The Budget Resolution also includes reconciliation instructions for deficit-neutral tax reform that Congress is likely to take up in the next few months. The budget would also include \$203 billion in mandatory savings and reforms for entitlement accounts. The policy language regarding tax reform is below:

SEC. 526. (b) POLICY ON TAX REFORM. It is the policy of this concurrent resolution that the House should consider comprehensive tax reform legislation that promotes economic growth, creates American jobs, increases wages, and benefits American consumers, investors, and workers by:

- (1) simplifying the tax code to make it fairer to American families and businesses and reducing the amount of time and resources necessary to comply with tax laws;
- (2) substantially lowering tax rates for individuals and consolidating the current seven individual income tax brackets into fewer brackets;
- (3) repealing the Alternative Minimum Tax;
- (4) reducing the corporate tax rate; and
- (5) transitioning the tax code to a more competitive system of international taxation.

The Senate budget resolution is pending and could be finalized before the end of the fiscal year in order to use the budget reconciliation process to enact tax reform with a simple majority of votes in the Senate. Despite no official budget, Senate Appropriations committee did adopt a plan of spending allocation on July 20th. The Senate total is \$16.1 B above the President's budget request.

The House Appropriation Committee has approved 12 appropriations bills. Four of these bills (Defense, Energy & Water, Leg. Branch, and MilCon-VA) were packaged into a minibus and passed on the House floor (235-192) on July 27th.

The House is expected to consider the THUD appropriations bill on the House floor the first two weeks of September. The House version of the THUD appropriations bill would eliminate the TIGER grant program and include \$1.7B for the Capital Investment Grant program with very little funding potentially for new start programs like the OC Street Car that is expected to sign an FFGA in FY18. The Senate version on the other hand strengthens the TIGER program that Senator Collins called "an essential government program" and included an increase of \$50 million from the previous year and provides over \$2.1B for the CIG programs with adequate funding for new start projects in the pipeline. Report language direct USDOT to continue the CIG program was also included in both the House and Senate committee reports.

With regard to the CIG program, Secretary Chao testified before the Senate Appropriations committee on July 13th (two weeks before the Senate THUD Markup) where Secretary seemed to indicate that she would fund any New Start project in the pipeline that has current funding for FY17. The Secretary, however, still did not commit to signing any new FFGA that promise money in FY18 and beyond. A chart comparing the FY17 enacted, President's budget request and the proposed FY18 House and Senate funding levels for transportation is below.

It is important to note that the total Senate allocation for the fiscal year 2018 THUD appropriations bill is \$60 billion-- a \$2.4 billion increase above current funding levels and \$2.3B higher than the House FY18 THUD bill. Overall, the Senate THUD bill that was also approved by the full Committee on July 27th would spend more than the House bill in almost every DOT account except for the FRA's Federal-State Partnership State of Good Repair Grants.

FY18 US DOT Appropriations Levels
(In Thousands of \$\$)

	FY 2017 Enacted	FY2018 Request	FY 2018 House	FY 2018 Senate
FHA				
Limitation on Administrative Expenses	432,547	442,692	442,692	442,692
Federal-Aid Highways	43,266,100	44,234,212	44,234,212	44,234,212
Emergency Relief (GF)	1,532,017	0	0	0
Rescission of Formula Contract Authority	-857,000	0	-800,000	0
Federal-Aid Highways (Exempt CA)	739,000	739,000	739,000	739,000
TOTAL FHWA	44,680,117	44,973,212	44,973,212	44,973,212
Federal Motor Carrier Safety Administration				
Operations and Programs (Ob. Limit.)	277,200	283,000	283,000	283,000
Motor Carrier Safety Grants (Ob. Limit.)	367,000	374,800	374,800	374,800
Pre-FY17 CVISN Balances (Ob. Limit.)	0	0	100,000	0
Pre-FY17 Contract Authority Rescission	0	0	0	-117,716
TOTAL, FMCSA	644,200	657,800	757,800	540,084
National Highway Traffic Safety Administration				
Operations and Research (Discr.)	180,075	152,510	180,075	162,000
Operations and Research (Ob. Limit.)	145,900	149,000	149,000	149,000
Total, Operations and Research	325,975	301,510	329,075	311,000
Highway Traffic Safety Grants (Ob. Limit.)	585,372	597,629	597,629	597,629
TOTAL, NHTSA	911,347	899,139	926,704	908,629
Federal Railroad Administration				
Safety and Operations	218,298	199,000	218,298	210,000
Railroad R&D	40,100	39,100	40,100	40,100
Consolidated Rail Infra/Safety Grants	68,000	25,000	25,000	92,547
Federal-State SOGR Partnership Grants	25,000	25,945	500,000	26,000
Rail Restoration/Enhancement Grants	5,000	0	0	5,000
TOTAL, FRA	1,851,398	1,049,045	2,211,398	1,973,647
Federal Transit Administration				
Administrative Expenses	113,165	110,795	110,795	113,165
Transit Formula Grants (Ob. Limit)	9,733,706	9,733,353	9,733,353	9,733,353
Technical Assistance & Training	5,000	0	5,000	0
Capital Investment Grants	2,412,631	1,232,000	1,752,990	2,132,910
Capital Investment Grants (Rescission)	0	0	0	0
Washington Metro	150,000	149,715	150,000	150,000
TOTAL, FTA	12,414,502	11,225,863	11,752,138	12,129,428

U.S. Department of Transportation Announces \$226.5 Million Funding Opportunity to Improve Transit Bus Service

On July 12th, the DOT announced the opportunity to apply for approximately \$226.5 million in competitive grant funding for transit bus programs. The “Grants for Buses and Bus Facilities Infrastructure Investment Program” is a congressionally authorized program to improve the conditions of buses and bus facilities nationwide. The application period closes on August 25th. Eligible applicants are fixed bus route operators, states, and local governmental authorities. All projects must comply with Buy America standards.

House Transportation & Infrastructure Committee Hearing: FAST Act Implementation: Improving the Safety of the Nation’s Roads.

On July 18th, the House Transportation and Infrastructure Subcommittee on Highways and Transit held a hearing entitled “*FAST Act Implementation: Improving the Safety of the Nation’s Roads*”. The main purpose of the hearing was to examine the implementation of the FAST Act, specifically concerning key safety principles. Witnesses included representatives from the FHA, FMCSA, National Highway Traffic Safety Administration, and the National Transportation Safety Board. House subcommittee members such as Chairman Graves (R-MO) focused on the effectiveness of FAST Act regulation and related rulemakings-- foreshadowing the potential for more regulatory reform to expedite project delivery in the potential infrastructure legislation. Congressman Denham (R-CA) also discussed the implementation of a rule that would allow NEPA reciprocity in California that would eliminate the duplication of environmental reviews. Another topic of discussion was highway safety issues and the increased use of distracting technology like cellphones and screen devices in vehicles.