OCTA

February 15, 2018

To: Legislative and Communications Committee

From: Darrell Johnson, Chief Executive Officer

Subject: Federal Legislative Status Report

Overview

Updates are provided on the recent federal funding bills, Orange County Transportation Authority's advocacy efforts on the OC Streetcar project, tax legislation signed into law in December 2017, the President's infrastructure proposal, and pending confirmations to the Department of Transportation. A summary of the United States Senate Environment and Public Works Subcommittee hearing on freight movement is provided.

Recommendation

Receive and file as an information item.

Discussion

Government Funding Update

On December 8, 2017, the President signed a continuing resolution (CR), a "stop-gap" funding measure to ensure funding for all departments of the federal government through December 22, 2017. The previous government funding bill was set to expire on December 8, 2017. This two week CR passed the Senate by a vote of 81-14 and the House of Representatives by a vote of 235-193. On December 22, 2017, the President signed another CR to fund the federal government through January 19, 2018. This CR passed the Senate by a vote of 66-32 and the House by a vote of 231-188. This CR included a provision to prevent the budgetary effects of the tax reform legislation from being counted for purposes of the Statutory Pay-As-You-Go Act of 2010, which triggers automatic spending cuts if Congress enacts legislation changing taxes, fees, or mandatory expenditures in a way that increases projected deficits.

On January 18, 2018, the House passed a CR that would have lasted through February 16, 2018. That CR included a six-year authorization of the Children's Health Insurance Program among other minor changes made to health care programs. On January 19, 2018, a Senate motion to invoke cloture on this measure failed by a vote of 50-49, causing a partial government shutdown at midnight on January 20, 2018. The government shutdown lasted until January 22, 2018, when Congressional leaders agreed to a CR through February 8, 2018. This CR passed the House by a vote of 266-150 and the Senate by a vote of 81-18, and it included the same policy provisions as the version of the CR that passed the House just a few days earlier.

On February 6, 2018, the House passed a CR through March 23, 2018. The next day, Senate leaders agreed to a bipartisan budget deal that they attached to the House-passed CR. Due to Senate procedural rules, the bill was not approved by the Senate and House until early on February 9, 2018. As a result, there was another partial government shutdown for a few hours. The CR, with the budget deal, passed the House by a vote of 240-186 and the Senate by a vote of 71-28. It was signed into law by the President later that day. The bipartisan compromise increased discretionary spending for the next two fiscal years well beyond the budget caps imposed by the Budget Control Act of 2011. For the remainder of the 2018 fiscal year, the bill will increase discretionary defense spending by $80 billion and non-defense discretionary spending by $63 billion. These funding increases will allow for additional funding capacity in an omnibus funding bill that Congress is expected to consider in the coming weeks. Specifically, the budget deal will likely result in increased funding for transportation programs, including the Capital Investment Grant program that is expected to fund the OC Streetcar project.

The budget deal also extended the debt limit until March 2, 2019, provided more than $80 billion in disaster funding, and extended through tax year 2017 the Alternative Fuel Excise Tax Credit that had expired at the end of tax year 2016. The bill had just been released as this staff report was prepared. As such, staff will provide any additional details at the February 15, 2018, Legislative and Communications Committee meeting.

OC Streetcar Advocacy Update

In November 2017, Chairman Michael Hennessey, Legislative and Communications Chairman Shawn Nelson, Chief Executive Officer (CEO) Darrell Johnson, and Government Relations staff traveled to Washington, D.C. to discuss the OC Streetcar project with Members of Congress and officials from the Department of Transportation. The group emphasized the benefits of the project for the region and highlighted the need for the Secretary of

Transportation to sign the full funding grant agreement so that the Federal Transit Administration (FTA) can continue its activities with the Orange County Transportation Authority (OCTA). As a result of these successful meetings, members of the Orange County Congressional delegation sent Transportation Secretary Elaine L. Chao a letter in support of the OC Streetcar. The letter, sent on December 20, 2017, is included as Attachment A.

In January 2018, Chairwoman Lisa A. Bartlett, CEO Darrell Johnson, and Government Relations staff traveled to Washington, D.C. to introduce the new Chair. The delegation also used the meetings with the Congressional delegation and the FTA as an opportunity to discuss the timing of a full funding grant agreement for the OC Streetcar project and provide follow-up materials from the December meetings.

Tax Legislation

On December 22, 2017, the President signed into law the tax reform legislation that was discussed at the November Legislative and Communications Committee meeting. The final conference report passed the House by a vote of 224-201 and the Senate by a vote of 51-48. The bill is expected to increase the federal deficit by $1.456 trillion over the next decade, and as noted above, these lost revenues will not be counted for purposes of the Statutory Pay-As-You-Go Act of 2010.

The final bill did not include a long-term fix for the Highway Trust Fund's structural revenue deficit, contrary to what many transportation groups advocated. The final agreement repealed the tax exemption for advance refunding bonds, which will likely increase borrowing costs for transportation agencies that issue these instruments. The conference report also limited the employer deduction for transportation benefits and repealed the employee deduction for bicycle benefits. Without these tax incentives, commuter benefits will become more expensive, potentially causing employers to alter or terminate their current benefit packages. The final bill did not repeal the tax exemption for private activity bonds or the tax credit for plug-in electric vehicles, each of which was included in the House bill. The conference report included a projected $324.4 billion worth of repatriated earnings over the next ten years, an amount that was significantly more than the original proposals. This lost revenue could have otherwise been used to fund infrastructure projects.

Prior to the bill's passage, the Southern California Association of Governments worked with transportation agencies across the region to outline how the different policy changes that were being discussed would impact the delivery of transportation projects. OCTA provided input on the agency's concerns and signed the final letter, which is included as Attachment B.

Infrastructure Proposal

On January 30, 2018, the President used the State of the Union Address to reiterate his support for an infrastructure package by asking Congress to produce a bill that invests $1.5 trillion in infrastructure projects. That night, the White House released a fact sheet, included as Attachment C, to give some guidance on what the Administration would like to see in such a bill. According to this document, the President plans to divide the new funding as follows:

- Half of new funds would go to incentivizing new, non-federal revenue;
- A quarter of funds will address rural infrastructure needs; and
- Significant funding to prioritize projects based on community need.

The structure of the $1.5 trillion in funding is still unclear, and the President has offered little detailed guidance on how Congress should finance such an investment. The President's 2018 Budget proposed a $1 trillion infrastructure package but only planned to appropriate $200 billion, with the remainder dependent on the generation of new state and local funding sources and increased private investment. In the State of the Union, the President noted that "[e]very Federal dollar should be leveraged by partnering with State and local governments and, where appropriate, tapping into private sector investment." Following the speech, news reports have indicated that the infrastructure package would only have a federal investment of $200 billion, and lawmakers on both sides of the aisle questioned how Congress would structure the proposal.

In details leaked prior to the State of the Union, there were several areas of potential concern with the principles for an infrastructure package. For instance, the funding meant to incentivize new state and local investment, the largest portion of funding in the proposal, is reported to exclude any investment passed more than three years ago. As such, funding provided by Measure M2, which passed in 2006, would not qualify as a new local or state funding source, potentially lowering the ranking for projects using this local funding. In addition, reports revealed that there would be limits on what percentage of the project cost could be funded by the infrastructure package, with some funding from the proposal being limited to no more than 20 percent of the total project cost. As a result, most projects funded through the infrastructure package would be largely dependent on state and local funding. Staff will closely monitor the situation and give a verbal update at the February 15, 2018, Legislative and Communications

Committee meeting should there be any significant developments since the drafting of this staff report.

Pending Nominations to the Department of Transportation

On July 10, 2017, the President nominated Ronald L. Batory, former President and CEO of Conrail Inc., to be the Administrator of the Federal Railroad Administration (FRA). The nomination was initially referred to the Senate Committee on Science, Commerce, and Transportation, where it was reported favorably on August 2, 2017. Batory's nomination is awaiting confirmation by the full Senate. On January 26, 2018, it was reported that Heath Hall, who had been serving as Acting Administrator while Batory awaited confirmation, was taking an extended leave. As a result, Chief Counsel Juan Reyes became the Acting Deputy Administrator of the FRA.

On September 11, 2017, the President nominated Paul Trombino, former Director of the Iowa Department of Transportation, to be the Administrator of the Federal Highway Administration. The nomination was referred to the Senate Committee on Science, Commerce, and Transportation, where it was reported favorably on October 25, 2017. On December 11, 2017, Trombino removed himself from consideration, citing family concerns. No replacement has been named at the writing of this report.

The President has yet to nominate an Administrator to the FTA. Staff will keep the OCTA Board of Directors updated as the nominations and confirmations progress.

Senate Committee on Environment and Public Works Subcommittee Hearing on Freight Movement

On December 20, 2017, the Senate Committee on Environment and Public Works Subcommittee on Transportation and Infrastructure held a hearing entitled, "Freight Movement: Assessing Where We Are Now and Where We Need To Go." During the hearing, Senators from both sides of the aisle acknowledged the need for greater infrastructure investment, particularly in freight infrastructure. Subcommittee Chairman James Inhofe (R-OK) highlighted that the FAST Act included $6.3 billion in freight formula funding and $4.5 billion in grant programs to improve freight movement. Both Chairman Inhofe and the witnesses agreed that more was needed and that federal funds should be prioritized to ensure that they have the largest impact on the economy.

Chris Spear, President and CEO of the American Trucking Associations, discussed how a 20 cent per gallon fee built into the price of transportation fuels collected at the terminal rack, as well as an increase in registration fees, could be considered as potential funding sources for future infrastructure projects. He also called for Highway Trust Fund dollars to be restricted to highways and requested that Congress maintain the existing caps on non-highway spending under the FAST Act freight formula and Infrastructure for Rebuilding America grant program. Mark Policinski, speaking as a member of the Coalition for America's Gateways and Trade Corridors, urged Congress to lift the caps on non-highway spending, noting that freight moves on networks other than highways as well.

Summary

Updates are provided on the government funding bills, OCTA's advocacy efforts, tax legislation, the infrastructure package, and pending confirmations to the Department of Transportation. A summary of the Senate hearing on freight movement is also provided. The November, December, and January monthly activity reports from OCTA's Washington advocate, Potomac Partners DC, are provided as Attachment D, E, and F, respectively.

Attachments

A. Letter from Orange County Congressional Delegation to the Honorable Elaine L. Chao, Secretary, U.S. Department of Transportation supporting a Full Funding Grant Agreement for the OC Streetcar, dated December 20, 2017
B. Joint letter from Southern California Transportation Agencies to the Honorable Paul D. Ryan, Speaker of the House of Representatives, and the Honorable Mitch McConnell, Senate Majority Leader, on tax reform legislation, dated November 29, 2017
C. THE WHITE HOUSE, Office of the Press Secretary, FOR IMMEDIATE RELEASE, January 30, 2018
D. Potomac Partners DC, Monthly Legislative Report, November 2017
E. Potomac Partners DC, Monthly Legislative Report, December 2017
F. Potomac Partner DC, Monthly Legislative Report, January 2018

Prepared by:

Dustin Sifford
Senior Government Relations Representative,
External Affairs
(714) 560-5389

Approved by:

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