OCTA

August 16, 2018

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Federal Legislative Status Report

Overview

An update is provided on the 2019 appropriations process and proposals to increase federal transportation funding. A summary of a hearing on online sales tax collection is also included.

Recommendation

Receive and file as an information item.

Discussion

Appropriations Update

In July, the Senate took up a House-passed bill to fund a portion of government operations as part of its “minibus” appropriations strategy. The version of this legislation that passed the House did not fund the Department of Transportation. When the bill reached the Senate floor, an amendment added the Senate version of the 2019 transportation funding bill, which provides funding at levels significantly above the President’s budget request. As previously reported to the Legislative and Communications Committee (Committee), the Senate transportation funding bill would provide $26.6 billion for the Department of Transportation, including $2.55 billion for the Capital Investment Grants (CIG) program. The Senate also adopted an amendment to ensure that the CIG program is administered consistent with previous practices, limiting the Federal Transit Administration’s ability to make administrative changes to the program. In addition, the Senate added an amendment to prohibit the procurement of mass transit and rail cars and buses from manufacturers owned or subsidized by the Chinese government. The Senate passed the measure on August 1, 2018 by a vote of 92-6. The bill cannot proceed until the House returns from recess on September 4, 2018.

Infrastructure Proposals

On July 23, 2018, House Transportation and Infrastructure Committee Chairman, Bill Shuster (R-PA) released a discussion draft of legislation to modernize federal transportation policy. This legislative language has not yet been introduced as a bill. The proposal has four titles:

- Highway Trust Fund (HTF) changes
  - Creation of a commission to study the long-term solvency of the HTF
  - HTF reforms, including taxes on fuel used for public transportation and an increase of the federal gas tax
- Infrastructure investments
  - One-year extension of surface transportation authorization
  - Authorization of program for nationally significant projects
  - Multi-year funding increases for certain programs
- Innovative methods to finance transportation projects
- Policies to expedite project delivery

The HTF Commission envisioned by the proposal would consist of 15 members appointed by the Secretary of Transportation and relevant committee leadership in the House and Senate. The proposal calls for the Commission to file a report with Congress by January 15, 2021, that identifies the nation's surface transportation needs, determines revenues necessary to meet these needs, and identifies potential revenue sources. The report would also be required to recommend one legislative solution, which could be pursued under an expedited process in both the House and Senate.

Chairman Shuster proposes to increase revenue for the HTF by approximately $283.5 billion over ten years, which is nearly double the $144 billion in transfers from the General Fund made in the last decade. While additional transportation funding could benefit the Orange County Transportation Authority (OCTA), two of the revenue proposals are of concern. First, the Chairman proposes to repeal the current federal gas tax exemption for both diesel and alternative fuel used for public transit. This proposal would create a federal gas tax burden for OCTA when one had not previously existed. Based on preliminary fuel consumption estimates, OCTA's operational costs could potentially increase by $2 million to $3.7 million annually. Similarly, the proposal calls for a 4.3 cent tax on fuel used by certain passenger trains, which could increase operating costs for the Los Angeles – San Diego – San Luis Obispo Rail Corridor Agency and Metrolink by hundreds of thousands of dollars annually. Other proposals to increase revenue include an incremental increase in the federal gas tax from 18.3 cents to 33.3 cents over four years, a ten percent excise tax on electric vehicle batteries, and a ten percent excise tax on bicycle tires.

The Chairman would use these new revenues to extend all federally authorized transportation programs for one year and increase funding for certain programs. The proposal would authorize the Better Utilizing Investments to Leverage Development (BUILD) Grant program, formerly known as the Transportation Investment Generating Economic Recovery (TIGER) program. The TIGER program, now the BUILD Grant program, has never been authorized in statute. The Chairman proposes to authorize $3 billion annually for the program, with minimum grant awards of $25 million, a 30-percent set-aside for rural projects, and a $500 million set-aside for nationally significant projects. Similar to the President's infrastructure proposal, the Chairman proposes to set aside $3 billion of this funding for infrastructure assets owned by the private sector. In addition, the proposal would increase transportation funding beyond authorized levels for the next three fiscal years for the Surface Transportation Block Grant Program, Bus and Bus Facility Grants, Amtrak, Consolidated Rail Infrastructure and Safety Improvements Grants, and the Federal Railroad Administration's Federal-State Partnership for State of Good Repair Program.

The proposal also includes various policies to expedite project delivery. Notably, the Chairman proposes to create a categorical exclusion for multimodal projects, allowing a project approved by one modal agency to be excluded from similar reviews conducted by a different modal agency. The Chairman proposes to put into statute the One Federal Decision policy, which allows project sponsors to work with only one federal agency throughout the federal review process rather than coordinating with multiple agencies as is required under current law. Finally, the proposal would authorize the use of funds to guarantee loans through the Railroad Rehabilitation and Improvement Financing Program.

Chairman Shuster's proposal was released following conflicting measures on replacing the federal gas tax with a carbon tax. On July 19, 2018, the House approved a nonbinding resolution declaring that a carbon tax would be "detrimental to the United States economy" by a vote of 229 to 180. The following week, Representative Carlos Curbelo (R-FL) introduced legislation that would replace the federal gas tax with a carbon tax, which is estimated to provide an additional $285 billion for the HTF. Staff will continue to monitor these proposals, and any others, in the coming weeks to continue to keep the Committee informed of potential policy changes that may impact OCTA's operations.

Hearing on Online Sales Collection

On July 24, 2018, the House Judiciary Committee hosted a hearing entitled, "Examining the *Wayfair* Decision and its Ramifications for Consumers and Small Businesses." The hearing focused on the potential ways in which Congress could respond to the *South Dakota v. Wayfair, Inc.* case, in which the

Supreme Court ruled that states are allowed to collect sales tax from out-of-state retailers conducting business exclusively online in the state. The discussion at the hearing touched on the need for a fair multijurisdictional tax system, the availability of software solutions, and the appropriate minimum standards states should pursue in collecting these revenues. There was bipartisan agreement in that the *Wayfair* decision did not address how states will react, and the hearing did not provide clarity on what the next steps might be. Staff will continue to monitor the situation in order to keep the Committee updated.

Summary

Updates are provided on the appropriations process, proposals to reform federal transportation funding, and a hearing on online sales tax collection.

Attachments

A. Potomac Partners DC, Monthly Legislative Report – July 2018

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