



**October 17, 2019**

**To:** Legislative and Communications Committee

**From:** Darrell E. Johnson, Chief Executive Officer

**Subject:** Federal Legislative Status Report

### **Overview**

Updates are provided on the 2020 appropriations process and a rulemaking on fuel efficiency standards. Overviews of hearings on commuter rail and congestion management policies are also included.

### **Recommendation**

Receive and file as an information item.

### **Discussion**

#### **Federal Funding Update**

On September 27, 2019, the President signed a continuing resolution to fund government operations at current funding levels through November 21, 2019. The continuing resolution passed the Senate by a vote of 81 to 16 and the House by a vote of 301 to 123. The short-term continuing resolution allows Congress to continue its work on funding bills for the next few weeks. The continuing resolution also provided a few short-term policy extensions, none of which are considered controversial, to prevent any significant interruptions in government operations while Congress finalizes yearlong funding bills. One of the extensions ensures that transit funding is not adversely affected during the course of the continuing resolution.

In conjunction with the continuing resolution, Congress continued its work on yearlong appropriations bills. While the House passed a transportation funding bill earlier this year, the Senate started drafting its versions of the funding bills after the budget deal was signed into law by the President in August. On September 19, 2019, the Senate Appropriations Committee reported its version of the transportation funding bills by a vote of 31 to 0. The Senate version of the Transportation, Housing, and Urban Development funding bill would provide

\$74.3 billion in discretionary funding. The Senate transportation funding bill was written to the spending levels agreed to in the budget deal. As such, the Senate bill provides \$1.5 billion less than the House version. It is worth noting that the Senate version of the bill is a \$3.2 billion increase over the currently enacted spending levels and, like the House bill, the Senate bill funds many transportation programs at or above authorized levels.

The Senate transportation bill would provide \$86.6 billion for the Department of Transportation, which is \$167 million above the currently enacted level. The Senate bill provides \$1 billion for Better Utilizing Investments to Leverage Development (BUILD) grants. It also directs the Secretary to ensure geographic equity in BUILD award selections, limits any single state to ten percent of total BUILD funding, and requires that 30 percent of BUILD funding go to rural projects. Unlike the House version, the Senate transportation funding bill does not include report language expressing concern with the project selections processes for discretionary transportation programs. Following the trend of recently enacted funding bills, the Senate bill provides \$2.7 billion in additional appropriations from the General Fund to increase highway formula programs above authorized levels, including \$1.25 billion for the Surface Transportation Block Grant Program and railway-highway grade crossings. Unfortunately, the Senate bill also directs \$1.25 billion toward the highway plus-up for a bridge repair program in less densely populated states, for which California is not eligible.

The Senate bill provides \$560 million in additional General Fund appropriations for transit programs. The Senate bill only provides \$1.978 billion in funding for the Capital Investment Grants (CIG) program. While this funding level is over \$300 million less than recently enacted funding bills, appropriators argue that it fully funds current Full Funding Grant Agreements and projects in the CIG pipeline. The Senate bill includes \$2 billion in Amtrak funding, as well as \$557 million for other discretionary rail programs, including the Consolidated Rail Infrastructure and Safety Improvement (CRISI) Program. The Senate bill also contains the report language included in previous bills that directs the Federal Aviation Administration to work with state and local governments 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.” While this language is vague, it illustrates a commitment from Congress on a collaborative approach to resolving the ongoing dispute regarding the taxation of aviation fuel.

Since the House transportation funding bill was not written to the spending levels agreed to in the budget deal, the differences between the House and Senate versions must be reconciled. These differences must be worked out, or another continuing resolution must be agreed to by November 21, 2019, to avoid a partial



government shutdown. Staff will continue to monitor the appropriations process and provide updates as funding bills move through Congress.

#### Update on Rulemaking on Passenger Vehicle Emissions

On September 27, 2019, the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) jointly published a final rule entitled, "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program." For background, the EPA is responsible for the approval of Clean Air Act pre-emption waivers, whereas the NHTSA is responsible for setting tailpipe emissions standards. As expected, the first part of the SAFE Vehicles Rule revoked California's Clean Air Act pre-emption waiver, the legal authority underpinning California's more stringent tailpipe emissions standards and zero-emission vehicles targets. The final rule states that California's Clean Air Act waiver undermines the NHTSA's statutory authority to implement a single, national fuel efficiency standard. The first portion of the SAFE Vehicles Rule argues that statute grants NHTSA limited waivers for states and localities to enforce their own tailpipe emissions standards and, as such, California's pre-emption waiver is not justifiable under the Clean Air Act because it complicates implementation of a unified national tailpipe standard.

Before the final rule was published in the Federal Register, California's Attorney General, along with the Attorneys General from 22 other states, filed a lawsuit against the EPA and NHTSA joint rule. The lawsuit's main argument is that California's Clean Air Act waiver should be governed by the provisions of the Clean Air Act, not the statutory provisions governing NHTSA's rulemaking authority over tailpipe emissions. Specifically, the lawsuit argues that the breadth of the NHTSA's waiver authority is not explicitly included in the Clean Air Act's list of factors to consider when evaluating a pre-emption waiver. The lawsuit points out that the statutory context governing the NHTSA's authority to implement tailpipe emissions has not traditionally been a consideration in the history of California's Clean Air Act waiver, which was first granted by Congress in 1967. The first part of the SAFE Vehicles Rule argues that the waiver is being revoked in a joint action by EPA and the NHTSA, which makes the statutory context governing both agencies relevant to the waiver determination. The litigation will likely result in a protracted legal dispute that is expected to make its way to the Supreme Court, which means that the legal questions raised by the final rule may not be decided for months or even years. Staff will continue to monitor the litigation and report on any significant developments.

Contrary to expectations, the first part of the SAFE Vehicles Rule did not explicitly invalidate California's air quality model, resulting in significant uncertainty surrounding the project-level consequences of the final rule. The air quality model could still be invalidated by additional agency actions, such as the next part of the SAFE Vehicles Rule. While the second part of the SAFE

Vehicles Rule is likely to set national tailpipe emissions standards, the timing of its release is currently unknown. California's air quality model could also be automatically invalidated under existing air quality conformity regulations. The timing and consequences of a decision regarding the air quality model will depend on when and how the agencies decide to act. As of the writing of this staff report, staff was working with various stakeholders and experts to best determine exactly when and how these policy changes would affect Orange County Transportation Authority's (OCTA) projects.

On September 24, 2019, the EPA Administrator wrote a letter to the California Air Resources Board, included as Attachment A, regarding California's Clean Air Act State Implementation Plan (SIP). In the letter, the EPA Administrator discusses California's SIP processing backlog and requests an update by October 10, 2019, as to what steps California would be taking to expedite SIP processing. A withdrawal or denial of the SIP would initiate a two-year statutory clock on sanctions that could result in the loss of federal highway funds for California. A SIP action could also have air quality conformity impacts, the timing of which depends on the findings made in the SIP action. In response to this letter, Senator Dianne Feinstein (D-San Francisco) sent a letter, included as Attachment B, to the EPA Deputy Inspector General requesting an investigation into the status of the SIP processing backlog. Between the pending litigation and lack of clarity regarding California's air quality model and the SIP processing backlog, there is still significant uncertainty regarding exactly how and when the SAFE Vehicles Rule will impact OCTA's projects. Staff will continue to provide updates as the situation develops.

#### **Congestion Management Pricing Hearing**

On September 11, 2019, the House Transportation and Infrastructure Committee's Subcommittee on Highways and Transit held a hearing entitled, "Pricing and Technology Strategies to Address Congestion and Financing of America's Roads." The discussion focused on the importance of identifying a funding source for potential surface transportation legislation, of which one solution could be congestion management pricing. Transportation and Infrastructure Committee Chair Peter A. DeFazio (D-OR) communicated his frustration about the lack of identified revenue sources to stabilize transportation funding, noting his preference to raise the federal gas tax. Chair DeFazio also expressed skepticism about the viability of congestion pricing, specifically discussing equity concerns. Representative Harley Rouda (D-Newport Beach) complimented the work OCTA is doing on the Interstate 405 Improvement Project, especially since most of the funding is coming from the county's local sales tax measure, Measure M2, and not the federal government. He also briefly discussed the need to make additional improvements to streamline the Transportation Infrastructure Finance and



Innovation Act loan process, allowing additional projects to access the financing tool.

#### Commuter Rail Hearing

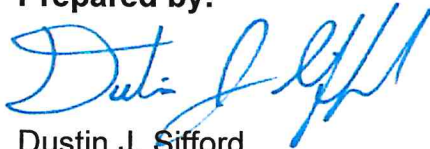
On September 24, 2019, the House Transportation and Infrastructure Committee's Subcommittee on Railroads, Pipelines, and Hazardous Materials held a hearing entitled, "Challenges and Opportunities for Commuter Railroads." The discussion focused on the importance of improving commuter rail safety and reliability. Stephanie Wiggins, Chief Executive Officer of Metrolink, testified about Metrolink's suggestions for improving commuter rail service. Specifically, Metrolink is requesting full eligibility for commuter rail agencies in discretionary rail programs, specifically the CRISI Program; more funding for railroad crossway and right of way improvements; and a new dedicated funding source for commuter rail that does not supplant existing sources. The hearing also featured a discussion about the ongoing implementation of Positive Train Control (PTC) safety technology, specifically the need for additional funding to cover the cost of maintaining PTC technology each year. According to a witness from the American Public Transportation Association, the cost of ongoing PTC implementation is approximately \$160 million annually.

**Summary**

Updates are provided on federal funding and a rulemaking on vehicle emissions. Overviews are also provided of hearings on commuter rail and congestion management policies.

**Attachments**

- A. Letter from United States Environmental Protection Agency Administrator Andrew R. Wheeler to Ms. Mary D. Nichols, Chair of the California Air Resources Board, dated September 24, 2019
- B. Letter from United States Senator Dianne Feinstein to the Honorable Charles Sheehan, Deputy Inspector General of the Environmental Protection Agency, dated September 27, 2019
- C. Potomac Partners DC, Monthly Legislative Report – August 2019
- D. Potomac Partners DC, Monthly Legislative Report – September 2019

**Prepared by:**

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

**Approved by:**

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