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Monthly Legislative Report – September 2019

FY20 Budget and Appropriations Update

This month Congress passed a Continuing Resolution (CR) to extend funding for the federal government past the end of the Fiscal Year 2019. The President signed the CR into law on September 27th. Section 115 of the CR (HERE) postponed a pending $7.6 billion rescission in highway funds that would have applied to states' unobligated balance of highway contract authority as of September 30th and taken effect next year. It also included a number of health program extenders and an extension of the National Flood Insurance Program. All of the extensions in the bill, including federal spending, will expire on November 21st, 2019. A Continuing Resolution was necessary because this month the Senate was still working on crafting and approving their 12 individual appropriations bills after waiting for a budget deal to set topline numbers, which was passed in early August. Once the Senate completes some of their bills, they will begin their formal conference negotiations with the House. Informal discussions between House and Senate leaders on the compromise funding levels for each bill are already underway and should help facilitate quick passage of compromise bills once the Senate acts.

As it related to transportation funding, the full Senate Appropriations Committee approved the FY20 Transportation, Housing and Urban Development Appropriations bill on September 19th by a vote of 31-0. Timing of the bill's floor consideration has not been scheduled, but Committee staff believe that it could be considered later this month. Details of the bill are as follows:

Department of Transportation – $86.6 billion in total budgetary resources for the U.S. Department of Transportation (DOT) for FY2020, which is $167 million above the FY2019 enacted level. The total funding for DOT includes $25.3 billion in discretionary appropriations and $61.3 billion in obligation limitations. Funding is prioritized for programs that improve the safety, reliability, and efficiency of the transportation system.

- **BUILD Grants** – $1 billion for Better Utilizing Investments to Leverage Development (BUILD) grants.
    - At least 30% for rural
    - Must use FY17 NOFO selection criteria
    - Up to $15 million on planning, preparation, or design
    - Up to 20% for TIFIA and RRIF subsidies

- **Highways** – $46.3 billion in obligation limitation from the Highway Trust Fund for the Federal-aid Highways Program, consistent with the FAST Act. In addition, the bill includes $2.7 billion discretionary appropriations for highway programs, of which $1.25 billion is for the Surface Transportation Block Grant funds and for the elimination of hazards at railway-highway grade crossings, and $1.25 billion is for bridge repairs in small states with high rates of bridges not in good condition. The bill also provides $100 million for the Appalachian Development Highway System and $100 million for the Nationally Significant Federal Lands and Tribal Projects grant program. The bill maintains flexibility for State Departments of Transportation to repurpose some stagnant project funding for current infrastructure projects.

- **Aviation** – $17.7 billion in total budgetary resources for the Federal Aviation Administration (FAA), which fully funds all air traffic control personnel, including more than 14,000 air traffic controllers, and more than 25,000 engineers, maintenance technicians, safety inspectors, and operational support personnel. The bill fully funds the Essential Air Service program for all communities as well as the Contract Towers program.

- **Aviation Safety**: The bill increases funding for aviation safety by $31.8 million above the budget request, requires FAA to respond to all Inspector General and National Transportation Safety Board investigations and audits, and requires FAA to finalize its rulemaking on safety management systems for aircraft manufacturers.

- **Rail** – $2.8 billion for the Federal Railroad Administration (FRA). This includes $2 billion to Amtrak for the Northeast Corridor and National Network, continuing service for all current routes. The bill also provides $255 million for the Consolidated Rail Infrastructure and Safety Improvement grants program, $300 million for Federal-State Partnership for State of Good Repair grants, and $2 million for Restoration and Enhancement grants.

- **Transit** – $13.0 billion for the Federal Transit Administration (FTA). Transit formula grants total $10.1 billion, from the Mass Transit Account of the Highway Trust Fund, consistent with the FAST Act. In addition, $560 million is provided from the general fund for transit infrastructure grants. The bill provides a total of $1.978 billion for Capital Investment Grants (CIG), fully funding all current "Full Funding Grant Agreement" (FFGA) transit projects, as well as new projects that have met the criteria of the CIG program. Other CIG details are as follows:
    - $1.5 billion for New Starts (must be under 51% fed share, as long as FTA doesn't discriminate against projects >40% fed share)
    - $300 million for Core Capacity
    - $78 million for Small Starts
    - $100 million for expedited project delivery (p3) projects
    - Bill text also bans the implementation of the "Dear Colleague" letter
    - Total covers all projects w/FFGAs and all projects expected to request an FFGA in FY20
        - According to sources, the Senate Minority Banking and Appropriations staff signed-off o the funding level

- *Report language* reiterates that they must move projects through the pipeline and not discriminate based on the extent of the local commitment or geographic diversity.
- *Report* prohibits FTA from putting out revised programmatic guidance
- *Report* once again chastises FTA for not putting out regulations on evaluating Core Capacity projects or establishing a program of interrelated projects.
- *Report* directs quicker action on requests for Letters of No Prejudice.
- *Report* directs FTA to continue sending monthly updates on projects in the pipeline.

- **Maritime** – $904 million for the Maritime Administration to increase the productivity, efficiency, and safety of the nation's ports and intermodal water and land transportation. This includes $300 million for the Maritime Security Program, $91.6 million for the Port Infrastructure Development Program, and $300 million for the third National Security Multi-Mission Vessel. This training ship is essential for the State Maritime Academies to provide the nation with a strong merchant marine workforce.

- **Safety** – The legislation contains funding for the various transportation safety programs and agencies within the U.S. Department of Transportation. This includes $972 million in total budgetary resources for the National Highway Traffic Safety Administration and $679 million for the Federal Motor Carrier Safety Administration. The bill continues to delay electronic logging device enforcement for livestock and insect haulers. The bill also includes $278 million for the Pipeline and Hazardous Materials Safety Administration to help address safety concerns related to recent pipeline and crude oil by rail accidents.

The full text of the bill can be found HERE. The Committee Report (S 116-109) can be found HERE. On page 43 and 44 of the Committee Report, the Senate Appropriations Committee encourages the Secretary of the Department of Transportation to reach an agreement with self-help counties that would allow the use of local sales tax revenues. The full text of this language is included below:

"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, public transportation, and other transportation requirements. Several of these counties contain airports and have been receiving funds raised through the sales tax on 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. 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 continue working with state and 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."*

September Advocacy Meetings

Congressman Harley Rouda (D-CA) – We facilitated a meeting for OCTA with Congressman Rouda and his staff to discuss OCTA's experience with the TIFIA loan process and provide an update on the I-405 project. We also met separately with staff to discuss the finalization of the SAFE rule, which would invalidate California's air quality emissions model used to make transportation conformity determination. We also discussed the potential of the proposed rule causing delays in major projects. We discussed how there needs to be, at minimum, a three-year transition period and discussed the regional and national impacts of major project delays.

Congressman Lou Correa (D-CA) – We facilitated a meeting for OCTA with Congressman Correa and his staff to give an update on the OC Streetcar. We also discussed OCTA's experience with TIFIA and updated the Congressman on the I-405 project and discussed the Surface Transportation Reauthorization and support for legislation to address the aviation fuel tax issue. We also met with staff to discuss the EPA's announced revocation of California's Clean Air Act waiver, and next steps.

Congressman Mike Levin (D-CA) – We facilitated a meeting for OCTA with Congressman Levin and his staff this month to discuss on-going projects in the Congressman's district. We also followed-up with staff on our discussions regarding beach erosion issues between Capistrano Beach and Dana Point. We also discussed the TIFIA program and the I-405 project. We also discussed the EPA's announced revocation of California's Clean Air Act waiver, and the need for at least a three-year transition period.

Congresswoman Grace Napolitano (D-CA) – We met with Congresswoman Napolitano and her staff to discuss the Surface Transportation Reauthorization drafting process and next steps for H.R. 2939 to address the aviation fuel tax issues.

Congressman Gil Cisneros (D-CA) – We followed-up with senior staff in Congressman Cisneros' office to discuss progress on additional tax extenders and the possibility of including them in any upcoming appropriations minibus or omnibus bills. We also discussed the TIFIA program and support for legislation to address the aviation fuel tax issue. We also discussed the EPA's announced revocation of California's Clean Air Act waiver.

Congressman Pete Aguilar (D-CA) – We met with the Congressman this month to discuss the appropriations process and the prospect of passing the FY20 THUD bill before the end of the calendar year. We also discussed the likelihood of the year-long

CR if the House and Senate are unable to reach consensus on some or all of the individual bills. We also discussed the EPA's announced revocation of California's Clean Air Act waiver.

Congressman Alan Lowenthal (D-CA) – We met with Congressman Lowenthal and his staff ahead of a House Transportation and Infrastructure hearing by the Subcommittee on Railroads, Pipelines, and Hazardous materials to discuss OCTA projects and priorities. The hearing, entitled Challenges and Opportunities for Commuter Railroads, was delayed from its original time and ended up being held during party conference meetings on impeachment proceedings. This greatly impacted Member attendance at the hearing, which only lasted about one hour.

Senator Dianne Feinstein (D-CA) – We followed-up with Senator Dianne Feinstein's staff numerous times this month to discuss the timeline for FY20 appropriations in the Senate and OCTA's experience with TIFIA. We followed-up on possible TIFIA reform legislation and discussed the timeline for the Senate's version of a Surface Transportation Reauthorization in the Finance Committee, Banking Committee, and Commerce Committee. We also discussed the impact of the EPA's decision regarding California's Clean Air Act waiver and the need for a three-year grace period.

Ranking Member Sam Graves (R-MO) – We met with Ranking Member Graves' staff to discuss updates on progress for the Surface Transportation Reauthorization and possible funding mechanisms for the bill. We also discussed the FAA Reauthorization hearing and the need to address the aviation fuel tax issue, and the Commuter Rail hearing and the need for additional resources in the region to address the goods movement impacts on local infrastructure.

House Transportation and Infrastructure Committee – We met with senior Majority staff on the House Transportation and Infrastructure Committee again this month to discuss possible TIFIA reform legislation in the Surface Transportation Reauthorization and other possible changes to a number of discretionary grant programs that are being contemplated.

Surface Transportation Reauthorization

Senate Majority Leader Mitch MConnell (R-KY) has been touting the possibility of the Surface Transportation Reauthorization legislation moving through the Senate later this year despite the potential of impeachment proceedings. In an interview at the end of the month he said, "It probably won't be as bold as the president was talking about because it would inevitably, if it were that bold, involve a whopping gasoline tax increase, which is very regressive, hits medium and low income people very hard," McConnell said. "But we will do a transportation bill. It will be more along the size of a traditional every four or five-year transportation bill."

As it relates to other funding options for the bill, on September 12th, Senate Environment and Public Works (EPW) Ranking Member Carper (D-DE) proposed charging a user fee on electric vehicles, including annual fees or registration fees, as a means of raising revenues to pay for the EPW's portion of a Surface Transportation Reauthorization. Chairman John Barrasso (R-WY) told reporters this month that he is not opposed to charging elective vehicles a user fee. In addition, the bill would establish a 50-state pilot program that would explore using a Vehicle Miles Traveled (VMT) approach to raising revenue for the Highway Trust Fund as opposed to an increase in the gas tax.

As you may recall, the Senate EPW Committee approved their Surface Transportation Reauthorization on July 30th (S. 2302 – *America's Transportation Infrastructure Act of 2019)*. The bill will authorize $287 billion for highways, an increase of 28%. Of this, $259 billion (90%) would be disbursed to states by formula and would seek to address climate change by authorizing new formula-based and discretionary grant programs aimed at reducing emissions.

The Congressional Research Service (CRS) announced this month that S. 2302's highway provisions would create a shortfall of $79 billion. According to CRS, this shortfall would increase when public transit is included. The Public Transit portion of the Senate's Highway Bill is the responsibility of the Senate Banking Committee, which has yet to begin work on the title.

Other Administrative and Legislative Updates

- On September 11th, the **House Transportation & Infrastructure** Subcommittee on Highways and Transit held a hearing entitled "*Pricing and Technology Strategies to Address Congestion on and Financing of America's Roads*". During the hearing Orange County Congressman Harley Rouda (D-CA) said that he is very proud of the Orange County Transportation Authority (OCTA) and spoke about the I-405 project and the reason why rural communities should care about what's going on in the cities. Rouda said that of the $2 billion for the project, only $46 million of the project is funded by the federal government and that this is why TIFIA is so important. Congressman Rouda also made the argument that with 40% of all imported container goods being moved through the Ports of Los Angeles and Long Beach and neighboring communities, the transportation infrastructure of Orange County has a nation-wide impact.

- On September 24th, the **House Transportation & Infrastructure** Subcommittee on Railroads, Pipelines, and Hazardous Materials held a hearing entitled "*Challenges and Opportunities for Commuter Railroads*". One of the witnesses in the hearing was Stephanie Wiggins, CEO of Metrolink. Metrolink was positively received by Members of the Committee and recognized as a leader in PTC implementation and commuter rail operations. Stephanie Wiggins testified before the Committee about Metrolink's sustained increases in ridership, and the economic impact of the system in Southern California. She also testified to the good working relationship with other rail providers, including BNSF and UP. Congresswoman Napolitano (D-CA) congratulated Ms. Wiggins on her appointment and asked about what Metrolink is doing about suicides and homelessness on the rail lines. Ms. Wiggins testified that this is a major industry concern and that while Metrolink is working with vendors and other organizations, the biggest difficulty is a lack of funding. Metrolink's full testimony can be found HERE.

- This month **Environmental Protection Agency (EPA)** announced plans to formally revoke a special waiver that allows California to establish tougher emissions standards for motor vehicles. The waiver (2009 press release HERE) has been opposed by major auto makers who claim that two sets of emissions standards hurts the auto markets. Thirteen other states and the District of Columbia have said they will follow California standards, but the EPA's withdrawal of the waiver would return those states to federal standards. California Governor Gavin Newsom and State Attorney General Xavier Becerra responded to the announcement saying that the EPA has "no basis and no authority" for the action and that the State is preparing to challenge the move in court. Links to the Final Rule: *One National Program on Federal Preemption of State Fuel Economy Standards* can be found HERE and HERE.

  The EPA also sent a formal letter to the Chair of the California Air Resources Board, Mary Nichols. The letter, found HERE, states that California has "failed to carry out its most basic tasks under the Clean Air Act" resulting in California having the worst air quality in the United States with more than 34 million people living in areas that do not meet National Ambient Air Quality standards. The letter also asserts that California represents a disproportionate share of the national list of backlogged State Implementation Plans (SIPs), a collection of regulations and documents used by a state to reduce air pollution in areas that do not meet National Ambient Air Quality Standards. As a result, the EPA is recommending that California withdraw its backlogged and un-approvable SIPs and work with the EPA to develop and complete approvable SIPs. In the event that California does not withdraw its "un-approvable" SIPs, the EPA is planning to move forward with the disapproval process. This would lead to:

  1. Highway funding sanctions, which could result in a prohibition of federal transportation projects and grants in certain parts of California;
  2. New Source Review permitting sanctions: and
  3. A deadline for the issuance of a Federal Implementation Plan.

  The EPA has requested a formal response to the letter from the California Air Resources Board by October 10th. If the statutory sanctions were to be triggered, they would not take effect until 18 months after a SIP was rejected. A full press release on the issue with a statement from EPA Administrator Wheeler can be found HERE.

- The Federal Transit Administration (FTA) signed a Full Funding Grant Agreement (FFGA) this month for the Tempe Streetcar in Arizona. The FFGA promises $75 million in federal funding for the $192 million project. Of the $75 million, $50 million was appropriated in FY17, and $25 in FY18. This brings the total amount of FTA CIG program dollars formally committed to projects to $3.5 billion for 16 projects. On

September 30th, 2018, the FTA reported that $2.5 billion in prior year CIG appropriations covering FY15-18 is still legally unobligated, bringing up an important issue. Technically, a multi-year FFGA for a CIG project is not a legal obligation of the US Government to pay out any money. The legal obligation comes one year at a time. Section 143 of the Continuing Resolution that the President signed, changes the hard deadline in 2018 and 2019 appropriations bills for "obligation" of much of the FY18 and FY19 appropriations to "allocations", a formal process within FTA assigning appropriated money to a particular project. We will be monitoring the FTA and Congress for any issues that may affect the OC Streetcar. This change was a result of concerns that if the DOT did not obligate funds by the deadlines set by Congress, the money would be recaptured and returned to the US Treasury.

- Over the Summer, Congresswoman Grace Napolitano (D-CA) introduced a bill (H.R. 1139 – *Transit Worker and Pedestrian Protection Act*) that would direct rail and bus operators to develop and implement operator and transit worker safety plans. The bill currently has 167 (up from 157 last month) cosponsors from both parties and has been referred to the House Highways and Transit Subcommittee. Orange County cosponsors include Representatives Alan Lowenthal (D-CA), Gil Cisneros (D-CA), Harley Rouda (D-CA), Linda Sanchez (D-CA), Katie Porter (D-CA), and Mike Levin (D-CA).
    - We are in contact with Committee staff on the possibility of a hearing before the end of the year to consider the legislation and move it to the floor. It is more likely, however, this legislation will be included in a House Surface Transportation draft early next year.

- Congresswoman Julia Brownley (D-CA) introduced a bill this summer (H.R. 2164 – *Green Bus Act of 2019).* If enacted, this legislation would require any bus purchased or leased with funds provided by the Federal Transit Administration (FTA) to be a zero-emission bus by 2028. The bill provides new funding streams for zero-emission buses. At the time of this report the bill has 24 (up from 17 in July) cosponsors and has been referred to the House Highways and Transit Subcommittee. Orange County Reps. Gil Cisneros (D-CA), Alan Lowenthal (D-CA), Harley Rouda (D-CA), and Mike Levin (added this month) are cosponsors on the bill.

- Senator John Cornyn (R-TX) introduced a bill earlier this session (S. 846 – *Transit Infrastructure Vehicle Security Act)* that would prohibit the use of federal dollars for rolling stock that is manufactured by a company that is "owned or controlled by, is a subsidiary of, or is otherwise related legally or financially to a corporation based in a country" that is identified as a nonmarket economy country, or is subject to monitoring by the US Trade Representative. The bill would also require additional certifications in addition to requiring recipients to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks.
    - The bill was included in the Senate FY20 NDAA (Sec. 6015), which passed the Senate on June 26th and is undergoing conference negotiations with the House at the time of this report. According to House and Senate Armed Service

Committee Staff they anticipate having Conference Committee report prepared and released before the end of October.

- On May 23rd, Congresswoman Grace Napolitano (D-CA) introduced a bill to address the aviation fuel sales tax issue that impacts self-help counties with local sales tax measures (H.R. 2939 – *State and Local General Sales Tax Protection Act*). The legislation currently has nine cosponsors, including Reps. Lowenthal (D-CA), Huffman (D-CA), Rouda (D-CA), Carbajal (D-CA), Garamendi (D-CA), Schiff (D-CA), Eshoo (D-CA), Lewis (D-GA), and Scott (D-GA). We followed-up with the entire Orange County delegation regarding OCTA's support for this legislation. The bill has yet to be considered by the House Aviation Subcommittee where it has been referred. CA and FAA officials are continuing to discuss a path forward, while Congresswoman Napolitano's bill works its way through the legislative process. As mentioned earlier, the Senate Appropriations THUD Committee Report includes language directing the FAA to consider the benefits of self-help county sales tax measures and work with localities on reaching a solution recognizing this benefit. In addition to working with Congresswoman Napolitano on building support for the bill in the House and Senate, we are working with the Orange County Delegation and Committee Members on addressing this issue through the inclusion of the bill's language, or similar language, either FAA or Surface Transportation Reauthorization. There has yet to be a similar Senate companion bill introduced.

- On June 18th, Congressman Mike Thompson (D-CA), Chairman of the House Ways and Means Subcommittee on Select Revenue Measures, introduced legislation (H.R. 3301 –*Taxpayer Certainty and Disaster Tax Relief Act of 2019*) to address tax extenders. Section 133 of the bill would extend and clarify tax credits relating to alternative fuels until December 31, 2020. Moreover, the bill would back-date excise tax credits to January 1, 2018 and allow any such credit to be refunded for that period of time. The House Ways and Means Committee held a markup of the bill on June 20th, but staff are not sure when the bill will be considered on the House floor. Senior staff in Congressman Thompson's office updated us on the bill saying that while this is a priority for the Committee, they are waiting for direction from Leadership on next steps. There are no immediate plans to move the bill to the House floor. A related bill (S.617) is still pending in the Senate. That Senate bill, according to Senate Finance Committee Staff, may be reintroduced with new provisions later this year.