



January 16, 2020

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Federal Legislative Status Report

Overview

Updates are provided on the appropriations process, enacted legislation that affects rolling stock procurements, and oversight of discretionary grants.

Recommendation

Receive and file as an information item.

Discussion

Federal Funding Update

On November 21, 2019, the President signed a continuing resolution to fund the government at current funding levels through December 20, 2019. The continuing resolution passed the Senate by a vote of 74-20 and the House by a vote of 231-192. In addition to providing short-term funding, the continuing resolution also repealed the \$7.6 billion rescission of transportation funding that was scheduled to take place on July 1, 2020. According to the Federal Highway Administration, California's share of the rescission, which was authorized by the Fixing America's Surface Transportation (FAST) Act, would have been nearly \$280 million. Since this rescission will be avoided, staff has updated the Orange County Transportation Authority (OCTA) 2019-20 Federal Legislative Platform to strike the language in the section entitled "Key Issues in the 116th Congress" opposing the FAST Act rescission. There is still language in the platform opposing arbitrary funding cuts, which will allow staff to engage in discussions related to any rescission proposed in the future that could negatively impact OCTA.

On December 20, 2019, the President signed into law a \$1.4 trillion spending package to fund government operations for the remainder of the 2020 fiscal year. The funding package providing resources for federal transportation programs

passed the Senate by a vote of 71-23 and the House by a vote of 297-120. The transportation funding bill provides \$86.2 billion in total funding for the Department of Transportation, which is \$324.9 million below the previous year's funding level, but \$3.3 billion above the President's budget request. While there is a small decrease in overall transportation funding, most transportation programs are funded at or above authorized levels. In addition, the final transportation funding bill is free of any controversial riders.

A program-specific breakdown of the transportation funding provided by the spending package is included as Attachment A. Similar to previous years, the bill provides \$2.166 billion from the General Fund for Federal-aid Highways formula programs. Included in this supplemental funding, there is \$1.15 billion for bridge replacement and \$781.1 million for both Surface Transportation Block Grant Program eligible projects and alternative fuel charging infrastructure. The bill also provides \$1 billion for the competitive Better Utilizing Investments to Leverage Development (BUILD) program, which funds multi-modal surface transportation projects. This BUILD funding level is \$100 million more than the previous fiscal year. The bill requires that BUILD grants be split evenly between large urban areas and rural areas with a population of under 200,000. While there is no maximum BUILD grant award, no more than 10 percent of BUILD funds may go to any one state.

The spending package also provides \$510 million in supplemental funding above authorized levels for transit formula programs out of the General Fund. As detailed in the table in Attachment A, the transit funding increase largely benefits federal transit bus programs. The funding bill provides \$1.978 billion in funding for the Capital Investments Grants (CIG) program, which includes \$1.458 billion for New Starts projects, \$300 million for Core Capacity projects, \$100 million for Small Starts projects, \$100 million for the CIG delivery pilot project authorized by the FAST Act, and \$20 million for oversight activities. While the overall CIG funding level is below the previous year's enacted level, the funding for CIG New Starts projects is slightly higher than that of last year. There is also language directing the Federal Transit Administration (FTA) to allocate nearly 85 percent of this year's CIG funding by December 31, 2021.

The funding bill's more than \$2.5 billion in intercity passenger rail funding provides \$2 billion to Amtrak, \$200 million to the Federal Railroad Administration's (FRA) Federal-State Partnership for State of Good Repair grants, and \$325 million to the Consolidated Rail Infrastructure and Safety Improvements program, among other programs. Of the \$2 billion included for Amtrak, the funding bill allocates \$700 million for Northeast Corridor grants and \$1.3 billion for the National Network, both of which are increases over the previous fiscal year, as well as the authorized level. The bill directs the FRA to release award of this year's rail grants by May 1, 2020.

The spending package also extends certain tax provisions that had previously expired, including the Alternative Fuel Excise Tax Credit. The spending package retroactively extends the Alternative Fuel Excise Tax Credit through December 31, 2020. Based on fuel usage, this tax incentive provides OCTA with more than \$4 million each year the credit is in effect. There is also language in the funding bill that is meant to ensure that the intended claimants of this tax incentive, notably end users of alternative fuels like OCTA, are the ones benefiting. Staff is continuing to monitor the implementation of this language, as well as all of the provisions in the transportation funding bill and will provide further updates as necessary.

Legislation Affecting Rolling Stock

On December 20, 2019, the President signed into law the National Defense Authorization Act (NDAA) after it passed the Senate by a vote of 86 to 8 and the House by a vote of 377 to 48. The NDAA is legislation authorizing defense policies and programs, and it has been enacted every year for decades, one of the few authorization bills signed into law each year. This year, the NDAA included provisions affecting the purchase of rolling stock from American companies that are owned or controlled by parent companies based in countries that are on certain trade watch lists. While the bill could apply to many companies, it is essentially aimed at prohibiting the procurement of rolling stock from the state-subsidized Chinese electric bus company, BYD, and the state-owned Chinese rail company, CRCC.

Specifically, the provisions in the NDAA prohibit the use of federal funds from being used to procure buses from companies meeting the bill's definition. This language also requires that fixed-guideway rail operators receiving FTA's State of Good Repair funding certify that the agency is not contracting with applicable companies. Both the procurement prohibition and the additional certification do not apply to contracts awarded within two years of the bill's enactment. The NDAA provisions also require that rail fixed-guideway operators make certifications about cybersecurity best practices to ensure that rail systems are not being undermined by foreign governments.

As of the writing of this staff report, staff was in the process of better understanding exactly how and when these provisions will apply to OCTA, including how the agency's procurements may be impacted by the provisions, and how the agency will make the certifications required by the bill, where appropriate. Staff is continuing to develop and refine a plan to comply with the different provisions and will provide updates as additional information becomes available.

Oversight of Discretionary Grants

On December 5, 2019, House Transportation and Infrastructure Committee Chair Peter A. DeFazio (D-OR), along with Highways and Transit Subcommittee Chair Eleanor Holmes Norton (D-D.C.), wrote to Secretary of Transportation Elaine L. Chao regarding discretionary grant awards. Chairs DeFazio and Norton expressed their concern with the lack of communication from the Department of Transportation about findings in a recent report from the Government Accountability Office on discretionary transportation grants. Specifically, the letter, which is included as Attachment B, requests information about a memo sent in April 2019 to all offices that administer discretionary grant awards, including searchable electronic copies of all departmental guidance on discretionary grants. The letter also emphasizes that the inquiry is part of an effort to ensure that discretionary grant awards are based on merit and the anticipated effectiveness of a project in addressing our country's infrastructure needs. Staff will continue to monitor efforts to improve the discretionary grant process, especially during the upcoming surface transportation reauthorization process, and provide updates as warranted.

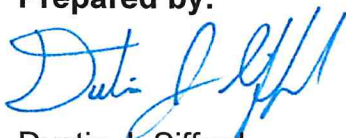
Summary

Updates are provided on federal funding, legislation affecting rolling stock, and the oversight of congressional grants.

Attachments

- A. Fiscal Year 2020 Funding Breakdown
- B. Letter from Leaders of the Committee on Transportation and Infrastructure to the Honorable Elaine L. Chao, dated December 5, 2019
- C. Potomac Partners DC, Monthly Legislative Report – November 2019
- D. Potomac Partners DC, Monthly Legislative Report – December 2019

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