



February 20, 2020

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Kenneth D. Johnson for

Subject: Federal Legislative Status Report

Overview

Principles are proposed in preparation for surface transportation reauthorization discussions. Updates are provided on the reauthorization process, an effort to support federal grant awards to Orange County, and a hearing on rail grade crossing safety.

Recommendation

Adopt the proposed Principles for Surface Transportation Reauthorization Legislation and direct staff to take necessary and appropriate actions in furtherance of these goals in Washington, D.C.

Discussion

Surface Transportation Reauthorization Legislation Proposals

The Fixing America's Surface Transportation (FAST) Act, the current surface transportation legislation authorizing federal highway, transit, and rail programs, will expire on September 30, 2020. Before that date, Congress must reauthorize transportation programs and adjust revenues into the Highway Trust Fund to avoid disrupting the delivery of federally-funded transportation programs. As a result, committees in both chambers of Congress have started the process of drafting surface transportation reauthorization proposals. Last year, the Legislative and Communications Committee received an update on legislation marked up in the Senate Environment and Public Works Committee that would authorize \$287 billion over five years only for highway programs. By comparison, the FAST Act authorized \$305.5 billion in total transportation spending – for highway, transit, and rail programs – over the same timeframe.

On January 29, 2020, the majority members of the House Transportation and Infrastructure Committee unveiled a proposal to authorize \$760 billion in

infrastructure spending over five years, more than double the authorized level in the FAST Act. While the proposal would authorize highway, transit, and rail programs, it would also broaden the scope of previous surface transportation bills to include airport infrastructure, port projects, as well as water resource investments, among other programs. A breakdown of the proposal from the Transportation and Infrastructure Committee majority members is as follows:

- \$434 billion for highway and transit investments – The proposal would authorize \$319 billion for highway programs, \$105 billion for transit projects, and \$10 billion dedicated to safety projects. Language is included on fix-it-first policies, revamping existing formulas, and addressing climate change.
- \$55 billion for rail investments – The proposal would provide significant funding for intercity passenger rail and commuter rail, although there was very little detail provided on how the funding would be allocated.
- \$30 billion for airport infrastructure – The proposal would increase airport fees to finance airway investments.
- \$19.7 billion for port projects – The proposal would revamp the Harbor Maintenance Trust Fund to allow for additional funding on port projects.
- \$85.9 billion for water projects – The proposal would authorize \$10 billion for water resources investments, \$50.5 billion for clean water projects, and \$25.4 billion for drinking water.
- Other investments include:
 - \$86 billion for broadband technology;
 - \$34.3 billion for electric grid modernization;
 - \$12 billion for emergency communications projects; and
 - \$2.7 billion for Brownfield restoration.

Unfortunately, legislative language does not yet exist, making it difficult for staff to analyze exactly how the proposal's provisions could affect the Orange County Transportation Authority (OCTA). Fact sheets have been prepared, however, that indicate some beneficial aspects to the agency. These proposals discuss how forthcoming legislation would streamline the Transportation Infrastructure Finance and Innovation Act (TIFIA) program, improve the discretionary grant process, provide additional funding for zero-emission bus transit technology, test a Road User Charge system, and make reforms to the Capital Investment Grants program. While legislative language is needed to fully evaluate these policies, the inclusion of these topics is promising, and staff will work with Congress and stakeholders to refine these proposals for the benefit of OCTA.

There were also some areas of concern with the majority's proposal. The fact sheets contained language about allowing metropolitan planning organizations to administer federal funds, which could contradict programming practices in Southern California. Other areas of concern included tighter standards on congestion management, potential greenhouse gas emission measures, new

language related to climate change and resiliency, and Buy America reforms. While difficult to analyze these proposals due to the lack of detail, staff will continue to provide updates as legislative language becomes available.

The minority members of the Transportation and Infrastructure Committee expressed a willingness to work in a bipartisan manner towards surface transportation reauthorization legislation. Specifically, the minority outlined the following principles in working towards bipartisan legislation:

- Long-term Highway Trust Fund sustainability – The volatility of fuel taxes justifies developing a long-term replacement for fuel taxes, the traditional source of Highway Trust Fund revenues.
- Incorporating innovative technologies – Federal policy must better reflect the capability of technological innovation to make transportation systems more efficient, improve safety, protect the environment, and create jobs.
- Streamlined project delivery process – Improving project delivery timelines will allow state and local agencies to more quickly build projects, thereby better leveraging taxpayer dollars.
- Addressing the needs of rural communities – Investing in rural transportation systems, which account for 71 percent of America’s road lane-mileage.
- Prioritizing existing transportation programs – Fixing the core functions of the existing transportation programs to ensure the safety and efficiency of the surface transportation network.
- State flexibility – Federal policy should reflect the unique nature of each state to allow states, and their local partners, to address infrastructure needs while also respecting local control.

That same day these proposals were released, the House Ways and Means Committee held a hearing entitled “Paving the Way for Funding and Financing Infrastructure Investments.” At the hearing, there was a discussion about the financing of infrastructure projects, specifically the need to address the long-term structural deficit facing the Highway Trust Fund. Unfortunately, the Ways and Means Committee did not provide updated cost estimates on any of the financing options discussed during the hearing, such as fuel tax increases or a potential Road User Charge system. The lack of consensus on financing mechanisms is particularly concerning because the Transportation and Infrastructure Committee’s proposal would authorize nearly twice as much as the FAST Act. Similarly, the annual budget projections published by the Congressional Budget Office did not provide additional policy details or cost estimates. Instead, the projections noted that revenues into the Highway Trust Fund continue to fall significantly short of expenditures on federal transportation programs.

Since the release of the House Transportation and Infrastructure Committee’s proposal, political leaders have started to shape the debate around potential

surface transportation legislation. The Ranking Member of the House Transportation and Infrastructure Committee, Sam Graves (R-MO), discussed the need to study a transition from fuel taxes toward some type of Road User Charge system, also known as a Vehicles Miles Traveled (VMT) fee. Ranking Member Graves highlighted a VMT study conducted by the State of Washington as a step in the right direction toward reducing the volatility of transportation revenues. In the State of the Union Address, the President briefly discussed his support for the Senate Environment and Public Works highways bill, although he did not speak in detail about what passing that bill would mean for rail or transit programs. Finally, in a hearing on an unrelated subject, both the Chair and the Ranking Member of the Senate Environment and Public Works Committee indicated that electric vehicle users should pay their fair share for using public streets and roads. While the statements were not accompanied by detailed policy proposals or cost estimates, California's electric vehicles fee used to finance additional transportation spending in SB 1 (Chapter 5, Statutes of 2017) could be a model for a federal electric vehicle financing mechanism.

In light of these developments, staff have prepared draft Principles for Surface Transportation Reauthorization, detailed in Attachment A, to guide OCTA's advocacy efforts during the reauthorization process. The principles are based largely on language in OCTA's 2019-20 Federal Legislative Platform, as well as the principles adopted by the Legislative and Communications Committee on March 15, 2018, in response to the President's proposed infrastructure package. The language has been updated to best guide OCTA's efforts during the reauthorization discussions. The principles include:

- A focus on formula funding – Prioritizing transportation programs distributed via formula funding while also respecting OCTA's unique role as a regional transportation leader.
- Innovative financing options – Expanding and improving upon innovative financing options, such as the TIFIA loan program, based on OCTA's experience with a TIFIA loan on the Interstate 405 Improvement Project.
- Funding flexibility – Avoiding new conditions or restrictions on funding that would make it harder for local agencies like OCTA, that have a history of successfully delivering transportation improvements, to build projects.
- Climate change policy certainty – There are two principles meant to provide certainty on environmental policies. The first ensures that the implementation of the Safer Affordable Fuel-Efficient Vehicles Rule does not undermine the delivery of transportation projects in California, a national leader on these issues. The second seeks to streamline the environmental review process, without undermining substantive protections, to expedite project delivery.
- Improvements to discretionary grant processes – Advocating for a fairer and more discretionary transportation grant process to allow more transportation funding to flow to Orange County.

- Funding for zero-emission bus transit technology – Maximizing the funding available to transition to zero-emission bus technology.
- A more sustainable Highway Trust Fund – Principles include seeking a modern source of Highway Trust Fund revenues, maintaining the federal commitment to transit expenditures, and ensuring that new infrastructure spending does not undermine existing programs that benefit OCTA.

Staff will prepare specific legislative proposals to carry out these principles once they are approved. Similarly, staff will continue to monitor surface transportation proposals and provide updates as necessary.

Prioritizing Orange County Grant Applications

On February 6, 2020, Representative Lou Correa (D-Santa Ana) wrote a letter to Secretary of Transportation Elaine L. Chao about the upcoming Infrastructure for Rebuilding America (INFRA) grants call for projects. In the letter, Representative Correa noted that the INFRA Notice of Funding Opportunity specifically says that a project in a federally-recognized Opportunity Zone will be “more competitive” than a project not in an Opportunity Zone. OCTA is expected to apply for INFRA funding for the State Route 55 Improvement Project, which runs through an Opportunity Zone in the City of Santa Ana. Staff will work with Representative Correa’s office to follow-up on the letter in hopes of improving OCTA’s chances of being awarded INFRA funding.

Grade Crossing Hearing

On February 5, 2020, the House Transportation and Infrastructure Committee’s Subcommittee on Railroads, Pipelines, and Hazardous Materials held a hearing entitled, “Tracking Toward Zero: Improving Grade Crossing Safety and Addressing Community Concerns.” The discussion at the hearing focused on how data about rail grade crossings is reported to, and acted on, by the Federal Railroad Administration. Mark Christoffels, the Chief Engineer for the Alameda Corridor-East Project, emphasized the need to make rail grade crossings safer, especially in highly congested, urban areas like Southern California. The witnesses and Members of Congress discussed at length the need for additional funding in the reauthorization process to carry out rail grade crossing projects and increase the number of quiet zones in densely populated areas.

Summary

An update is provided on the surface transportation reauthorization process, including principles to advocate for OCTA's interests in legislative proposals. There are also overviews of an effort to provide grant funding to Orange County and a hearing on rail grade crossing safety.

Attachments

- A. Principles for Surface Transportation Reauthorization Legislation
- B. Letter from J. Luis Correa, Member of Congress, to The Honorable Elaine L. Chao, Secretary of Transportation, dated February 6, 2020
- C. Potomac Partners DC, Monthly Legislative Report – January 2020

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