



**February 18, 2021**

**To:** Legislative and Communications Committee

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

**Subject:** Federal Legislative Status Report

### **Overview**

The Orange County Transportation Authority provides regular updates to the Legislative and Communications Committee on policy issues directly impacting its programs, projects, and operations. An update is provided on the initial actions of both the new Presidential Administration and the 117<sup>th</sup> Congress. Details are provided on the potential for another round of economic stimulus funding. An overview is provided on the Executive Orders signed by President Biden, and the newly appointed transportation leaders within the new Administration. An update is provided on the members of the Orange County delegation serving on the House Transportation and Infrastructure Committee, as well a summary of a hearing on protecting essential transportation workers.

### **Recommendation**

Receive and file as an information item.

### **Discussion**

New Economic Stimulus and Coronavirus (COVID-19) Pandemic Response Proposals

After assuming office, President Biden emphasized his top policy priority is the COVID-19 response. Calling for a \$1.9 trillion stimulus package to address the ongoing economic impacts of COVID-19, the proposal would help fund a national vaccination program, testing and contact tracing, \$1,400 direct stimulus payments to qualified individuals, a \$15 minimum wage, and more than \$350 million in funding for state and local governments.

The President's proposal calls for Congress to provide an additional \$20 billion in funding for the "hardest hit" transit agencies. According to an outline of the proposal, the President is calling for these funds to be used to avoid laying off

workers or cutting service. The proposal also calls for a federal COVID-19 worker protection standard, as well as funding to enforce this new standard, and hazard pay for essential workers, including retroactive hazard pay for work done since the initial outbreak of the COVID-19 pandemic. In addition, the proposal includes a significant expansion of paid sick and family and medical leave, specifically over 14 weeks of mandatory leave as well as federal funding to cover the cost of such leave for certain employers. The President is proposing to reimburse state and local governments for the cost of this expanded leave, which is noteworthy because the implementation of previously-enacted stimulus legislation has not allowed state and local governments to benefit from federal assistance to cover the cost of such leave.

Given the current federal budget deficit, some concerns were raised in Congress about the potential cost impacts of such a large economic relief package, considering more than \$3 trillion in stimulus relief that was provided last year. As of the writing of this staff report, Congress had not yet introduced the legislative language for further economic stimulus efforts, staff is currently unable to comprehensively analyze how potential funding or policy changes might affect the Orange County Transportation Authority (OCTA). The new Administration had started to work with a bipartisan group of Senators to reach a potential compromise that could get the 60 votes needed to avoid a filibuster on the proposed legislation.

OCTA staff continues to work with its transportation agency partners and stakeholders on any further transportation funding that Congress might consider. The American Public Transit Association (APTA), along with labor unions, sent a letter, included as Attachment A, advocating for an additional \$39.3 billion in emergency transit funding. This amount represents a doubling of the emergency transit funding already provided through the two rounds of emergency transit funding that staff have previously detailed. The APTA coalition letter cites an independent economic analysis finding that public transit agencies face a \$39.3 billion shortfall through 2023. Consistent with previous transit funding efforts, OCTA staff worked with the California Transit Association (CTA) to send a letter, included as Attachment B, in support of the APTA coalition request. The CTA letter noted that the next round of transit funding should be distributed so that transit agencies of all sizes across California receive at least their historic share of federal transit funding.

### Executive Orders

The President signed 24 Executive Orders within the first seven days in office. Since Executive Orders cannot change federal statute, many of these Executive Orders direct federal agencies to pass rules or implement policies implementing these new policy goals. The Executive Orders that are likely to result in permanent policy changes affecting OCTA are summarized as follows.

- Executive Order 13998, entitled “Promoting COVID-19 Safety in Domestic and International Travel”, directs federal agencies to require that face masks be worn during international and domestic travel, specifically on public transportation. This Executive Order was followed up by an order by the Centers of Disease Control (CDC) and a rarely utilized security directive from the Transportation Security Administration (TSA). OCTA staff continues to work with APTA, TSA, and the Federal Transit Administration (FTA) to learn more about how this policy change might affect what OCTA is already doing to limit the transmission of COVID-19. There has been and will continue to be weekly FTA calls on this subject, and staff will continue to provide updates as necessary.
- Executive Order 13999, entitled “Protecting Worker Health and Safety,” calls for the establishment of a federal workplace standard to protect essential workers from COVID-19. The order calls for the creation of a national program to enforce this new standard. The federal standard has not yet been promulgated pursuant to this Executive Order. This standard, and any corresponding enforcement efforts, could affect OCTA’s transit operations and other essential personnel.
- Executive Order 14005, entitled “Ensuring the Future is Made in All of America by All of America’s Workers,” calls for a comprehensive overview of Buy America policies, consistent with federal statute. This Executive Order directs all federal agencies reconsider existing Buy America policies, including language calling for a reexamination of the component test that might affect future procurements. The Executive Order also creates, within the Office of Management and Budget, the Made in America Office that will implement significant reforms to Buy America waiver process, consisting of a new written approval process, more thorough justification requirements, and additional public disclosures for all waivers.
- Executive Order 14008, entitled “Tackling the Climate Crisis at Home and Abroad,” lays out the new Administration’s ambitious climate agenda. While the Executive Order does not itself change laws or regulations, it calls for a plan, and corresponding legislation, for state and local governments to procure clean and zero-emission vehicles for their fleets. The Executive Order also requires each federal agency to make climate plans, which could impact federal transportation programs, and it also includes language about aligning federal investments with climate and equity goals, although few details are provided on what transportation programs might be impacted.

- **Regulatory Review** – There were also Executive Orders on the federal rulemaking process that would freeze any pending regulatory actions until the Administration's personnel are in place to reexamine the criteria used in promulgating rules and regulations. The order includes the suspension, revision, or rescission of Parts One and Two of the Safer Affordable Fuel-Efficient Vehicles Rule, which would have impacted California's legal authority to set climate and air quality goals more stringent than those in federal law.

While these potential policy changes most directly impact OCTA, there were also Executive Orders that could indirectly benefit OCTA and its employees. These include Executive Orders regarding masks on federal properties, increasing the federal share of certain Federal Emergency Management Agency assistance to 100 percent, creating a COVID-19 testing board, expanding access to COVID-19 treatments, protecting the public health supply chain, and ensuring an equitable recovery. In almost every instance, relevant federal agencies have not promulgated permanent regulations or policy changes to implement these directives. Staff will continue to monitor these proposals and any further legislative or regulatory changes that will impact OCTA, continuing to provide updates on any significant developments that may arise.

#### **New Secretary of Transportation Confirmed**

On January 21, 2021, the President's nominee to serve as Secretary of Transportation, Mr. Pete Buttigieg, appeared before the Senate Commerce, Science, and Transportation Committee to testify about his transportation priorities. Mr. Buttigieg discussed the need for a robust COVID-19 response, ways to improve discretionary grant programs, the need to be flexible in addressing Highway Trust Fund's (HTF) long-term structural deficit, and ways in which transportation investments can help achieve climate and equity goals. Mr. Buttigieg's nomination generally enjoyed bipartisan support. However, after the hearing there was some clarification made to a portion of his testimony. At the hearing, Mr. Buttigieg said all revenue options should be on the table to address the HTF long-term structural deficit, but after the hearing, a spokesperson confirmed that he does not support increasing the gas tax. Despite this minor adjustment to his testimony, the Senate Commerce, Science, and Transportation Committee approved his nomination by a vote of 21 to 3, and it was approved on the Senate floor by a vote of 86 to 13. Mr. Buttigieg was sworn in as Secretary of Transportation on February 3, 2021.

#### **Other Transportation Leaders in the New Administration**

The President also took initial steps to staff the modal agencies. For the three primary modal agencies, the President appointed qualified leaders with extensive transportation experience to the relevant Deputy Administrator

positions, which do not require Senate confirmation. This maneuvering, not uncommon in the first days of a new administration, allows each appointee to begin immediately serving as an Acting Administrator. The President is expected to nominate each of these individuals to serve as the Administrator on a permanent basis. Below is additional information about these nominees.

Ms. Nuria Fernandez has been appointed Deputy Administrator of the FTA. Ms. Fernandez most recently served as the Chief Executive Officer and General Manager of the Santa Clara Valley Transportation Authority, a position she held for the last seven years. Ms. Fernandez has extensive experience in the transit industry, having previously worked at the New York Metropolitan Transit Authority, the Chicago Transit Authority, and the Washington Metropolitan Area Transit Authority. Ms. Fernandez also served as Acting FTA Administrator with the Clinton Administration, and she played an active role in the APTA, serving as Chair of the APTA Board of Directors for the past two years.

Ms. Stephanie Pollack has been appointed Deputy Administrator of the Federal Highways Administration. Ms. Pollack served as the Secretary of the Massachusetts Department of Transportation since 2015. Ms. Pollack has been noted for her leadership in responding to the COVID-19 pandemic, conducting an investigation of a 2019 train derailment, and working to address congestion in the Boston metropolitan area.

Mr. Amit Bose has been appointed Deputy Administrator of the Federal Railroad Administration (FRA). Mr. Bose most recently worked for private sector architectural and engineering firm HNTB. Mr. Bose previously served as both the Deputy Administrator and Chief Counsel of the FRA during the Obama Administration. Before working at FRA, Mr. Bose worked for the New Jersey Transit.

As of the writing of this staff report, the nominations for these individuals had not yet been filed in the Senate. Staff will provide updates regarding any nominations, and corresponding potential confirmation hearings of interest to OCTA.

#### House on Transportation and Infrastructure Committee Membership

On February 4, 2021, the House Transportation and Infrastructure Committee (Committee) held its organization meeting in order to finalize the Committee's membership for the 117<sup>th</sup> Congress, which will feature two members of the Orange County delegation. Representative Alan S. Lowenthal (D-Garden Grove) retained his seat on the Committee, and he will serve on the Subcommittees on Highways and Transit; Coast Guard and Maritime Transportation; and Water Resources and Environment. Newly elected

Representative Michelle Steel (R-Huntington Beach) was also appointed to serve on the Committee, and she will serve on the Subcommittees on Highways and Transit and the Subcommittee on Railroads, Pipelines and Hazardous Materials. Representative Steel served on the OCTA Board of Directors from 2015 up until her election to Congress last year.

#### Committee Hearing on Protecting Essential Transportation Workers

Also on February 4, 2021, the Committee held a hearing entitled, “Protecting Transportation Workers and Passengers from COVID: Gaps in Safety, Lessons Learned, and Next Steps.” The witnesses included Dr. David Michaels from the George Washington University School of Public Health, Sara Nelson from the Association of Flight Attendants-Communications Workers of America, Lewie Pugh from the Owner-Operator Independent Drivers Association, Ismael Rivera, a coach operator from Orlando, Florida, Dr. William Bahnfleth from Pennsylvania State University, and Los Angeles City Councilmember Joe Buscaino. At the hearing, the witnesses discussed CDC guidance on wearing masks, notably how to address confrontations with passengers who refuse to wear a mask, the importance of adequate personal protective equipment, such as masks and gloves, in reducing the transmission of COVID-19, the need for additional stimulus funding, the benefits of air flow and contact tracing, and the potential for transportation workers to be prioritized in vaccine distribution programs.

One of the primary areas of focus was the potential of a rule or regulation that would require a negative COVID-19 test so passengers could travel. While this discussion focused on the airline industry, witnesses noted that such a requirement, if implemented, would be costly to transportation providers without providing a significant benefit in terms of reducing the risk of transmission. The Committee members and the witnesses also discussed the hierarchy of COVID-19 controls that prioritize social distancing and masks while also considering, when feasible, other controls, such as air flow technology, testing, and contact tracing. Representative Grace Napolitano (D-El Monte) discussed her previous legislation to protect transit workers and noted a desire to examine how bus manufacturers address operator shields and circulation in vehicle production. Councilmember Joe Buscaino emphasized, both in his witness testimony and in questions from the Committee, the need for robust funding that flows directly to all levels of government, most notably for local governments providing essential services that meet the needs of their communities.

***Summary***

An update is provided on the first actions of the Biden Administration and the 117<sup>th</sup> Congress, including details about the potential for an additional round of federal funding as well as details regarding the President's Executive Orders. Updates are provided on appointed transportation leaders in the Administration and steps taking by House transportation leaders to organize for the 117<sup>th</sup> Congress as well as the examination of efforts to protect essential transportation workers.

***Attachments***

- A. Letter from APTA and Other Transit Stakeholders to Congressional Leaders, dated February 1, 2021
- B. Letter from the California Transit Association to Congressional Leaders, dated February 5, 2021
- C. Potomac Partners DC, Monthly Legislative Report – January 2021

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