



April 15, 2021

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Federal Legislative Status Report

Overview

The Orange County Transportation Authority regularly updates the Legislative and Communications Committee on policy issues directly impacting the agency's programs, projects, and operations. An overview of the President's infrastructure plan is provided, as is an update on efforts in Congress to potentially bring back funding earmarks for specific projects. In addition, several transportation-related hearings are summarized on various policy issues to give a high-level overview of the policy environment in the early days of the new Administration and the 117th Congress.

Recommendation

Receive and file as an information item.

Discussion

President's Infrastructure Announcement

On March 31, 2021, the President outlined a more than \$2 trillion infrastructure plan, known as the American Jobs Plan, that calls on Congress to pass legislation providing funding for various categories of infrastructure projects including transportation, water, broadband, housing, resiliency, and healthcare, over the course of the next eight years. While it is up to Congress to ultimately act on the President's plan, the American Jobs Plan seeks to provide an additional \$621 billion in transportation spending, including:

- \$115 billion for bridges, highways, roads, and local streets, including funding set-asides for economically significant projects and "vision zero" plans to improve safety for bicyclists and pedestrians;
- \$85 billion to help modernize and expand transit systems;
- \$80 billion for passenger and freight rail;

- \$174 billion in grants and tax incentives for electric vehicles, including funding to convert school and transit buses to zero-emission technology;
- \$25 billion for airports, including a new program to support multimodal airport terminal investments;
- \$20 billion for a new grant program to reconnect neighborhoods cut off by transportation investments and otherwise advance racial equity goals;
- \$50 billion to make infrastructure more resilient, largely through housing and disaster mitigation funding programs.

There are still many unknowns about American Jobs Plan, such as how much funding will be dedicated for each of the specified uses, whether funding will be prioritized for state of good repair or capital expansion projects, and what statutory conditions will apply to the funding. Perhaps one of the largest unknowns is how this proposal will impact surface transportation programs funded out of the Highway Trust Fund (HTF), which are set to expire on September 30, 2021. The President emphasized the need to address policy goals, such as equity, climate change, and workforce development with these new investments. Notably, the President emphasized the benefits of collective bargaining, prevailing wage requirements, Buy America policies, and carbon reduction. The scope of these policy goals, particularly their applicability to surface transportation programs, will not be discernible until Congress drafts legislative text.

Most of the funding within the American Jobs Plan would benefit infrastructure priorities outside the realm of traditional surface transportation programs. An overview this funding is as follows:

- \$480 billion for research and development for supply chain and manufacturing capabilities;
- \$400 billion for home- and community-based healthcare;
- \$378 billion for housing, schools, and commercial and federal buildings;
- \$311 billion for drinking water, electric grid, and broadband infrastructure;
- \$100 billion for workforce development.

The approximately \$2.3 trillion in new investments would be offset by changes to the corporate tax code. The President is calling for Congress to increase the current corporate tax rate from 21 percent to 28 percent, although there is some concern about the broader economic impacts of this revenue mechanism. Specifically, Congressional Republicans expressed concern with using tax increases unrelated to infrastructure to pay for such an enormous investment, especially since the funding is not targeted at core transportation programs.

In conjunction with the release of the American Rescue Plan, the President announced that, in a few weeks, a second proposal will be unveiled, which he called the American Families Plan. While details are not yet available, reports

indicate that the next proposal will invest in social programs and address other workforce issues.

The details of both proposals will be worked out as Congress drafts and begins to consider legislation through the many committees of jurisdiction that would be involved in considering the President's wide-ranging proposals. Orange County Transportation Authority (OCTA) staff is closely monitoring these proposals and will provide updates as legislative text is introduced.

Community Project Funding: The Potential Return of Earmarks

U.S. House of Representatives (House) Appropriations Committee Chair Rosa DeLauro (D-CT) announced that the House's funding bills will consider requests to direct funding to specific projects, funding which historically was known as earmarks. The new iteration of this practice is being called Community Project Funding. House leaders also announced transparency measures in hopes of avoiding the types of ethical issues that caused Congress to abandon earmarked funding over a decade ago. These measures include publishing requests online, certifications that there are no conflicts of interest, a ban on for-profit recipients, an overall funding cap on Community Project Funding, and a limit of ten project requests from each Member of Congress across all 12 annual funding bills.

House leaders put out additional guidance on project-specific funding in appropriations bills, although many questions remain. Perhaps most notably, there has been no clarity on the programs the House will use to fund particular projects. Through conversations with the Orange County Congressional delegation, the consensus is that the annual funding bills will likely not provide significant funding for any individual project, with a maximum of one or two million dollars for any one project. The expectation is that Community Project Funding should be obligated very quickly, within the next year. Some, not all, members of the delegation set up online request portals, although the deadlines have shifted as House leaders have explored the details of how Community Project Funding will work across each of the 12 appropriations subcommittees.

In addition to the appropriations process, the House Transportation and Infrastructure Committee Chair Peter A. DeFazio (D-OR) announced that he would similarly accept project-specific requests in drafting a surface transportation authorization bill. Similar to appropriators, Chair DeFazio also detailed additional transparency measures, such as requiring information about project funding, if the project is in relevant planning documents, and if environmental approvals have been obtained. Per discussions with delegation offices and stakeholders, one notable distinction between Community Project Funding in appropriations bills and in a potential reauthorization bill is that the funding earmarked by authorizers might be larger, rumored to be as much as

\$15 to \$20 million for an individual project. As of the writing of this staff report, the online submittal portal for requests in a potential surface transportation bill was just being posted online, so additional guidance on Community Project Funding in an authorizing bill, especially how these requests might differ from project requests in a funding bill, is expected in the coming weeks.

While the House has taken these steps, U.S. Senate (Senate) leaders have not made any commitments to including similar project funding requests in either appropriations or authorizing legislation. Although there is still some uncertainty, OCTA staff has tracked these developments closely and deliberated internally about what projects might be well-suited to receive this funding, should it be enacted. An initial list of unfunded transportation priorities in Orange County is included as Attachment A. This list represents a variety of options for delegation offices to request Community Project Funding for, and staff continues to refine requests based on ongoing conversations with delegation offices. As of the writing of this staff report, no project requests had been posted online by the Appropriations Committee, and there had not been any bill language introduced to further inform how House leaders might make use of project-specific funding. Staff will continue to closely monitor this funding and provide updates as developments arise.

Transportation Hearings

On March 25, 2021, Transportation Secretary Pete Buttigieg testified in front of the House Transportation and Infrastructure Committee regarding the Administration's policy priorities. Secretary Buttigieg noted the urgency with which the new Administration would approach infrastructure, citing a once-in-a-generation opportunity to act on transformational mobility investments. Perhaps one of the most pressing issues raising throughout this hearing was the need to find a solution to the long-term structural revenue deficit facing the HTF. Members focused on the need for funding certainty to enact a surface transportation authorization bill this year since the current legislation expires later this year. In addition, there was significant discussion about the effect of declining gas tax revenues on long-term HTF solvency, particularly as electric vehicles become more widely adopted. Much of the discussion explored the need to examine some type of road user charge, although Secretary Buttigieg did not make any commitments to the Administration's thinking on a federal transportation funding future.

Another major theme was the need to address the current allocation of highway and transit funding. Notably, there were calls to increase the share of transit funding coming from the HTF. Secretary Buttigieg has expressed the Administration's commitment to equity, and at the hearing, there were many questions about the effects of highway projects on low-income and minority communities, often alongside calls for additional transit funding to rectify the

issue. In addition, there were calls for additional investments for rail, complete streets projects, and zero-emission vehicle technology to further the Administration's diverse policy goals. Specific policy solutions were not explored in detail, and Secretary Buttigieg did not commit to any policies that might drastically change the federal surface transportation landscape, although many of the topics might lend themselves to what could become fundamental policy shifts. Ranking Member Sam Graves (R-MO) stressed the need for transportation to remain a bipartisan policy issue, emphasizing that reauthorization legislation should remain focused on the core surface transportation programs. Members from the minority echoed this call throughout the hearing, reiterating the need for traditional surface transportation programs not to become an afterthought amongst the new Administration's policy goals. Representative Michelle Steel (R-CA) highlighted California's High-Speed Rail project. This topic was explored throughout the course of the hearing, although California's project was not explored in detail.

On March 17, 2021, the House Transportation and Infrastructure Committee held a hearing entitled "The Business Case for Climate Solutions." At the hearing, the eight witnesses from the private sector talked about what their companies are doing to address environmental issues and what role the federal government can play. The witnesses, notably from FedEx, testified that many private sector companies are already committed to exploring carbon neutral operations. One major theme was the need to invest in zero-emission technology as widely as possible, from passenger and heavy-duty vehicles to trains. In addition to an emphasis on the lack of funding available to develop and adopt this technology at scale, there was also significant discussion about the policy unknowns associated with refueling and operating amidst a constantly changing technological environment, including issues with zero-emission battery production. This discussion mostly focused on passenger vehicles, although there were some high-level comments about the range and availability of zero-emission buses. Another theme was a call to invest in mobility options that would facilitate additional throughput without adding highway lane miles, although programmatic recommendations were not explored in detail.

One of the primary concerns expressed during this hearing was the need to maintain American competitiveness in the face of new climate change policy solutions. Members in the minority emphasized that the United States is already doing more than many other developing nations, noting that some of the world's other large economies are not nearly as transparent in their efforts to reduce emissions. Over the course of the hearing, there was a discussion about a carbon tariff, a tax on goods imported from countries that are not as committed to fighting the effects of climate change, although there was significant concern raised with the broader economic effects of such a policy. This dynamic potentially pits the new Administration's climate goals against its current trade

policies, which staff will continue to monitor closely as legislative text is developed.

On March 25, 2021, the House Appropriations Subcommittee on Transportation, Housing, and Urban Development held a hearing entitled “Creating Equitable Communities Through Transportation and Housing.” The primary topic of discussion was identifying ways to coordinate transportation and housing funding and policy decision to improve economic outcomes in all types of communities across the country. The witnesses stopped short of prescribing specific solutions or recommending changes to transportation funding streams. However, the aspirational policy goals discussed in the hearing signal the potential for some degree of changes to federal transportation programs in annual funding bills. One theme of interest to OCTA was the focus on transit funding decisions that often disproportionately impact low-income, minority, and disabled riders. The witnesses discussed the need for adequate public input in transportation funding decisions, striking the right balance in linking housing and transportation priorities, and workforce development policies that advance racial and socioeconomic equity. Whereas more permanent changes to transportation would be the jurisdiction of the authorizing committee, OCTA staff will continue to monitor funding changes or opportunities to carry out these goals, such as new funding conditions on annual grant awards, and how such developments might impact OCTA.

On March 24, 2021, the Senate Commerce Committee held a hearing entitled, “Driving the Road to Recovery: Rebuilding America’s Transportation Infrastructure.” In a tonal shift from the House hearings detailed above, this hearing explored how the current policy environment creates challenges for project sponsors trying to deliver infrastructure improvements to improve the flow of goods and people. The witnesses spoke at length about how project sponsors are often required to piece together funding from various local, state, and federal sources, all of which often have unique funding requirements. Witnesses representing regional and local levels of government spoke at length about the need for additional flexibility in federal funding sources, noting the need for streamlined funding requirements across discretionary grant programs. Commerce Committee Chair Maria Cantwell (D-WA) and the witnesses also discussed issues with at-grade crossings, both in terms of safety and traffic delays. Senators and witnesses alike discussed the need to explore ways to fund these and other freight investments.

Summary

An update is provided on the President's infrastructure plan and the potential return of earmarks in Congress. Various transportation hearings are summarized to indicate the policy decisions taking place in Washington, D.C.

Attachments

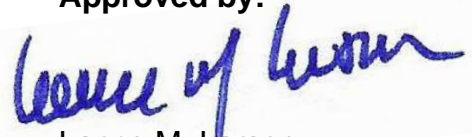
- A. OCTA Project Funding Needs
- B. Potomac Partners DC, Monthly Legislative Report – March 2021

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