OCTA

June 17, 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. Updates are provided on efforts to reauthorize federal surface transportation programs, negotiations on the President's infrastructure plan, and the nominee to lead the Federal Transit Administration. Details are also provided on three transportation-related hearings that continue to inform an everchanging policy environment in our nation's capital.

Recommendation

Receive and file as an information item.

Discussion

Surface Transportation Reauthorization in the Senate

On May 26, 2021, the Senate Environment and Public Works Committee held a markup to consider its portion of a surface transportation reauthorization bill, notably the provisions governing federal highway programs. The bill, otherwise known as the Surface Transportation Reauthorization Act of 2021, is substantially similar to the version drafted and considered by the same committee in 2019.

The last surface transportation bill, the Fixing America's Surface Transportation (FAST) Act, was extended for one year, but without another authorization bill or extension, surface transportation programs are set to expire on September 30, 2021. While much of the attention has been on the President's infrastructure plan, this bill marks the first steps in this Congress to deliberate on a comprehensive surface transportation bill, and these efforts will only become more important as the September deadline approaches.

The Senate's Surface Transportation Reauthorization Act of 2021 would authorize $303.5 billion over five years for highway programs. By comparison, the FAST Act authorized $305 billion for all federal transportation programs over a similar timeframe. This bill would reauthorize and increase funding capacity for existing federal highway programs, notably the Surface Transportation Block Grant and the Congestion Mitigation and Air Quality Improvement Program, two significant funding programs that allocate funding to the Orange County Transportation Authority (OCTA). While the bill makes minor changes, it does not significantly alter the structure of highway programs. Similar to the version marked up in 2019, this version contains the following provisions of note:

- Changes to the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program that OCTA has been actively engaged in developing over the last few years. These reforms were based on legislation introduced last Congress, S. 353 (Cornyn, R-TX), supported by OCTA, as well as other recommendations that OCTA made to Congressional staff. Of note, the bill would remove from future TIFIA loans the requirement that public agencies prepay certain secured loans, eliminating a burdensome obligation that undermines the value provided by the TIFIA program.

- The codification of the "One Federal Decision" policy that streamlines various federal environmental and project reviews so that project sponsors can be issued a single environmental decision within two years, a concept OCTA has also historically supported.

- The continuance of a dedicated climate title that would provide $4.9 billion over five years in grants aimed at protecting roads and bridges from natural disasters, including over $1 billion for alternative fuel infrastructure. Staff continues to monitor this funding, and related proposals, to ensure they benefit transportation investments.

Aside from minor drafting changes, the one substantial policy change from the version marked up last Congress is the addition of a pilot program aimed at addressing inequities resulting from transportation investments. The Reconnecting Communities Pilot program would provide $350 million in planning and construction funds for projects that remove, retrofit, or mitigate the impacts of existing transportation facilities creating barriers to community connectivity, including barriers to mobility, access, or economic development. This pilot program, developed in coordination with Senator Alex Padilla (D-CA), illustrates a willingness by some in Congress to utilize transportation funding to achieve these goals.

The Senate's highway proposal passed by a unanimous 20 to 0 vote. As of the writing of this report, the Senate Commerce, Science, and Technology Committee was reportedly preparing to host a markup of the rail title on June 16, 2021, although there was not timetable for when the Banking, Housing, and Urban Affairs Committee might markup a transit title. In addition, the Senate Finance Committee could take up the bill, if it so chooses, to consider how to pay for surface transportation investments. With surface transportation programs set to expire on September 30, 2021, Congress must either pass a reauthorization bill or another extension to prevent an interruption in federal transportation funding. The prospects for any reauthorization discussion depend on both what happens in the House and how Congress proceeds on the President's infrastructure proposal, both of which are discussed below.

Surface Transportation Reauthorization in the House

On June 9, 2021, the House Transportation and Infrastructure Committee held a protracted markup on its version of a reauthorization and infrastructure proposal, the Investing in a New Vision for the Environment and Surface Transportation (INVEST) in America Act. After 17 hours of vigorous debate to dispense with more than 200 proposed amendments, the bill passed out of committee by a vote of 38 to 26, with House leaders promising a floor vote before the July 4 recess.

Similar to the Senate's Surface Transportation Reauthorization Act of 2021, the INVEST in America Act is substantially similar to the House's reauthorization proposal of the same name that passed the House last Congress. This year's version of the INVEST in America Act would authorize $547 billion for surface transportation programs, which is $242 billion over the levels authorized by the FAST Act. The House bill would authorize $343 billion for highways, bridges, and safety programs. As such, the House's highway title is approximately $40 billion above the Senate highway proposal, although both the House and Senate are proposing more in highway spending than the FAST Act provided in overall funding authorization. Similar to the Senate proposal, the House bill would establish a new discretionary grant program to provide $3 billion to remediate economically-disadvantaged and underserved communities through a focus on inclusive economic development. OCTA staff continues to analyze INVEST in America Act to determine how the House language could affect federal formula programs, tolling policy, and the transportation planning process, among the many differences between the House and Senate versions of the highway title.

The House's INVEST in America Act would also authorize $109 billion on transit and $95 billion on rail over five years, compared to just $61 billion and $10 billion, respectively, authorized by the FAST Act. As noted above, the relevant Senate committees had not yet released their rail and transit titles as of the writing of this staff report, making it difficult to conduct a more detailed comparison of the ways in which the House and Senate reauthorization proposals might affect OCTA. Staff will continue to closely monitor the development of any reauthorization proposals, specifically how the Senate language compares to the House's INVEST in America Act, in order to more comprehensively analyze and advocate for the types of policies that will most effectively benefit OCTA's operations and mobility in Orange County.

Update on the President's Infrastructure Plan

Leaders from both parties continue to refine their proposals amid ongoing negotiations to develop an infrastructure investment plan. The President reduced the cost of his proposal focused on physical infrastructure, known as the American Jobs Plan, to $1.7 trillion, down from $2.3 trillion. Congressional Republicans also increased their proposal to $928 billion, approximately $360 billion above their initial proposal. This counterproposal remains focused largely on physical infrastructure investments directed to existing formula and proven discretionary transportation programs. Aside from the two sides remaining hundreds of billions of dollars apart, significant questions remain about whether infrastructure spending would be in addition to or part of reauthorization efforts, the timeframe for these investments, how to pay for the spending increases, and how funding could be used to address other policy priorities, notably climate change and equity.

Nomination Update

On May 11, 2021, the Senate Banking, Housing, and Urban Affairs Committee held a hearing to consider the nomination of Ms. Nuria Fernandez to officially serve as Federal Transit Administrator. Ms. Fernandez, who was appointed to the Deputy Administrator position earlier this year and currently serves as the Acting Administrator, displayed her extensive knowledge of transit policy in fielding questions about zero-emission bus technology, post-pandemic funding stability, assaults on transit personnel, and the Administration's efforts to better coordinate housing and transportation investments. Previous to her nomination, Acting Administrator Fernandez served for seven years as the Chief Executive Officer and General Manager of the Santa Clara Valley Transportation Authority. On May 19, 2021, Acting Administrator Fernandez's nomination was reported out of committee by a voice vote, where it now awaits Senate floor action.

The President's nominees to lead the other modal agencies, the Federal Highways Administration and the Federal Railroad Administration, have not yet been considered in the relevant committees. Staff will continue to monitor all these nominations and provide updates as warranted.

Transportation Hearings

On May 11, 2021, the Senate Environment and Public Works Committee's Subcommittee on Transportation and Infrastructure held a hearing entitled, "Equity in Transportation Infrastructure: Connecting Communities, Removing Barriers, and Repairing Networks Across America." Senators and witnesses explored how transportation investments have sometimes led to inequitable outcomes in certain communities and what Congress might do to address equity through transportation funding and policy decisions. California Department of Transportation (Caltrans) Director Toks Omishakin was one of the witnesses, testifying about how Caltrans is ensuring that transportation policies benefit all communities equally. Director Omishakin noted that Caltrans has expressed a commitment to expanding mobility options through investments in transit and passenger rail service as well as active transportation facilities. In fielding questions, Director Omishakin noted that California has been competitive in discretionary grant programs, and in an exchange with Senator Padilla, Director Omishakin voiced his support for a robust disadvantaged business enterprise program. While specific policy solutions were not explored in detail at the hearing, the conversations did inform the drafting of the surface transportation reauthorization legislation, discussed above, that includes a pilot program aimed at addressing historic inequities in transportation investments.

On May 18, 2021, the Senate Finance Committee held a hearing entitled, "Funding and Financing Options to Bolster American Infrastructure." Senators and witnesses discussed the long-term transportation funding future, including ways to address the solvency of the highway trust fund (HTF). The Congressional Budget Office (CBO) testified to the efficacy of various proposals aimed at addressing the HTF's structural revenue deficit. According to the CBO, a fee on electric vehicles would only raise about $200 million per year, whereas a vehicle miles traveled fee on large trucks would raise $2.6 billion per year for every cent assessed via such a fee. There was bipartisan agreement that a five-cent per mile fee on large trucks would raise significant revenue, approximately $13 billion per year according to the CBO. This amount of revenue would almost cover the structural revenue deficit facing the HTF while also respecting the user fee approach traditionally taken with federal transportation programs, although there were no witnesses from the trucking industry present at the hearing to speak to the cost borne by the trucking industry on such a proposal. There was also a discussion about repurposing stimulus funds from the most recent economic relief package, specifically those directed to state and local governments. Multiple witnesses spoke about the plans that states and localities have for such funds, and ultimately, there was no consensus on that issue.

Senators and witnesses also discussed the importance of bonding mechanisms, such as tax-exempt and tax-credit bonds. There was broad support for bonding flexibilities, such as private activity bonds and other tax-credit bonds, that could be used to leverage additional private sector investment in infrastructure improvements without burdening the already sizable federal budget deficit. One policy of interest to OCTA was the consensus opinion that the tax exemption for advance refunding bonds should be restored. This tax exemption was repealed as part of the 2017 tax reform legislation, and OCTA has supported efforts to reinstate this exemption. Witnesses specifically noted how this tax exemption allows localities to have the financial flexibility and certainty in planning long-term transportation investments. While there is support for this tax exemption, it is unclear how it fits into the already complicated discussion on paying for a large infrastructure investment at a time of historic budget deficits. That said, staff will continue to monitor these discussions and provide updates as necessary.

On May 20, 2021, the Senate Banking, Housing, and Urban Affairs Committee held a hearing entitled, "21st Century Communities: Expanding Opportunity Through Infrastructure Investments." Transportation Secretary Pete Buttigieg testified alongside Housing and Urban Development Secretary Marcia L. Fudge to discuss the Administration's efforts to coordinate housing and transportation policies. While specific federal funding or policy proposals were not discussed in detail, Secretary Buttigieg noted the Administration's support for an infrastructure investment that could both address a $1 trillion maintenance backlog while also transforming communities across the country. In urging Congress to pass the President's American Jobs Plan, Secretary Buttigieg fielded questions about how to pay for such a large investment. In one exchange, Secretary Buttigieg argued against repurposing emergency transit funding provided in the three recent stimulus bills, emphasizing that transit agencies have plans to spend that funding. The Secretary also made clear that only one of those bills included an obligation deadline, and even then, it was three years from the date of enactment, which would make it unfair for Congress to repurpose this funding only a few months after the legislation was signed into law. Secretary Buttigieg also noted that, conceptually, the Administration views the infrastructure investments proposed in the American Jobs Plan as a separate discussion from annual transportation funding provided in a surface transportation authorization bill, although he did not provide additional details on the Administration's viewpoint on this incredibly important issue.

Summary

Updates are provided on surface transportation reauthorization legislation as well as the President's infrastructure plan and relevant transportation nominations. Congressional transportation hearings are summarized referencing various policy decisions underway in Washington, D.C.

Attachments

A. Potomac Partners DC, Monthly Legislative Report – May 2021

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