OCTA

July 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. Updates are provided on a potential infrastructure package, efforts to reauthorize federal surface transportation programs, and the annual federal funding process.

Recommendation

Receive and file as an information item.

Discussion

Update on the President's Infrastructure Plan

On June 24, 2021, a bipartisan group of Senators announced a tentative agreement on an infrastructure package that would provide funding for transportation infrastructure and also make investments in broadband, water, and the power grid. The agreement would provide a total of $973 billion in spending over five years, including $579 billion in spending to supplement annual spending. A breakdown of the $579 billion in new spending is as follows:

- Transportation – $312 billion
    - $109 billion for roads, bridges, other major projects,
    - $66 billion for passenger and freight rail,
    - $49 billion for public transit,
    - $25 billion for airports,
    - $20 billion for infrastructure financing,
    - $16 billion for ports and waterways,
    - $15 billion for electric vehicles and buses, and
    - $11 billion for safety.

- Other Infrastructure – $266 billion
  - $73 billion for the power grid,
  - $65 for broadband,
  - $55 billion for water,
  - $47 billion for resilience,
  - $21 billion for environmental remediation, and
  - $5 billion for western water prevention.

The agreement framework did not detail the specific programs any of the funding would flow through. The bipartisan group of Senators did include a list of pay-fors that will reportedly finance all new spending in the infrastructure agreement. As of the writing of this staff report, the Congressional Budget Office (CBO) had not released detailed estimates for how much revenue each pay-for would raise, nor had CBO submitted a comprehensive cost estimate for the infrastructure agreement. Notable listed pay-fors in the framework include:

- Repurposing relief funds – Redirecting unused funds from recent stimulus legislation. Details on which stimulus funding might be repurposed or how much might come from each program were not disclosed.
- Toll credits – Allowing states to sell or purchase unused toll credits for infrastructure, although very little information was provided on how this idea would facilitate new infrastructure investments or whether it might alter how toll credits are currently being used.
- Addressing the tax gap – Increasing collection of unpaid taxes to raise addition revenue. According to CBO cost estimates, $40 billion in additional funding for the Internal Revenue Service would bring in a projected $103 billion in additional funding for a net revenue effect of $63 billion.
- Unemployment insurance integrity – Reducing spending on unemployment insurance and redirecting such funding from recent stimulus legislation.
- Innovative financing – Increasing the use of public-private partnerships, private activity bonds, and other innovative financing mechanisms.

While many questions remain, perhaps the most important issue is how the new spending would be combined with surface transportation reauthorization efforts. Specifically, the agreement does not detail how the assumptions made about annual funding compare to the ongoing work in both the House and Senate on surface transportation reauthorization. According to a fact sheet posted on the White House website, the infrastructure agreement would provide $973 billion in total spending over five years, consisting of $579 billion in new spending and $394 billion in annual spending via existing programs. By contrast, both the House and Senate reauthorization proposals would authorize much higher annual funding levels. The House bill is almost double the annual funding assumption, and the Senate reauthorization effort is almost $394 billion over five years without a transit title. Updates on reauthorization legislation moving through the House and Senate are provided below. Staff will continue to provide updates on transportation funding as developments arise.

Update on Surface Transportation Reauthorization in the House

On July 1, 2021, the House of Representatives passed the Investing in a New Vision for the Environment and Surface Transportation (INVEST) in America Act by a vote of 221 to 201. The INVEST in America Act, as passed, would have provided more than $700 billion for federal surface transportation and water infrastructure programs. As detailed in last month's Federal Legislative Status Report, the version of the INVEST in America Act that went to the floor would authorize $547 billion for highway, rail, transit, and safety programs. Through amendments made on the House floor, the bill now authorizes an estimated $592 billion for surface programs, which is $287 billion above the levels authorized by the Fixing America's Surface Transportation Act. This funding level is also significantly above the annual funding assumptions in the bipartisan infrastructure agreement, making the prospects for this legislation uncertain.

The INVEST in America Act includes a $148 billion transfer from the General Fund to cover spending from the Highway Trust Fund, which is more than the total amount of General Fund transfers, $140 million, made since 2008. The language on this intergovernmental transfer does not extend excise taxes the way that previous surface bills have, causing many stakeholders to question the bill's long-term transportation funding dynamic. This issue could be resolved when the pay-fors, both on the infrastructure package and any reauthorization effort, are finalized. As such, the prospects for the House's INVEST in America Act depend on both the ongoing work on the infrastructure agreement as well as the reauthorization efforts in the Senate, detailed below.

There was one noted development in the House's amendment process. Orange County Transportation Authority (OCTA) staff worked with Representative Alan S. Lowenthal (D-Garden Grove) to craft an amendment that would improve the bill's new tolling policy. Working with toll operators from across California, staff provided recommended language adjustments to Representative Lowenthal to help clarify the language so that, if enacted, changes to federal tolling policy in the INVEST in America Act would not overly burden future congestion management projects. The amendment clarified that the bill's new requirements related to degradation monitoring for tolling projects would be limited to the toll facility instead of the entire corridor. The amendment also clarified the applicability of the new tolling provisions to future projects, as well as the roles and responsibilities for entities within a tolled corridor. This amendment was adopted as part of a package of amendments by a vote of 217 to 186. These efforts are consistent with the OCTA 2021-22 Federal Legislative

Platform principle to "Encourage policies on the planning, delivery, and operation of tolling projects that are aligned with the flexibility provided in California law."

Update on Surface Transportation Reauthorization in the Senate

On June 16, 2021, the Senate Commerce, Science, and Transportation Committee passed the Surface Transportation Investment Act of 2021 by a vote of 25 to 3. The Surface Transportation Investment Act is a $78 billion rail title that Senate leaders plan to attach to the $303.5 billion highway title approved by the Environment and Public Works Committee in May, as detailed in last month's Federal Legislative Status Report. Together, these bills represent the Senate's efforts to reauthorize federal transportation programs.

The Surface Transportation Investment Act of 2021 would provide $78 billion over five years for rail, freight, and safety programs. The bill would provide a total of $2.2 billion per year for the Infrastructure for Rebuilding America Grants program, more than double the current funding level. The bill also includes language allowing up to 50 percent of funding to be used for multimodal and intermodal projects, a significant increase over the $100 million annual cap in current law. The bill would also authorize the $1.5 billion per year for the Rebuilding American Infrastructure with Sustainability and Equity Grant program, originally known as the Transportation Investment Generating Economic Recovery Grant program and then the Better Utilizing Investments to Leverage Development Transportation Discretionary Grants program. Despite annual appropriations, this program has never been authorized.

The bill authorizes $25 billion for intercity rail and $7.5 billion for rail safety projects over the next five years. It would almost double annual funding for Amtrak, including $2.5 billion per year for the National Network and an average of $1.3 billion per year for the Northeast Corridor. Similarly, the bill would provide significant funding increases for discretionary rail programs. When compared to an average of annually appropriated funding for these programs, the bill would almost triple funding for the Consolidated Rail Infrastructure and Safety Improvement Grants program. It also creates new grant programs dedicated to megaprojects and rail grade crossings.

As of the writing of this report, the Senate Banking, Housing, and Urban Affairs Committee had not released the Senate's transit title. In addition, the Senate Finance Committee had not taken up the bill to address how to finance these new surface transportation investments. By September 30, 2021, Congress must either pass a reauthorization bill or another extension to prevent an interruption in federal transportation funding. Staff will continue to closely monitor reauthorization proposals and provide updates as necessary.

Start of the Annual Budget Process

In addition to the infrastructure negotiations and reauthorization processes, the Administration and Congress have started to work on the annual appropriations process. As is the case with the first year of any Administration, the appropriations hearings have been affected by ongoing confirmations to vacant Administration positions, delaying the consideration of funding bills. Notably, language for the transportation funding bill has not yet been released in either the House or the Senate. However, there have been some budget hearings of note. On June 16, 2021, Transportation Secretary Pete Buttigieg testified in front of the Senate Appropriations Committee's Transportation, Housing, and Urban Development Subcommittee. Testifying the week before the infrastructure agreement was announced, Secretary Buttigieg spoke at a high-level in support of an infrastructure package without divulging the details of the negotiations.

On June 23, 2021, Treasury Secretary Janet Yellen testified at a Senate hearing at which she was asked about the debt ceiling. Secretary Yellen said there would be "catastrophic consequences" in failing to raise the debt ceiling. The suspension of the debt ceiling is set to expire on July 31, 2021, at which time Treasury can take what are known as "extraordinary measures" to avoid incurring additional debts that might put the national debt above its current statutory limit. On July 1, 2021, CBO updated its deficit projections to forecast a $3 trillion deficit, nearly triple pre-pandemic levels. As a result, CBO projects that national debt, as a share of the economy, will reach the highest level in our nation's history within the next decade. Given CBO's unprecedented deficit projections, it is not clear how much flexibility Treasury will have with the so-called extraordinary measures, and Congress may have to act on the debt ceiling very shortly after the statutory deadline on July 31, 2021. This dynamic is particularly relevant to the ongoing discussions about an infrastructure package and surface transportation reauthorization legislation, especially given the uncertainty with pay-fors on each legislative vehicle. Staff will continue to monitor all significant federal funding developments and provide updates as developments arise.

Summary

Updates are provided on a potential infrastructure agreement, surface transportation reauthorization legislation, the annual appropriations process, and the availability of federal funding.

Attachment

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

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