OCTA

September 16, 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 is provided of the infrastructure legislation the Senate passed that also reauthorizes federal surface transportation programs for the next five years. The staff report outlines the next steps for this bill and the other issues affecting the federal transportation funding landscape.

Recommendation

Receive and file as an information item.

Discussion

Senate Passes Bipartisan Infrastructure Bill

On August 10, 2021, the Senate passed a $1.2 trillion bipartisan infrastructure bill, the Infrastructure Investment and Jobs Act (IIJA), by a vote of 69 to 30. The IIJA would provide significant federal funding for surface transportation programs that help rebuild highways, roads, and bridges as well as improve transit and rail systems. The bill would also provide significant funding to modernize the power grid and invest in water, airport, and electric vehicle projects.

If enacted, the IIJA would reauthorize federal transportation programs for five years, which is notable since the one-year extension of the Fixing America's Surface Transportation (FAST) Act expires on September 30, 2021. In addition to reauthorizing annual transportation funding, the IIJA provides $550 billion in new infrastructure funding above existing levels, almost half of which would directly benefit transportation programs. A majority of the new transportation funding would be directed towards existing programs, funding above authorized levels by the FAST Act. In total, the bill provides approximately $567 billion in funding for transportation over five years, although this estimate varies based on how funding is categorized.

The Senate-passed IIJA would result in significant increases for formula programs on which the Orange County Transportation Authority (OCTA) relies on each year to improve mobility. Annual highway funding authorizations would increase by $115.75 billion, a 49 percent increase over current spending levels. Transit funding authorizations would increase by $42 billion, 65 percent more than was provided by the FAST Act. The Senate bill also provides a significant increase for federal rail programs, providing roughly equivalent transit and rail funding. Over the next five years, the bill would provide a total of $106.9 billion for transit programs and $102 billion for rail. The bill's astronomical increase for federal rail programs, and all programmatic changes that benefit OCTA's programs and operations, are discussed in greater detail below.

The bill's funding increases would be partially paid for through an assortment of revenue mechanisms, including a transfer of $118 billion from the General Fund, redirecting unspent emergency stimulus dollars, repurposing unemployment insurance funds, a change to Medicare rebates, and other fees, none of which are transportation related. According to the Congressional Budget Office, the infrastructure bill would add approximately $256 billion to the budget deficit over the next decade. If signed into law, Congress will have transferred approximately $271.8 billion from the General Fund into the Highway Trust Fund (HTF) over the last 13 years, and yet, the IIJA does not address the HTF's continued long-term structural revenue deficit. The bill does include funding for a national, voluntary per-mile user fee pilot program to examine the policy implications of potential HTF solutions, which closely mirrors the California Road Charge Pilot program. The national pilot does not itself institute any transportation funding mechanism, instead would study options to recommend policy solutions for Congress to consider. In addition, the Senate bill also includes funding for state pilots that could benefit the California Road Charge Pilot program.

Programmatic Funding Changes

The Senate-passed IIJA bill reauthorizes federal highway programs well above FAST Act levels. The bill would increase the largest highway formula program, the National Highway Performance Program, by 27 percent over FAST Act levels. The Senate bill would also provide a 23 percent increase for the Surface Transportation Block Grant program and a ten percent increase for the Congestion Management and Air Quality program, both when compared to the FAST Act. The bill also codifies the Bridge Investment Program and provides a total of $40 billion over five years. Bridge funding accounts for the third largest source of Federal Highway Administration funding over the five-year life of the bill, and the complicated mechanics of this program, will likely give the states significant discretion in its implementation.

While Federal Transit Administration (FTA) formula programs receive increases, the bill's most notable transit investments are in zero-emission bus funding and the Capital Investment Grant (CIG) program. The IIJA would double the size of the CIG program, providing $23 billion over five years compared to the $11.5 billion investment made by the FAST Act. The bill also authorizes $5.6 billion for the Low or No Emission Vehicle program over five years, an exponential increase over the FAST Act's five-year total of $275 million. The FTA Section 5307 Urbanized Area Formula Grants program would only receive a six percent increase compared to the FAST Act, largely because the stimulus bills provided tens of billions of dollars through this program. The FTA Section 5337 State of Good Repair Grants program would receive a 78 percent increase over FAST Act levels, the bill's largest transit formula funding increase.

The IIJA would provide $91.8 billion for federal rail programs, compared to the FAST Act's $10.3 billion total. The largest rail funding increase focuses on the Federal Rail Administration's Federal-State Intercity Passenger Rail Partnership Program, which would invest in new intercity rail service. The IIJA also provides significant five-year increases for Amtrak's National Network at $28.6 billion, and the Northeast Corridor at $12.6 billion. Proportionally, Amtrak's National Network would receive a slightly larger increase than the Northeast Corridor.

New Funding Programs

The Senate's bipartisan bill does create some new funding programs to achieve the Administration's policy goals, including:

- $13.72 billion through two new highway formula programs aimed at carbon reduction and infrastructure resiliency, specifically through electric vehicle infrastructure, evacuation routes, at-risk coastal infrastructure, and other planning purposes consistent with the Administration's policy goals;
- $7.5 billion directed explicitly to electric vehicle charging infrastructure to facilitate broader adoption of zero-emission passenger vehicles;
- $5 billion for multimodal national transportation priorities, which are informally being called "megaprojects" that can be funded through multiyear grant agreements, similar to the CIG program;
- $5 billion for a new Safe Streets and Roads for All program aimed at improving street safety through "Vision Zero" safety plans that reduce and eliminate fatalities for all transportation users;

- $1.4 billion for a competitive grant program aimed at infrastructure resiliency, with grant criteria similar to the formula funding described above;
- $1 billion for a pilot program reconnecting neighborhoods adversely affected by previous transportation investments;
- $400 million aimed at reducing emissions at ports through electrification and emerging technologies that reduce emissions from idling trucks; and
- $250 million for a new program specifically dedicated to multimodal congestion relief solutions in large urbanized areas.

OCTA will be eligible to compete for most of this new funding. Many of the new programs are aimed at projects and programs that have not traditionally been addressed through federal transportation funding sources; however, the new programs do not reduce funding for or otherwise add new policy conditions to existing surface transportation programs.

Notable Policy Changes

While the IIJA does not make sweeping policy changes, there are some provisions that will affect federal transportation funding, such as:

- One Federal Decision – The IIJA codifies the One Federal Decision policy, building off OCTA's previous advocacy efforts through the Breaking Down Barriers Report and Follow-on Study. The One Federal Decision policy aims to streamline project delivery approvals without undercutting environmental protections, specifically by ensuring the completion of the environmental process within two years of the project sponsor's original submittal and also encourages federal agencies to issue all applicable authorizations or approvals within 90 days.
- Low or No Emission Vehicles Funding – In conjunction with the significant funding increase for FTA's Low or No Emission Vehicle program, the bill would require that at least 25 percent of this funding go towards buses that are not zero-emission technology.
- Zero-Emission Fleet Transition Plans – The IIJA would require any recipient of FTA's competitive bus funding, either Low or No Emission Vehicle funding or a Bus and Bus Facilities competitive award, to have a zero-emission fleet transition plan.
- Zero-Emission Bus Workforce Training – If enacted, five percent of FTA bus funding related to zero-emission buses must be used for workforce training.
- Coach Operator Safety Provisions – The bill would add coach operator safety requirements to FTA's transit safety plans, specifically to include information about driver protection technology, de-escalation trainings, and other safety education efforts. In addition, transit agencies would be

required to submit data on coach operator assaults to the National Transit Database.

- Tolling Provisions – Any toll facility built after the IIJA's enactment would have to allow high-occupancy, transit, and paratransit vehicles to use the tolled facility at a discount or for free, unless the Secretary of Transportation determines that doing so would affect the travel time reliability of the facility.

Next Steps

The Senate-passed bill now heads to the House of Representatives. While the President has indicated he would sign the bill, the most important question that remains is how much the House may try to amend the version of the IIJA that passed the Senate. Any changes in the House would have to be approved by the Senate, complicating the weeks of negotiations over the current language.

On August 24, 2021, the House approved a complex procedural mechanism to provide for consideration of the Senate's bipartisan infrastructure bill. The procedural rule allows for consideration of the IIJA and forthcoming budget legislation. This dual track is important because of the narrow margins in the House. One faction in the House majority wants to vote on the Senate's bipartisan infrastructure bill, and another faction in the majority wants to first take up the budget legislation, which would allow for the Senate to vote on other policy priorities via an expedited Senate floor process. Under the procedural agreement, the House has until September 27, 2021, to vote on the IIJA, although the House could vote to extend that deadline.

Extending the deadline in the House rule would have significant ramifications for federal transportation funding. First, any type of extension of the procedural deadline would require an extension of the FAST Act, which is set to expire on September 30, 2021. Second, Congress needs to pass a transportation appropriations bill to avoid a partial government shutdown at the end of the fiscal year, which is also on September 30, 2021. Without a funding bill or a continuing resolution, federal transportation agencies would not have funds to conduct many critical operational functions. While the House has passed some funding bills, the uncertainty around the budget resolution, and its relationship with the IIJA, mean that funding bills are not yet finalized. Specifically, it is not clear what the Senate's plan is for considering annual funding bills, which means the appropriations process has not yet started in earnest. Third, Congress must also address the debt ceiling, which expired on July 31, 2021. The Treasury Department can take so-called extraordinary measures to avoid incurring any new debts, although news reports indicate that Congress will likely have to act on the debt ceiling sometime this fall, to avoid any significant economic consequences.

As of the writing of this staff report, there was no clear path forward on the Senate-passed infrastructure bill or any of the many transportation issues facing Congress in the coming weeks. Staff will continue to closely monitor the situation and provide updates to the OCTA Board of Directors as necessary.

Summary

An update is provided on the Senate's infrastructure bill and the next steps in the complex federal transportation funding picture.

Attachments

A. Potomac Partners DC, Monthly Legislative Report – July 2021
B. Potomac Partners DC, Monthly Legislative Report – August 2021

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