OCTA

***November 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 regularly updates the Legislative and Communications Committee on policy issues directly impacting the agency's programs, projects, and operations. An update is provided on the House's approval of the Senate-passed infrastructure legislation, the Infrastructure Investment and Jobs Act, which also reauthorizes federal surface transportation programs for the next five years. This report outlines the benefits of the bill and the next steps for its implementation.

### *Recommendation*

Receive and file as an information item.

### *Discussion*

Bipartisan Infrastructure Bill

On November 5, 2021, the House of Representatives passed the $1.2 trillion bipartisan infrastructure bill, the Infrastructure Investment and Jobs Act (IIJA), by a vote of 228 to 206. House passage came after months of delay on this bill due to ongoing negotiations over other infrastructure spending in the reconciliation bills. The Senate had previously passed the IIJA by a vote of 69 to 30 on August 10, 20210. As of the writing of this staff report, the IIJA was expected to be signed into law on November 15, 2021.

As previously reported to the Legislative and Communications Committee, the IIJA provides significant federal funding for surface transportation programs that help rebuild highways, roads, and bridges as well as improve transit and rail systems. The IIJA reauthorizes federal transportation programs for the next five years. The timing of the IIJA is especially important because the previous authorizing bill, the Fixing America's Surface Transportation (FAST) Act, was operating under a series of short-term extensions. In addition to reauthorizing annual transportation funding, the IIJA provides $550 billion in new infrastructure funding above existing levels, almost half of which directly benefits transportation programs. A majority of the new transportation funding is directed to existing programs, funding them 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 bill also provides significant funding to modernize the power grid and invest in water, airport, broadband, and electric vehicle projects.

IIJA Funding Structure

The IIJA results 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 increase by $115.75 billion, a 49 percent increase over current spending levels. Transit funding authorizations increase by $42 billion, 65 percent more than current spending levels. The bill also provides a significant increase for federal rail programs, providing roughly equivalent transit and rail funding. Over the next five years, the bill provides 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 are 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 is expected to add approximately $256 billion to the budget deficit over the next decade. Congress will have transferred approximately $271.8 billion from the General Fund into the Highway Trust Fund (HTF) over the last 13 years, however 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 studying options to recommend policy solutions for Congress to consider. In addition, the bill also includes funding for state pilots that could benefit the California Road Charge Pilot program.

Programmatic Funding Changes

The IIJA bill reauthorizes federal highway and transit programs well above FAST Act levels. The bill increases the largest highway formula program, the

National Highway Performance Program, by 27 percent over FAST Act levels. The bill also provides a 23 percent increase for the Surface Transportation Block Grant (STBG) program and a ten percent increase for the Congestion Mitigation and Air Quality program, both compared to the FAST Act. The IIJA 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 life of the bill, and the complicated 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 doubles 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 only receives 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 receives a 78 percent increase over FAST Act levels, the bill's largest transit formula funding increase.

The IIJA provides $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 invests 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 receives a slightly larger increase than the Northeast Corridor.

New Funding Programs

The bipartisan IIJA 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 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 criteria similar to the formula funding described in the first bullet in this list;

- $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:

- Transportation Infrastructure Finance and Innovation Act (TIFIA) Amendments – The legislation includes changes to the 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 OCTA made to Senator Diane Feinstein (D-San Francisco), a member of the Senate Environment and Public Works Committee. Among the IIJA’s TIFIA streamlining provisions, the bill removes 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 IIJA also extends the statutory timeframe for the inclusion of multiple projects into a TIFIA Master Credit Agreement from the three-year window in current law to five years, which will allow OCTA to bundle more projects into one TIFIA instrument and maximize savings to taxpayers. Both of these changes are based on policy recommendations made by OCTA.

- 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.

- Buy America Provisions – The IIJA establishes the Made in America Office within the Office of Management and Budget and requires that each federal agency submit a report on funding programs considered deficient in Buy America compliance. The bill specifies definitions for deficient programs regarding the production of iron and steel, manufactured products, and construction materials, excluding cement, gravel, and aggregate binding agents from the definition of construction materials. Finally, the IIJA requires regulations, within one year, to standardize and simplify how agencies comply with and enforce the Buy American Act.

- Low or No Emission Vehicles Funding – In conjunction with the significant funding increase for FTA's Low or No Emission Vehicle program, the bill requires that at least 25 percent of this funding go towards buses that are not zero-emission technology.

- Zero-Emission Fleet Transition Plans – The IIJA requires recipients of FTA's competitive bus funding, either Low or No Emission Vehicle funding or a Bus and Bus Facilities competitive award, have a zero-emission fleet transition plan.

- Zero-Emission Bus Workforce Training – Five percent of FTA funding related to zero-emission buses must be used for workforce training.

- Coach Operator Safety Provisions – The bill adds 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 must submit data on coach operator assaults to the National Transit Database.

- Tolling Provisions – Any toll facility built after the IIJA's enactment must 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 affects the travel time reliability of the facility.

- STBG Active Transportation Set-aside – The bill increases the amount of STBG funding set aside for active transportation purposes and also increases the percentage of the STBG active transportation set-aside distributed by population, from 50 percent in current law to 59 percent. The bill also includes a mechanism allowing up to 100 percent of this funding to be distributed by population if the Secretary approves state plans to do so, pursuant to certain reporting requirements in the bill.

- CIG Changes – Aside from doubling the size of the CIG program, the IIJA makes some minor changes to the CIG program. Notably, the bill raises the Small Starts thresholds to $400 million in total capital cost and $150 million in CIG share, increases over the $300 million and $100 million thresholds, respectively, in current law. The bill also requires a public CIG dashboard that must be placed in an easily identifiable location on the FTA website, similar to the CIG transparency mechanisms OCTA has previously advocated for.

- Office of Multimodal Freight Infrastructure and Policy – The bill creates a new office within the Office of the Secretary to plan, fund, and deliver multimodal freight projects. The newly created Office of Multimodal Freight Infrastructure and Policy will administer multimodal freight grants, including those in the Infrastructure for Rebuilding America (INFRA) grant program. While not exactly clear what role this new office will play in grant administration, staff will continue to monitor its impact on INFRA funding or any other discretionary funding program.

Next Steps

In becoming law, the IIJA ushers in the federal transportation policy paradigm for the next five years. The State has already initiated conversations about the implementation of some of the IIJA's provisions. Certain programs, like the bridge program and various climate programs, will likely necessitate either state legislation or significant guideline development, or both, to implement the funding in Orange County and across the State. Staff will continue analyzing the bill language and working with stakeholders to ensure as much of the bill's funding as possible benefits OCTA's projects and programs.

Moreover, the appropriations process will play a role in the delivery of these funds. The IIJA provides three different types of funding – authorizations for mandatory spending from the HTF, funding authorizations subject to the annual appropriations process, and one-time advance appropriations for lump sum increases for specific programs. Transportation stakeholders that OCTA works closely with have already started to seek clarity from appropriators on the role that annual funding bills might play in affecting the implementation of the IIJA. Staff will continue monitoring these developments as part of its routine updates on the appropriations process.

Finally, Congress is still debating a solution to the statutory debt ceiling, the potential for additional spending via the reconciliation process, and a yearlong funding bill for the current fiscal year. The debt ceiling and current continuing resolution must be acted on by early December. Staff will continue to monitor these negotiations and provide update on any significant developments.

***Summary***

An update is provided on the reauthorization and infrastructure bill passed by Congress.

***Attachment***

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

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