

## MEMORANDUM

**TO:** Santa Clara Valley Transportation Authority  
Board of Directors

**FROM:** Kurt Evans, Government Affairs Manager  
Santa Clara Valley Transportation Authority

**DATE:** July 13, 2009

**SUBJECT:** Weekly Legislative Update: Week of July 6, 2009

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### **FEDERAL**

**SAFETEA-LU Reauthorization:** The House, Senate and White House are in three different places when it comes to the authorization of federal surface transportation programs. In the House, the leadership of the Transportation and Infrastructure Committee has unveiled a six-year, \$500 billion bill. It authorizes \$337.4 billion for highways, \$99.8 billion for transit, and \$50 billion for high-speed rail. In addition, the House legislation:

- Defines a new role for the federal government in the area of surface transportation that focuses on achieving 12 objectives.
- Proposes a significant consolidation of existing federal highway and transit programs.
- Creates two new multimodal discretionary programs aimed at reducing congestion in major metropolitan areas and improving interstate freight mobility.
- Establishes a National Infrastructure Bank to fund large-scale transportation projects.
- Places a new emphasis on performance measures.

Ideally, House Transportation and Infrastructure Committee Chairman James Oberstar (D-MN) would like to get a new six-year surface transportation authorization bill to President Barack Obama without having to extend the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which expires at the end of September. However, that goal is becoming more and more remote. Oberstar's plan to hold a full committee mark-up this month has been pushed back to at least September, as the House Ways and Means Committee, which is deep into health care talks, is not expected to be ready to offer a plan to finance the bill this summer.

Meanwhile, the White House released a "first stage" surface transportation authorization proposal that consists of the following:

- 18-month extension of SAFETEA-LU to give lawmakers until after the November 2010 mid-term elections to reach a deal on a six-year bill.

- Appropriation of \$20 billion to maintain the solvency of the Highway Trust Fund. Of this amount, \$18 billion would go for highways and \$2 billion for transit in order to keep the Highway and Mass Transit Accounts within the Trust Fund afloat at current spending levels through FY 2010. The Obama Administration wants this \$20 billion to be fully offset, perhaps by using the international tax enforcement measures that are proposed in the President's budget.
- Reforms to encourage performance-based decision-making at the state and regional levels.
- Measures designed to emphasize regional mobility and access, and livability in the metropolitan transportation planning process.

Key transportation leaders in the Senate are receptive to the idea of a short-term extension of SAFETEA-LU. However, they do not support including any modifications to current law in a short-term extension bill, contending that reforms, such as those proposed by the Obama Administration, would only endanger the measure's chances of passage before the August congressional recess. In fact, the Senate Environment and Public Works Committee marked up a "clean" 18-month extension of SAFETEA-LU on July 15 that does not include any reforms. Also coming into play in the Senate is a preoccupation with the confirmation of a new U.S. Supreme Court justice, a major climate change bill and health care reform, all of which are higher priorities than a multi-year surface transportation authorization bill.

***Climate Change:*** Saying global warming poses unprecedented threats to Americans' way of life, four of President Obama's top environmental and energy officials urged the Senate to quickly pass legislation to reduce the pollution linked to the planet's rising temperature. The heads of the Energy, Agriculture and Interior Departments, as well as of the Environmental Protection Agency (EPA) told the Senate Environment and Public Works Committee that it should pass a bill similar to the one that the House narrowly cleared late last month. The House legislation would impose the first-ever limits on greenhouse gas emissions—eventually leading to an 80 percent reduction by mid-century—by putting a price on each ton of climate-altering pollution.

The appearance of the three Cabinet secretaries and the EPA administrator on Capitol Hill signals the beginning of the Senate's work on a climate change bill. The Environment and Public Works Committee hopes to draft and advance legislation before the August congressional recess, and Senate leaders want to take up the measure on the floor this fall, before talks begin on a new global treaty to reduce heat-trapping gases.

The House narrowly passed its climate change legislation by a vote of 219-212 after months of negotiations that led to last-minute deals and significant concessions in order to win the support of moderate Democrats from industrial and agricultural states, who were concerned about the costs that the bill would impose on businesses in their districts.

**Financial Markets:** President Obama proposed the most sweeping overhaul of financial market regulations since the 1930s in response to a Wall Street crisis that sent the U.S. economy into a severe downturn. He wants lawmakers to enact the plan by the end of the year. The 88-page plan almost certainly will spark intense debate in Congress, with opponents already claiming that it would impose too many restrictions that would harm the ability of U.S. financial companies to compete in the global economy. In general, the President's plan is designed to:

- Strengthen the oversight of the nation's financial system: A "financial services oversight council" headed by the U.S. Treasury would be responsible for ensuring that major financial institutions have sufficient capital and that high levels of executive compensation do not prompt company officers to take undue risks. The Office of Thrift Supervision, which has been criticized for lax enforcement of savings and loans, would be replaced by a "national bank supervisor" to keep institutions from shopping for the most lenient regulator. In addition, the new system would force hedge funds to register and would regulate money market mutual funds.
- Regulate complex financial instruments: Over-the-counter derivatives and credit default swaps would be regulated and sold on exchanges. Companies that bundle loans into securities would have to retain 5 percent of the credit risk.
- Create a consumer finance watchdog agency: This entity would oversee a wide range of consumer products, including mortgages. It would ensure that financial firms clearly disclose risks to consumers in plain language and do not engage in unfair practices.
- Reduce the risk of failing companies: The Federal Reserve would have the authority to safely shut down failing financial firms so they do not threaten the entire system. Today, the federal government can dismantle failing banks, but does not have such power over non-banks.

## **STATE**

**State Budget:** Despite plunging tax revenues, Wall Street's unwillingness to loan the state money and billions of dollars worth of IOUs hitting mailboxes, California's leaders continue to be at an impasse over how to close the state's growing \$26.3 billion deficit. Gov. Arnold Schwarzenegger and the Legislature blew past a June 30 deadline to enact a revised budget for FY 2010, and no one can say with any precision when the new moment of truth is, if there is one.

Based on projections of the state's financial outlook by Controller John Chiang, the answer may be several more weeks, if not months. That is when he projects the state will finally run short of cash to make legally mandated payments to schools and bondholders. The crunch would have come sooner had Chiang not resorted to using IOUs to pay lower-priority creditors, such as vendors. Chiang said the state could probably make it until September without jeopardizing those legally mandated obligations by continuing to issue IOUs. He plans to issue \$3.4 billion worth of the notes this month, and billions more in August if a budget deal is not reached. However, the notes cannot be cashed until October 2, except in cases where a recipient's bank agrees to honor them sooner.

Meanwhile, budget negotiations between Gov. Schwarzenegger and legislative leaders continue to be fluid. Assembly Speaker Karen Bass (D-Los Angeles) threatened to boycott negotiating sessions with the Governor, saying he is not serious about reaching a deal. The Governor, in turn, blamed what he called “intransigent” Democrats for not being willing to make adequate program cuts and far-reaching reforms to fix the state’s repeated deficits. Every day that elapses without a deal means another day that the state has to pay bills based on the budget that legislators crafted in February, which quickly fell out of balance primarily because of plummeting tax revenues and the defeat of several measures on the May 19 special election ballot. Lawmakers have proposed various savings measures to help bridge the shortfall, but the longer it takes to enact those savings, the less time there will be for them to take effect. By the end of July, the state will have lost \$800 million in potential savings through the simple passage of time. That will force legislators to cut even deeper to make up the difference.

Amid all of the confusion, it would be easy to lose track of what is on the table with regard to transportation. Here are the key proposals that are still in play:

- Using \$336 million in unanticipated Public Transportation Account “spillover” revenues that are projected to accrue in FY 2010 to pay debt service on transportation bonds.
- Using \$986 million in annual gas tax subvention revenues for local streets/roads to pay debt service on transportation bonds in FY 2010 and another \$745 million in FY 2011.
- Significantly reducing the staffing resources in Caltrans’ Planning Department that are dedicated to preparing and reviewing project study reports (PSRs), which are required planning documents for capital improvement projects on the state highway system.
- Charging the costs for preparing and reviewing PSRs for state highway improvements initiated at the local level to local agencies.
- Delaying the first and second quarter payments under Proposition 42 for local streets/roads to the fourth quarter of the fiscal year.
- Requiring government entities to withhold 3 percent of payments to independent contractors for state income tax purposes.

In addition, there is a concerted effort now under way to defeat Budget Conference Committee language that would require the California High-Speed Rail Authority to study alignments other than the Caltrain Corridor for the San Jose-San Francisco segment of the state’s high-speed rail project.

**California Transit Association Lawsuit:** The Third District Court of Appeals in Sacramento ruled against the state in a lawsuit filed by the California Transit Association challenging the diversion of \$1.2 billion in public transit money to the General Fund in FY 2008. In its decision, the court said the \$1.2 billion diversion was illegal. The appellate court’s ruling hinged on the following three key determinations:

1. “Spillover” revenues must be deposited in the Public Transportation Account, and must be used for mass transportation and transportation planning purposes.
2. “Mass transportation” means “public transportation” or “public transit.” Therefore, Public Transportation Account revenues cannot be used for yellow school bus service or for transportation for the clients of the state’s regional occupational centers.
3. Public Transportation Account revenues cannot be used to reimburse the General Fund for past debt service payments related to any transportation bonds. With regard to the current fiscal year, Public Transportation Account revenues can be used for debt service payments related to public transit bonds (Proposition 108), but not for transportation bonds generally.

All indications are that the state will appeal this decision to the California Supreme Court. If the Supreme Court agrees to take the case, it could be some time before the questions raised in the Association’s lawsuit are finally resolved.

## **REGIONAL**

***Metropolitan Transportation Commission (MTC):*** At its July 8 meeting, the MTC Programming and Allocations Committee took public comment on a series of funding actions that would program \$140 million to the BART Oakland Airport Connector Project. The 3.2-mile elevated connector would operate on a dedicated right-of-way and connect the Coliseum BART Station with Oakland International Airport. During the public testimony, a number of speakers, including former state Sen. Don Perata, who is an Oakland mayoral candidate, urged the committee to halt the project and consider a bus rapid transit line as an alternative. They argued that a bus alternative could be implemented at a fraction of the cost of the people mover. However, the BART Board supports the project and believes it would provide a needed transportation benefit, while giving Oakland’s economy a boost by creating new construction jobs. The full commission is scheduled to consider the matter later this month.

**NOTE:** Also contributing to this report were Susan Lent with Akin Gump Strauss Hauer & Feld; Mark Watts with Smith, Watts & Company; and Scott Haywood, VTA’s Policy and Community Relations Manager.