

MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

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

DATE: July 20, 2009

SUBJECT: Weekly Legislative Update: Week of July 13, 2009

FEDERAL

Transportation Appropriations: The House Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies marked up its annual spending bill on July 13. Full Appropriations Committee consideration of this bill and final House passage are scheduled to occur before the end of the month. The Senate process will most likely begin once Congress reconvenes after its upcoming August recess.

The House subcommittee's legislation largely tracks the budget request submitted by President Barack Obama. It provides \$41.1 billion for highways in FY 2010, \$10.3 billion for transit, \$1.5 billion for Amtrak, and \$16 billion for aviation. All of these numbers are fairly close to FY 2009 spending levels. The only departure from the President's budget submittal is a \$4 billion appropriation for high-speed and intercity passenger rail. This figure represents a significant increase over the President's FY 2010 request of \$1 billion. However, the subcommittee's bill contains a provision that would allow Congress to authorize the transfer of up to \$2 billion from high-speed and intercity rail to fund a National Infrastructure Bank, if one is created by Congress prior to September 30, 2009.

The subcommittee's legislation includes two project earmarks for VTA under the Bus/Bus Facilities Discretionary Program: (1) \$750,000 for our Renewable Energy Conversion Project, a request that was sponsored by Congresswoman Zoe Lofgren; and (2) \$600,000 for our High-Volume Bus Stop Upgrades Program, which was pushed by Congressman Mike Honda.

SAFETEA-LU Reauthorization: On July 15, the Senate Environment and Public Works Committee marked up the Surface Transportation Extension Act of 2009, an 18-month continuation of the highway portion of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The extension bill authorizes spending for federal-aid highway programs through March 2011, providing \$41 billion in FY 2010 and \$20.5 billion for the first half of FY 2011. Seeking to secure immediate passage, the committee

introduced the bill as a continuing resolution with none of the policy changes recommended by the Obama Administration.

The legislation does not include funding levels for public transit or rail programs for the 18-month period. Money for those programs must be added to the bill by the Senate Banking, Housing and Urban Affairs Committee and the Senate Commerce, Science and Transportation Committee, respectively. In addition, there are not sufficient resources in the Highway Trust Fund to pay for the funding authorized for highways. Supposedly, the Senate Finance Committee is developing a proposal to address the projected shortfall in the Highway Trust Fund for both highways and public transit for the 18-month period.

In the House, a short-term extension of SAFETEA-LU faces strong opposition from Transportation and Infrastructure Committee Chairman Jim Oberstar (D-MN), who remains committed to moving forward with a long-term authorization of federal surface transportation programs. In June, he and fellow committee members unveiled a six-year bill that authorizes \$337.4 billion for highways, \$99.8 billion for public transit, \$12.6 billion for highway and motor carrier safety, and \$50 billion for high-speed rail. In addition, Oberstar's bill: (a) defines a new role for the federal government in the area of surface transportation that focuses on achieving 12 objectives; (b) proposes a significant consolidation of existing federal highway and public transit programs; (c) creates two new multimodal discretionary programs aimed at reducing congestion in major metropolitan areas and improving interstate freight mobility; and (d) places a new emphasis on performance measures. At the same time, Oberstar is working behind the scenes on a separate piece of legislation to prop up the Highway Trust Fund through September 30, which would require around \$7 billion.

Oberstar's plan to proceed with a long-term surface transportation authorization bill has run into several problems. In addition to the Senate Environment and Public Works Committee's proposed delay, an approach that is supported by the Obama Administration, the ambitious House bill could need upwards of \$200 billion in additional revenue, which falls under the jurisdiction of the Ways and Means Committee. Lawmakers on this committee, already heavily involved in health care reform legislation, have balked at a fuel tax increase or other moves to raise the money that is needed to support Oberstar's measure. Even if Ways and Means can fully fund the \$500 billion proposal, several other major issues still have to be worked out at the Transportation and Infrastructure Committee level, such as the funding distribution formulas and which earmarks will be included in the bill.

Although SAFETEA-LU does not expire until September 30, the pending insolvency of the Highway Trust Fund is forcing lawmakers to act in July. The balance in the Trust Fund is expected to dip low enough by mid-August that the Federal Highway Administration (FHWA) would have to begin cutting state reimbursements for federal-aid highway projects. With Congress scheduled to take a month-long recess in August, any Trust Fund rescue must be approved in July.

Climate Change: 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. The legislation, authored by Reps. Henry Waxman (D-CA) and Edward Markey (D-MA), would set an initial limit on greenhouse gas emissions and then gradually tighten it over time. Major emitters of greenhouse gases, including any business that burns fossil fuels such as oil, natural gas or coal, would have to reduce their emissions or buy allowances, which would be traded on the open market like commodities. This would be the first economy-wide limit on greenhouse gas emissions in the United States. Europe has had a similar system in place for years.

What Waxman and Markey had to give away in order to secure the votes needed for the bill's passage were free emission allowances during a transition period of 10 to 20 years. The biggest chunks of allowances are intended to reduce the costs for certain companies and consumers, especially those reliant on coal. Other allowances would essentially be subsidies, going to states, a new clean-energy bank, forestry groups, automakers, and others that would sell them and use the proceeds.

President Obama's initial climate change proposal called for the federal government to auction off 100 percent of the emission allowances under the cap. The Waxman-Markey bill, however, proposes to auction off about 15 percent to start with and would not phase out the free allowances until 2030. During the program's first 10 years, a full auction as proposed by the President would pump an extra \$713 billion in revenues into the U.S. Treasury.

Under the Waxman-Markey bill, local electricity distribution companies that rely heavily on coal would get 35 percent or more of the free allowances through 2025. Energy-intensive manufacturers, such as those that make aluminum, glass or steel, would receive 10-15 percent of the allowances for most of a decade. These firms are worried about competition from countries such as China and India, which do not price greenhouse gas emissions. Rural electricity firms would be entitled to an extra \$6.4 billion worth of allowances; three-quarters of 1 percent would go to about a half-dozen small, independent oil refiners; and major oil refiners would receive 2 percent. Automakers would get 3 percent of the free allowances to cover their manufacturing emissions (not tailpipe emissions) for six years, and then 1 percent for eight more years. Companies working on carbon capture and storage would receive as much as 5 percent. In the initial years, state governments would get 10 percent of all allowances, which they would then sell to finance a range of energy-efficiency activities, including public transit. And 5 percent of the free allowances would go to help groups fighting deforestation. These groups would sell the allowances to fund projects in places such as Brazil, Indonesia and China.

While the centerpiece of the Waxman-Markey legislation is cap-and-trade, key portions are about regulation. These provisions would act as backstops, cutting emissions even if the cap-and-trade system does not work as advertised. One section of the bill would require new coal-fired power plants to emit 50 percent less carbon dioxide than existing plants do. Plants licensed after 2020 would have to cut emissions by 65 percent. Other parts of the legislation would establish more energy-efficient building standards and order the phasing-out of hydrofluorocarbon, a refrigerant that is a strong greenhouse gas. Finally, the measure would establish a nationwide renewable electricity standard, requiring utilities to meet 20 percent of their 2020 power needs from renewable energy sources or energy efficiency.

U.S. Supreme Court: In her opening effort to blunt Republican criticism that her rulings would be slanted by her background or ethnic sympathies, Supreme Court nominee Sonia Sotomayor pledged “fidelity to the law” and said she would interpret the Constitution by its terms. Fending off tough questions from her GOP critics during her Senate Judiciary Committee confirmation hearings, Sotomayor reminded lawmakers of her view that “the task of a judge is not to make the law, it is to apply the law.”

At the heart of Sotomayor’s confirmation hearings were questions about the value of empathy and compassion in judicial decision-making, and how a judge’s background can affect rulings. Unlike Republican Supreme Court nominees who came before the Senate Judiciary Committee in 2005 and 2006, and far more than the two prior Democratic nominees in 1993 and 1994, Sotomayor entered the hearings under fire from conservatives, such as Sens. Jeff Sessions of Alabama, Chuck Grassley of Iowa and John Cornyn of Texas, for remarks that she made off the bench, not from rulings. Especially controversial has been Sotomayor’s comment that she “would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life.” Sotomayor, who would be the first Hispanic Supreme Court justice, did not explicitly defend that remark before the Senate Judiciary Committee, but said, “My personal and professional experiences help me to listen and understand, with the law always commanding the result.” She did not use the word “empathy,” yet noted that she rules according to what the law requires, and tries to explain “why a contrary position, sympathetic or not, is accepted or rejected.”

Republican critics are focusing on a handful of Sotomayor cases, including one upholding a decision by officials in New Haven, Conn., to discard the results of firefighter promotion tests because whites outscored blacks. Meanwhile, Democrats are trying to keep the focus on Sotomayor’s overall record as a 17-year veteran of the U.S. court system.

STATE

State Budget: Gov. Arnold Schwarzenegger and legislative leaders reached a “handshake” agreement to erase California’s \$26 billion deficit by cutting broadly across state government, shifting some costs into the future, and taking funds from cities and counties. They believe their budget plan is good enough to end the state’s issuance of IOUs, a practice that California is using for only the second time since the Great Depression.

Standing with Senate and Assembly leaders in front of his Capitol Office, the Governor called the deal “a really great, great accomplishment,” and heralded the fact that the \$88 billion General Fund budget includes no tax increases. Legislative leaders, however, spoke in sober tones about producing a plan with \$15.5 billion in cuts that they know will impact millions of Californians who depend on state government for services, education or employment, as well as local officials whose budgets are already experiencing sizable deficits. Senate and Assembly floor votes on the agreement are scheduled for July 23.

The key elements of the plan are as follows:

General Fund Program Cuts:

- \$6 billion from K-12 schools and community colleges over a two-year span, some of which would be backfilled with federal economic stimulus money.
- Nearly \$3 billion from the University of California and California State University systems.
- \$1.3 billion from Medi-Cal over two years.
- \$1.3 billion by retaining three unpaid furlough days per month for state workers.
- \$1.2 billion in unallocated reductions to the Department of Corrections.
- \$528 million from CalWORKs.
- \$226 million from Healthy Families.
- \$211 million from the In-Home Supportive Services Program. Also included in the deal are requirements for fingerprinting caregivers and recipients, and background checks for caregivers.
- \$8 million from state parks. This cut is less than previously proposed and would allow the majority of state parks, beaches and attractions to stay open.

Local Government Diversions:

- \$2 billion in local government property tax revenues. Pursuant to Proposition 1A, these funds must be repaid with interest in three years.
- \$1.7 billion from redevelopment agencies.
- \$1 billion per year in FY 2010 and FY 2011 in gas tax subventions for local streets/roads.

Revenues:

- Accelerating the collection of personal income and corporate taxes to bring in revenue earlier than anticipated.
- Selling off part of the State Compensation Insurance Fund, which the Department of Finance values at \$1 billion.
- Allowing limited expansion of oil drilling off the Santa Barbara Coast, bringing in \$100 million in FY 2010.
- Giving the Governor the authority to pursue the sale of about 10 state-owned buildings, including the Orange County Fairgrounds, the Public Utilities Commission Building in San Francisco and the Ronald Reagan State Office Building in Los Angeles.

Miscellaneous:

- Giving school districts the option of cutting the school year by five days.
- Eliminating the Integrated Waste Management Board and the Board of Geologists.
- Deferring the June 2010 monthly paychecks for state employees by one day for a paper savings of \$1.2 billion in FY 2010.
- Including a reserve of about \$800 million.

REGIONAL

Joint Policy Committee (JPC): At its July 13 meeting, the JPC discussed potential regional parking reforms for climate protection. The committee heard a brief report outlining: (a) the issues involving current parking policies; (b) the benefits of pricing parking; (c) the reasons

why more local jurisdictions are not implementing reforms; and (d) a range of potential strategies for the Bay Area. Most JPC members agreed that the committee should investigate a regional and/or statewide approach to reforming parking policies, while realizing that there cannot be a “one-size-fits-all” approach. In addition, committee members noted that there needs to be a strong public transit component to any reform. JPC staff will begin investigating specific strategies and will report back to the JPC at a later date.

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.