MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

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

DATE: September 8, 2009

SUBJECT: Weekly Legislative Update: Week of August 31, 2009

FEDERAL

FY 2010 Transportation Appropriations: Among the top priorities for lawmakers upon their return to Washington, D.C., from their summer recess is the enactment of annual appropriations legislation to fund all federal agencies and programs for FY 2010. While the House has finished all of its bills, the Senate has completed only five of 12 measures.

In the case of transportation, the House passed its version of the Transportation, Housing and Urban Development, and Related Agencies (THUD) appropriations bill on July 23. Meanwhile, in the Senate, the Appropriations Committee completed its work on July 30, and the legislation is awaiting floor consideration, which should occur sometime in September. Once the full Senate approves its bill, House and Senate Appropriations Committee members will meet in conference to develop a compromise version of the legislation for final passage and the President's signature. If the THUD bill is not completed by the end of the fiscal year on September 30, a continuing resolution may be required to keep transportation-related agencies and program operating in the meantime.

The House-passed THUD appropriations bill contains $10.484 billion for public transit programs for FY 2010, while the Senate measure provides $10.915 billion. The FY 2009 enacted level of funding was $10.231 billion. The numbers for the key public transit programs are as follows:

Urbanized Area: These funds are allocated to public transit agencies in urbanized areas (UZAs) according to a complex formula and can be used for any transit capital purpose and, in some limited cases, for operations. House = $4.757 billion. Senate = $4.757 billion.

Rural Area: These formula funds are allocated to public transit agencies that are not in a UZA. House = $607 million. Senate = $607 million.

Elderly and Persons with Disabilities: These formula funds are allocated to non-profit organizations to provide transportation services to elderly and disabled individuals who cannot use or do not have access to public transit systems. House = $140.7 million. Senate = $140.7 million.

Job Access/Reverse Commute: This formula grant program provides funding for projects that are designed to enhance access to employment opportunities for welfare recipients and low-income individuals. It also funds reverse commute initiatives. House = $164.5 million. Senate = $164.5 million.

New Freedom: This formula program provides funding for new transportation services beyond those required by the federal Americans with Disabilities Act (ADA) for individuals with special mobility needs. House = $92.5 million. Senate = $92.5 million.

Clean-Fuels: This program provides grants to public transit agencies to help them utilize clean-fuel technologies for their bus fleets. House = $61.5 million. Senate = $61.5 million.

Fixed Guideway Modernization: These funds are distributed by formula to UZAs for rehabilitation and enhancement projects related to existing rail systems. House = $1.756 billion. Senate = $1.756 billion.

New Starts/Small Starts: These discretionary funds are earmarked by Congress for major rail expansion projects, as well as for smaller streetcar, trolley, bus rapid transit, and commuter rail projects. House = $1.827 billion. Senate = $2.307 billion. Funding for New Starts/Small Starts is one of the major differences between the House and Senate FY 2010 THUD spending bills. The Senate is recommending $480 million more than the House.

Bus and Bus Facilities: These discretionary funds are earmarked by Congress primarily for the purchase of buses, and for the construction or upgrading of bus facilities. House = $584 million. Senate = $584 million. In both cases, the recommended funding level is $300 million less than the amount enacted for FY 2009. The House report states, "The funding level included for the bus program provides adequate discretionary resources since the projects designated in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) are not continued in fiscal year 2010." The $300 million reduction in Bus/Bus Facilities funding was used to increase the appropriations levels for the UZA and Rural Area Formula Programs.

Other items of note are as follows:

High-Speed Rail: The Senate FY 2010 THUD appropriations bill provides $1.2 billion for high-speed and intercity passenger rail, as opposed to the House measure, which recommends $4 billion.

Positive Train Control: The Senate legislation proposes to fund the full $50 million authorization under the Rail Safety Improvement Act of 2008 for deployment of positive train control (PTC) systems. The House version includes no money for this purpose.

Amtrak: The Senate bill provides $553.3 million for Amtrak operating grants, the same as the House legislation, and just over $1 billion for capital grants, which exceeds the House number by $72 million.

Multimodal Infrastructure Investment: The Senate FY 2010 THUD legislation includes $1.1 billion for an undefined multimodal competitive grant program, whereas the House provides no such appropriation.

Surface Transportation Authorization: Lawmakers must decide whether to enact a long-term surface transportation authorization bill or an extension of current programs prior to the expiration of SAFETEA-LU on September 30. Considering the short time remaining before SAFETEA-LU ends, it is very likely that an extension will be required.

While House Transportation and Infrastructure Committee Chairman James Oberstar (D-MN) is still working on gaining broader support for a six-year authorization, he has indicated that if such a bill cannot be completed prior to the September 30 deadline, he would favor a three-to-six-month extension of SAFETEA-LU to keep the pressure on Congress to pass a long-term measure as quickly as possible. Due to the crowded legislative agenda and limited time remaining before SAFETEA-LU expires, President Barack Obama is backing an 18-month extension of existing surface transportation law. In the Senate, the Banking, Housing and Urban Affairs Committee; and the Environment and Public Works Committee have separately approved bills extending SAFETEA-LU for another 18 months. But the exact length of any extension is expected to be a major topic of discussion over the next several weeks.

Putting aside questions about timing, the most challenging aspect of the legislation is reaching a consensus on how to finance the increased investment in public transit, high-speed/intercity passenger rail and highways that authorizing committees in both the House and Senate are considering. In addition, even a short-term extension must include some amount of new revenues to ensure that the Highway Trust Fund remains solvent, since current revenues will not be enough to fund surface transportation programs through the upcoming fiscal year. On August 7, President Obama signed H.R. 3357 into law, which provides sufficient funding to cover an anticipated shortfall in the Highway Account of the Highway Trust Fund through September 30. The Mass Transit Account of the Trust Fund was not included in this bill because projections indicate that there will be enough money to cover spending for public transit programs through FY 2010. However, if an 18-month extension is approved, it may be necessary to add funding for both the Highway and Mass Transit Accounts to ensure that there are sufficient resources to fund all programs for the duration of that period.

STATE

Tax Commission: In the midst of last year's state budget crisis, Gov. Arnold Schwarzenegger and Democratic legislative leaders created the Commission on the 21st Century Economy to develop recommendations for overhauling California's tax structure. The premise was that boom-and-bust tax cycles have led to unsustainable spending in good years and deep cuts in bad times. But reducing California's budget volatility has proved to be so complicated that the commission already has missed two deadlines this year. It remains to be seen how much of a consensus the philosophically divided panel will be able to reach before September 20, the current deadline that has been set by the Governor for the commission to issue its report.

Gov. Schwarzenegger has made it clear that he wants lawmakers to act quickly on the commission's recommendations, even though Democratic leaders have not committed to bringing them up for a vote and interest groups are beginning to foment opposition. Senate President Pro Tem Darrell Steinberg (D-Sacramento) has made it clear that the Legislature will control when and how any action takes place on the panel's proposal. "We will set the timetable, we will set the agenda and we will not be rushed into making any decisions of this magnitude without any careful analysis and debate," he said.

So far, the commission has made public only a rough outline of its working plan. Under the plan, the state would establish a "business net receipts tax," requiring firms to pay taxes on overall receipts minus their purchases of goods or outside services. The net receipts tax would vastly expand the number of businesses subject to paying taxes, including service firms. The new business net receipts tax would hover around 3 percent, a figure that is lower than existing sales and corporate tax rates. In addition, the commission's working plan calls for eliminating the corporate income tax and the state portion of the sales tax, and for reducing personal income tax rates to lessen the General Fund's reliance on that revenue source. In varying degrees, commissioners also believe the state should control volatility through a stronger "rainy-day" fund that builds a healthy reserve when tax revenues are high.

One member of the commission, former Democratic Assembly Member Fred Keeley, is pushing a "carbon" tax—a new 18-cent-per-gallon gas tax that would be adjusted annually for inflation. The revenues generated from this tax would be used to relieve the General Fund of the obligation of paying debt service on transportation bonds, provide money for state highway and local roadway maintenance, and pay for transportation-related projects that would help the state achieve its greenhouse gas emission reduction goals. Also still on the table is a "split-roll" property tax that would eliminate the same protections for businesses that apply to homeowners under Proposition 13, which would require voter approval, as well as a statewide tax on oil production in exchange for expanding oil drilling rights. Commissioners are convinced that the elements of their working plan that do not require voter approval could be passed by the Legislature with a majority vote because when taken together, they are intended to keep the state's overall level of taxation the same.

State Prisons: After more than a week of closed-door negotiations, the Assembly voted 41-35 to approve a pared-down plan for cutting state prison spending. However, the measure remains at odds with legislation that was passed by Senate. The Assembly bill, coupled with gubernatorial actions, would reduce prison expenditures by about $1 billion, roughly $220 million less than the amount required under the budget deal that was reached in July. Senate President Pro Tem Steinberg vowed to withhold concurrence until the Assembly acts on deeper cuts and more systemic changes. "The Assembly took a good first step, but it's not a complete package," he commented. Meanwhile, Assembly Speaker Karen Bass (D-Los Angeles) said she is confident that negotiations in the coming days will produce legislation to end the impasse.

The overall goal of both the Assembly and Senate bills is to reduce spending by targeting prison resources on the most serious and violent offenders. Both plans include the following components:

- Cutting parole caseloads from 70 to 45 per officer by easing supervision of low-level parolees.
- Turning over up to 8,500 non-citizen felons to federal authorities for deportation.
- Allowing some offenders to serve time in a county jail, rather than in a state prison.
- Allowing inmates to earn up to six additional weeks in sentencing credits for completing education, vocation or rehabilitation programs while in prison.

However, the Senate legislation, which is supported by Gov. Schwarzenegger, contains several key elements that were not included in the Assembly version, such as:

- Creating an alternative custody program that could release, under house arrest with electronic monitoring, up to 6,300 inmates who are at least 60 years old or medically incapacitated, or who are serving the final year of their sentence.

- Increasing the dollar threshold for charging felony grand theft from $400 to $2,500.

- Eliminating the possibility of charging offenders with felonies for writing bad checks, receiving stolen property or committing petty theft with a prior conviction.

- Establishing a commission to overhaul sentencing guidelines.

California is under judicial and budgetary pressure to overhaul its prison system, which has seen costs and inmate population soar as a result of the adoption of determinant sentencing and other tough-on-crime measures since the 1970s. The Senate plan would reduce the average daily prison population by about 27,300, compared with 17,000 under the Assembly legislation.

REGIONAL

Peninsula Corridor Joint Powers Board (JPB): At its September 3, 2009, meeting, the JPB amended the FY 2010 capital budget for Caltrain for its positive train control (PTC) project. The system that Caltrain is designing will be interoperable, thereby allowing Union Pacific, Capitol Corridor, Altamont Commuter Express (ACE), Amtrak, and future high-speed rail trains equipped with PTC to operate compatibly. The action by the JPB allows for the preparation of technical and commercial documents for a request-for-proposal package. The total cost of the project is $231 million. Caltrain will be submitting an application for American Recovery and Reinvestment Act (ARRA) money to secure full funding for the project.

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.