MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

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

DATE: October 31, 2011

SUBJECT: Weekly Legislative Summary: Week of October 24, 2011

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Deficit Reduction: With a Thanksgiving deadline fast approaching, the Joint Select Committee on Deficit Reduction is starting to spring to life on Capitol Hill. Democrats made the first move in a closed-door meeting, pressing the committee to pursue a far-reaching deal to slice $3 trillion from the federal budget over the next decade through a mix of spending cuts and new revenues. The proposal calls for significant reductions to health and retirement programs, as well as $1.3 trillion in new taxes. Republicans quickly rejected the offer and countered with their own plan to tame federal deficits without raising taxes, leaving the two sides apparently stuck on the same issues that have stymied action for months. However, after months of no apparent progress, the exchange marked the beginning of a more serious phase of discussions that will determine whether lawmakers will be able to break that political impasse.

Neither side seems certain where the path will lead. GOP members of the Joint Select Committee questioned the timing of the Democratic offer, which came nearly two months after the panel began meeting. Some suggested that Democrats were trying to paint themselves as reasonable negotiators in anticipation that the talks will ultimately fail. However, Senate Majority Leader Harry Reid (D-NV) said he had broached the idea of a "grand bargain" on taxes and entitlement programs with Senate Minority Leader Mitch McConnell (R-KY) and House Speaker John Boehner (R-OH) earlier, and that the goal of the offer was to determine whether such a deal could come together. McConnell and Boehner, however, remain steadfast in their refusal to consider tax increases big enough to persuade Democrats to throw their weight behind cuts to popular entitlement programs, such as Medicare and Social Security.

The Joint Select Committee was created in the aftermath of the debate over raising the federal government's debt limit, when a partisan battle over spending drove the United States to the brink of default. The panel faces a November 23 deadline to agree on a deficit reduction plan that would move through Congress with special procedural protections against any amendments or filibuster in the Senate. If the committee's mission fails or if Congress does not approve its recommendations, then $1.2 trillion in across-the-board spending cuts would automatically be implemented beginning in

January 2013. The automatic cuts would be divided equally between security and non-security spending. However, Social Security, Medicaid, Medicare, veterans' pensions, and other programs for low-income individuals and families are exempt from the automatic cuts.

Meanwhile, the Congressional Budget Office (CBO) reported that the budget deficit for the just-completed federal fiscal year hit $1.3 trillion, a figure that matches FY 2010, but falls short of the record $1.41 trillion set in 2009. Before 2009, the deficit had never come close to $1 trillion in a single year. According to the CBO, tax revenues were kept low because of continuing weakness in the U.S. economy, which is being weighed down by higher oil prices, an economic slowdown in Europe and the struggling housing sector.

Presidential Executive Orders: With his $447 billion American Jobs Act continuing to face stiff opposition from Republicans in Congress, President Barack Obama has embarked on a strategy, dubbed "We Can't Wait," that consists of taking limited action on elements of the act through presidential executive orders. Over the past week, the President has issued executive orders dealing with mortgage refinancing, student loans, job opportunities for veterans, job creation, and prescription drugs. These executive orders entail the following:

Home Financing: In an effort to help struggling homeowners refinance their mortgages, President Obama directed the Federal Housing Finance Agency to implement a number of changes to the Home Affordable Refinance Program, including: (a) eliminating certain risk-based fees for borrowers who refinance into shorter-term mortgages; (b) removing the current 125 percent LTV (lending-to-value) ceiling for fixed-rate mortgages backed by Fannie Mae and Freddie Mac; (c) waiving certain representations and warranties that lenders commit to in making loans owned or guaranteed by Fannie Mae and Freddie Mac; and (d) eliminating the need for new property appraisals where there is a reliable automated valuation model estimate.

Student Loans: President Obama announced new rules for the repayment of federal student loans. Under this executive order, borrowers would be allowed to reduce their monthly student loan payments to 10 percent of their discretionary income starting in 2012, and would be allowed to have the balance of their debt forgiven after 20 years. In addition, borrowers would be able to consolidate their separate federal student loans into one overall package with a lower interest rate.

Veterans: This executive order encourages community health centers to hire at least 8,000 veterans over the next three years and to give priority to veterans who are seeking to be trained as physician assistants.

Job Creation: President Obama signed two executive orders that he hopes will help boost employment. One directs federal agencies to take steps to speed up the transfer of federal research and development from the laboratory to the marketplace. The other creates BusinessUSA, a "one-stop, central online platform where small businesses and businesses of all sizes that want to begin or increase exporting can access information about available federal programs without having to waste time navigating the federal bureaucracy."

Prescription Drugs: The President signed new Food and Drug Administration (FDA) guidelines regarding the price and availability of prescription drugs. Specifically, this executive order instructs the FDA to: (a) broaden the reporting of potential shortages of certain prescription drugs; (b) speed up reviews of applications to begin or alter production of these drugs; and (c) provide more information to the U.S. Department of Justice about possible instances of collusion or "price gouging."

3 Percent Withholding: By a strong bipartisan vote of 405-16, the House passed H.R. 647, which repeals the current requirement that government entities withhold 3 percent of payments owed to contractors until they pay their federal taxes. The 3 percent withholding, which was enacted in 2005, has never been implemented. Currently, it is scheduled to take effect on January 1, 2013. Although the legislation to repeal the requirement has support in the Senate, debate continues on how to offset the $11 billion in revenues that the federal government is expected to lose.

Airline Emissions: By a voice vote, the House approved H.R. 2594, the European Union Emissions Trading Scheme Prohibition Act of 2011. Supported by the airline industry and the White House, this legislation prohibits U.S. air carriers from being forced to participate in the emissions cap-and-trade program that the European Union plans to impose on all planes flying to and from the continent beginning January 2012. The program, which was initiated in 2005, currently applies to carbon dioxide emissions from stationary sources in European Union countries, such as power plants, refineries, steel mills, and other industrial facilities.

In extending the program to aviation, the European Union would issue permits to each airline to emit a certain amount of carbon dioxide. Airlines could buy extra credits if they emit more than their allowed limit, or sell credits if they emit less. Payment would be made to the European Union country to which a particular airline most frequently flies. U.S. air carriers argue that the program would cost them as much as $3.1 billion by 2020. They also contend that it is unfair that a flight from the United States—for example, from Los Angeles—would have to pay for emissions for all parts of the flight to Europe, including time spent over the United States and the Atlantic Ocean.

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Climate Change: The California Air Resources Board (CARB) voted to adopt final rules that would regulate carbon emissions across a broad spectrum of the state's economy, including oil and gas producers, utilities, farmers, and the building industry. Dubbed "the economic equivalent of a moon shot" by its backers and a "job killer" by its detractors, the cap-and-trade system approved by CARB sets limits on the amount of carbon dioxide that can be produced by 350 of California's largest industrial emitters starting in January 2013. The state will issue a set number of "carbon allowances." Companies that pollute less than their limit will be able to sell their unused allowances to others whose emissions exceed the cap, creating market incentives to reduce emissions. Ninety percent of the carbon allowances will be given out free, while 10 percent will be sold on the open market, which could raise up to $500 million for the state's climate change programs.

Proponents of the program contend that cap and trade not only will reduce greenhouse gas emissions, but it will also spur innovation in the clean-technology sector. Businesses counter that it will increase electricity and gasoline prices, and could prompt manufacturers and other large employers to move to states where business costs are lower.

The cap-and-trade program, a key element of the state's plan to reduce greenhouse gas emissions pursuant to AB 32 (Nunez), has been the subject of legal and political challenges. In May, a San Francisco Superior Court judge placed a temporary halt on the program, ruling that the state did not conduct an adequate review of alternative approaches to addressing climate change. But that decision was reversed in September by the California Supreme Court. It also withstood a major political test when California voters, in November 2010, overwhelmingly rejected Proposition 23, an oil-industry-led initiative that sought to roll back the implementation of AB 32.

Public Employee Pensions: On October 27, Gov. Jerry Brown unveiled a 12-point plan for reforming state and local public employee pensions. While all public employees would be impacted in some way, most of the significant changes would apply only to new hires. The Governor said he wants the Legislature to put the entire plan before the voters in November 2012. The key elements are:

- Requires current and future public employees and their employers to share at least equally in monthly pension contributions.
- Increases the full retirement age to 67 for new employees not in public safety jobs.
- Replaces defined-benefit pensions for new public employees with a mandatory "hybrid" system that combines: (a) a smaller, defined benefit; (b) Social Security; and (c) a 401(k)-style benefit.
- For new public employees, requires pension calculations to be based on the average of the three highest years of pay versus single highest year.
- Excludes special bonuses, unused vacation time, overtime, and other pay "perks" from figuring into the pension calculations for current and future public employees.
- Prohibits the purchase of additional retirement service credit, or "airtime."
- Prohibits applying pension increases retroactively.
- Places limits on post-retirement employment for both current and future public employees.
- Reshapes the governing board of the California Public Employees' Retirement System (PERS).

Earlier this year, Gov. Brown tried unsuccessfully to use pension changes as a negotiating tool in budget talks with Republican lawmakers.

Redistricting: The California Supreme Court rejected lawsuits challenging the new congressional and state Senate districts that were drawn by the 14-member Citizens Redistricting Commission. The justices unanimously dismissed the lawsuits after weighing the written arguments submitted by both sides. The court did not comment on its action or on the legal issues raised by the lawsuits. Both lawsuits were sparked by GOP concerns that the new districts would benefit Democrats—perhaps giving them a two thirds majority in the state Senate. The lawsuits argued that the boundaries were unconstitutional for reasons ranging from dilution of minority voting clout to disregard for voter-approved criteria.

NOTE: Also contributing to this report were Steve Palmer with Van Scoyoc Associates; Mark Watts with Smith, Watts & Company; Scott Haywood, VTA Policy and Community Relations Manager; and Colleen Valles, VTA Senior Policy Analyst.