

MEMORANDUM

TO: Interested Parties

FROM: Kurt Evans, Government Affairs Manager
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DATE: May 4, 2012

RE: Monthly Legislative Summary for April 2012

FEDERAL

Surface Transportation Authorization: Both the House and Senate took steps to begin conferencing a multi-year surface transportation authorization bill to replace the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the current law governing federal highway and public transit programs. Each chamber appointed their conferees, who will be responsible for negotiating a final bill. Sen. Barbara Boxer (D-CA) will serve as chair of the conference committee, which is scheduled to hold its first public meeting on May 8. It is expected that this initial session will focus on determining the scope of the issues to be considered.

Getting to conference was not easy. SAFETEA-LU actually expired on September 30, 2009, but has been kept alive through the enactment of nine short-term extensions because lawmakers have not yet been able to reach a consensus on a longer-term bill to replace it. The current extension of SAFETEA-LU expires on June 30.

Some momentum was generated in March of this year, when the Senate passed S. 1813, Moving Ahead for Progress in the 21st Century (MAP-21), by a strong bipartisan vote of 74-22. This legislation authorizes federal surface transportation programs at current funding levels, plus inflation, for a period that covers the rest of the current fiscal year and all of FY 2013. It also makes a number of significant structural changes to the Highway and Transit Titles that focus on consolidating programs, pushing more money to the states and regions through formula-based grants, eliminating earmarks, and streamlining federal review processes.

In the House, repeated efforts on the part of Speaker John Boehner (R-OH) and the GOP leadership to round up a sufficient number of votes to pass H.R. 7, a highly controversial five-year authorization bill that proposes using revenues from domestic oil and gas drilling to fund surface transportation programs, were not successful. As a result, Boehner determined that the most realistic way to advance the process was to try to get the votes in the House for what amounts to “shell” legislation in order to trigger the conference committee. Thus, Boehner and his lieutenants pushed through H.R. 4348 last month, which

calls for extending SAFETEA-LU until September 30, 2012. However, the measure also includes provisions requiring the approval of a permit for the politically charged Keystone XL Pipeline Project.

There is some optimism on Capitol Hill that the move to conference is evidence of momentum that could lead to the enactment of a surface transportation authorization bill that would last through the end of FY 2013. To be sure, one of the driving forces is election-year politics. Both Congress and President Barack Obama have made transportation infrastructure investment the centerpiece of their jobs agendas.

However, the political imperative for passing legislation has become complicated by the insistence on the part of House Republicans that a mandate for federal approval of the Keystone XL Pipeline be included. In fact, Boehner has said Keystone is his top priority. But Senate Democratic conferees appear to have enough votes to block the inclusion of Keystone in the final product. Therefore, an open question is whether House Republicans would balk on an overall bill if they cannot get Keystone. Similarly, despite their public statements, it is unclear whether Senate Democrats would be willing to sacrifice the bill in order to block Keystone and whether President Obama would follow through on his veto threat, especially if the Keystone language were to be softened during conference negotiations. In the end, both sides ultimately must decide whether they want surface transportation authorization to be an issue that can be used as a campaign weapon or as an accomplishment they can tout to voters.

House Budget Resolution: After hours of contentious debate and the defeat of several alternatives proffered by both sides of the aisle, the House passed the FY 2013 budget resolution proposed by Budget Committee Chairman Paul Ryan (WI). The tally was 228-191, with all Democrats and 10 Republicans voting no. This non-binding resolution provides \$1.028 trillion in discretionary spending for the upcoming fiscal year, \$19 billion less than the \$1.047 trillion agreed to by the White House and Congress in the Budget Control Act of 2011, the debt ceiling legislation that was signed by President Obama last year. The budget resolution also calls for reducing spending over 10 years by \$5.3 trillion more than what was proposed by President Obama in his FY 2013 budget, and cutting the deficit by \$3 trillion more than the President's plan.

Major provisions in the House budget resolution include:

- Setting two federal income tax brackets at 10 percent and 25 percent, rather than the current six brackets; reducing the corporate tax rate to 25 percent; and eliminating the alternative minimum tax. To compensate for the lower tax rates, the Ways & Means Committee would be directed to come up with reforms to the tax code, which should consist of closing loopholes and eliminating some of the current deductions.
- Preventing the triggering of the Budget Control Act's sequestration cuts set for FY 2013 by charging six House committees (Agriculture, Energy & Commerce, Financial Services, Judiciary, Oversight & Government Reform, and Ways & Means) with the responsibility of finding at least \$18 billion of deficit reduction in the first year, and \$261.5 billion in reconciliation savings over 10 years to achieve the savings called for in the act.
- Eliminating federal spending on high-speed rail.
- Converting Medicaid and food stamps into block grants to the states.

- Repealing the Affordable Care Act, the health care reform legislation that was enacted in 2010.
- Converting Medicare to a voucher program in 2023, with participants being given the option of using federal payments to either buy private insurance or pay for Medicare benefits.

In the case of transportation, the House budget resolution proposes a 36 percent reduction—from \$88.6 billion in FY 2012 to \$57.1 billion in FY 2013. Similar to last year’s budget resolution, the intent is to ensure that federal surface transportation programs are funded at levels that can be supported by Highway Trust Fund receipts and to avoid the need to transfer General Fund dollars into the Trust Fund to keep it solvent. However, the FY 2013 resolution departs from last year’s version in that it includes provisions allowing for the Transportation & Infrastructure Committee to work with the Ways & Means Committee to find additional revenues or offsets to pay for any new surface transportation authorization bill that would be enacted to replace SAFETEA-LU.

In the Senate, Majority Leader Harry Reid (NV) intends to take a substantially different approach, arguing that spending levels for FY 2013 have already been set by the Budget Control Act. He indicated that the Senate will not vote on a budget resolution this year, but rather will use the previously set \$1.047 trillion spending cap in drafting its appropriations bills for the upcoming fiscal year.

FY 2013 Transportation Appropriations: The Senate Appropriations Committee passed its version of the FY 2013 Transportation, Housing and Urban Development, and Related Agencies spending bill. In the absence of surface transportation authorization legislation for the upcoming fiscal year, the Senate’s transportation appropriations bill maintains spending for FY 2013 at current levels, meaning \$39.1 billion for federal-aid highways and \$10.6 billion for public transit. In addition, the Senate measure provides:

- \$2.044 billion for the New Starts/Small Starts Program, a slight increase over the FY 2012 appropriations level of \$1.955 billion. The Senate legislation also calls for funding Small Starts bus rapid transit (BRT) projects out of the Bus/Bus Facilities Discretionary Program, rather than the New Starts/Small Starts Program, thereby freeing up capacity to allow more “traditional” New Starts projects to receive money in FY 2013. It appears that the \$150 million in New Starts funding contemplated in the Full Funding Grant Agreement (FFGA) for the BART Silicon Valley Project for the upcoming fiscal year could be accommodated with the Senate’s \$2.044 billion appropriation.
- \$500 million for the Transportation Investment Generating Economic Recovery Program (TIGER), a multimodal competitive grant program administered by the U.S. Department of Transportation that was created under the American Recovery and Reinvestment Act of 2009 (ARRA) to fund large-scale, capacity enhancement projects.
- \$1.75 billion for passenger rail infrastructure, including \$100 million for the High Performance Intercity Passenger Rail Grant Program to help states improve their existing intercity passenger rail services and \$1.45 billion for Amtrak.

The House is not expected to begin working on its version of a transportation spending bill for the upcoming fiscal year until June. Because of the House’s FY 2013 budget resolution, appropriators in

that chamber will be working with a lower discretionary spending limit than their counterparts in the Senate.

STATE

High-Speed Rail: Since the High-Speed Rail Authority approved a revised 2012 Business Plan, policy committees and budget subcommittees in both the Assembly and Senate have held informational hearings. These hearings mark the beginning of what could turn out to be a lengthy debate over how much money should be made available for high-speed rail in the upcoming fiscal year. Based on the revised business plan, Gov. Jerry Brown has formally asked the Legislature to approve \$7 billion in spending authority, which breaks down as follows:

- \$5.9 billion (\$2.6 billion in Proposition 1A bond funds matched with \$3.3 billion in federal money) to begin building a 130-mile Central Valley segment from Madera to just north of Bakersfield.
- \$812 million in Proposition 1A bond funds for rail connectivity projects, including \$106 million for intercity rail, and \$706 million for local and regional rail systems.
- \$252.5 million (\$204.2 million in Proposition 1A funds and \$48.3 million in federal money) to complete preliminary engineering work and environmental review for other segments of the high-speed rail project.

The High-Speed Rail Authority's revised plan incorporates a number of key changes, including constructing the southern portion of the system first, assuming lower construction costs, and using cap-and-trade revenues if additional federal funding fails to materialize. In addition, the revised plan calls for the High-Speed Rail Authority to partner with Caltrain and Metrolink to implement "blended operations" in the two urban ends of the system. Significant cost savings are assumed under the "blended" approach because high-speed trains would share the existing track alignment and infrastructure along the Peninsula with Caltrain and within the Los Angeles Basin with Metrolink. The revised plan recommends spending money in the near term to begin upgrading the Caltrain and Metrolink corridors for "blended operations."

The High-Speed Rail Authority contends that the revised business plan goes a long way toward addressing much of the criticism that has been leveled against the project. According to the authority, the plan commits to: (a) building an "initial operating segment" that will connect the Central Valley to the Los Angeles Basin, instead of an "initial construction segment" in the Central Valley with limited utility; (b) integrating high-speed rail with existing rail systems; and (c) providing early investment in the two urban ends of the system to upgrade existing services, build ridership and lay the foundation for high-speed rail.

But a fair amount of tension still exists. The Legislative Analyst's Office (LAO) continues to be openly critical of the \$68.4 billion project. In a recent report, the LAO concluded that despite the changes in the revised business plan, the High-Speed Rail Authority "has not made a strong enough case for going forward with the project at this time." Specifically, the LAO noted that: (a) most of the funding for the project remains "highly speculative;" and (b) important details regarding the scope and delivery of the

project “have not been sorted out.” Thus, the LAO is recommending that the Legislature not approve the Governor’s budget requests, but rather provide a minimal amount of funding to continue some of the planning efforts that are currently under way.

Within the Legislature, a number of key Democrats, including Sen. Joe Simitian (D-Palo Alto), chairman of the Senate Transportation Budget Subcommittee, and Sen. Alan Lowenthal (D-Long Beach), chairman of the Senate Select Committee on High-Speed Rail, remain skeptical. During recent hearings of their panels, Simitian and Lowenthal questioned the assumptions in the revised business plan relative to how the entire \$68.4 billion cost of the project would be covered. In addition, they continue to be concerned about the management of the project, questioning whether the authority has an adequate game plan in place for filling a large number of vacant staff positions, and whether steps are being taken to ensure adequate contractor management and oversight. Both of these issues also have been raised by the LAO.

Meanwhile, almost all GOP lawmakers are opposed to high-speed rail. One of their contentions is that the project as described in the High-Speed Rail Authority’s revised business plan is vastly different from what was “promised” to the voters when they were asked to pass Proposition 1A in 2008. Republicans are pushing for the Legislature to either scrap the project outright or place an initiative on the ballot asking Californians to re-vote on Proposition 1A.

Senate President Pro Tempore Darrell Steinberg (D-Sacramento) and Assembly Speaker John Perez (D-Los Angeles) have said they want Gov. Brown’s appropriations requests to get addressed as part of the budget, which must be passed by the Legislature by June 15. However, given the continuing controversy surrounding the project, it is more likely that a decision will not be made until August.

State Budget: In January, Gov. Brown submitted a budget to the Legislature that calls for tackling a General Fund shortfall of \$9.2 billion through cuts to health and human services programs, savings achieved through a continuation of the realignment of certain state programs to local governments, and an assumption of new revenues resulting from the passage of a ballot measure to temporarily raise the state sales tax and income taxes on the wealthiest Californians. The Governor’s budget also includes \$5.4 billion in “trigger cuts,” mostly to public schools and community colleges, which are intended to be implemented if the voters do not approve his tax initiative this November.

Despite some preliminary actions taken by several Assembly and Senate budget subcommittees, lawmakers are not expected to consider their options in earnest until after Gov. Brown presents his budget revisions in mid-May, which will include updated spending projections and revenue forecasts. Majority Democrats are hoping that the new revenue numbers in the so-called May Revise will reflect that the state’s economy is recovering at a faster pace, thereby lessening the amount of General Fund cuts that would have to be made. However, the Controller’s Office and the LAO have indicated that revenues are running below projections through the first 10 months of the current fiscal year, an indication that the General Fund deficit may be larger than the \$9.2 billion estimate provided by the Governor in January.

Meanwhile, Republican leaders have rolled out their own plan that seeks to balance the budget and preserve the current level of spending for public education without raising taxes. Their plan not only embraces Gov. Brown’s proposed cuts, but it also calls for reducing state worker pay, and transferring

money dedicated to affordable housing, mental health and childhood development programs to the General Fund. GOP leaders have said their budget plan undercuts Gov. Brown's contention that California voters need to pass a temporary tax increase. However, their plan will not get much consideration. Unlike in previous years, majority Democrats do not need to extend an olive branch to the GOP, since they can pass budgets with a simple majority vote as a result of the passage of Proposition 25, and since they intend to qualify Gov. Brown's tax initiative by gathering signatures, not through the legislative process.

Because the recent restructuring of transportation funding sources achieved significant, ongoing General Fund savings by tapping into vehicle weight fee revenues to pay for debt service related to transportation bonds, transportation programs were not targeted for cuts in Gov. Brown's FY 2013 budget.

State Government Reorganization: In April, Gov. Brown submitted a proposal to reorganize state government to the Little Hoover Commission. Among other things, the Governor is recommending splitting up the Business, Transportation & Housing Agency, and consolidating transportation functions into a new, stand-alone, cabinet-level Transportation Agency. This new agency would include Caltrans, the Department of Motor Vehicles (DMV), the California Highway Patrol (CHP), the California High-Speed Rail Authority, the California Transportation Commission (CTC), and the Board of Pilot Commissioners.

Under current law, the Little Hoover Commission has 30 days to review the plan and report its recommendations to Gov. Brown and the Legislature. After the plan is formally submitted to the Legislature by the Governor, lawmakers have 60 days to consider it. The plan would go into effect, unless it is rejected by a majority vote of either the Assembly or Senate during the 60-day period.