

MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

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

DATE: November 9, 2009

SUBJECT: Weekly Legislative Update: Week of November 2, 2009

FEDERAL

FY 2010 Transportation Appropriations: Congress passed a continuing resolution to extend the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and to provide appropriations for federal surface transportation programs at FY 2009 levels through December 18. President Barack Obama signed the bill into law on October 31. This is the second continuing resolution that has been needed to authorize short-term funding for federal surface transportation programs, as congressional negotiators have not been able to enact a full six-year authorization bill nor pass the FY 2010 Transportation and Housing and Urban Development (THUD) Appropriations Act. Moreover, attempts to enact a multi-month extension of SAFETEA-LU that would give states and public transit systems funding in the current fiscal year and Congress the time it needs to craft a six-year authorization bill have also fallen short.

Both the House and Senate have passed their own versions of the FY 2010 THUD spending bill. However, the legislation still has not been sent to a House-Senate conference committee to reconcile the differences. It is likely that Congress will need to combine all of the remaining appropriations bills for FY 2010, including transportation, into a large omnibus package. Congressional leaders have indicated that they want to try to finish up the process prior to Thanksgiving.

Surface Transportation Authorization: Prior to the passage of the continuing resolution, attempts to enact a six-month extension of SAFETEA-LU stalled. Members of the Senate Environment and Public Works Committee appear to be willing to reject the White House's request for an 18-month extension of SAFETEA-LU and, instead, seek a \$39.5 billion extension that would authorize federal surface transportation programs through April 30, 2010, at FY 2009 levels. However, efforts to bring the six-month extension to the Senate floor under rules that would have allowed for expedited consideration were thwarted by objections from Republicans. Nevertheless, Senate leaders have vowed to continue their efforts to enact a six-month extension

of SAFETEA-LU, which would supersede the existing continuing resolution if it becomes law prior to December 18.

Even if the Senate is successful in enacting the legislation, it must gain approval in the House, which has passed its own three-month extension of SAFETEA-LU. House Transportation and Infrastructure Committee Chairman James Oberstar (D-MN) has been adamant about keeping the pressure on Congress to pass a long-term surface transportation authorization bill to replace SAFETEA-LU and has not indicated whether he would support any extension of current law that is longer than three months.

In addition to the length of any short-term extension of SAFETEA-LU, there are other substantive disagreements between the House and Senate that would need to be reconciled. The Senate's six-month extension calls for restoring \$8.7 billion in highway contract authority to states that was rescinded just prior to the expiration of SAFETEA-LU on September 30. While the three-month extension passed by the House does not address this issue, it remains important for state transportation departments and for establishing a funding baseline for highway programs in the next long-term authorization bill.

While it is not clear whether the House and Senate will agree on a six-month or 18-month extension of SAFETEA-LU, there is growing pressure on congressional leaders to enact some type of legislation in the near term that provides infrastructure investment as a way to create jobs and stimulate the economy. Moreover, lawmakers could pass a six-month extension of SAFETEA-LU that does not require any new funding for programs supported by the Highway Account of the Highway Trust Fund, while an 18-month extension would require more money than would be generated by fuel taxes to support federal-aid highway programs at even current funding levels. While estimates for the Mass Transit Account of the Highway Trust Fund, plus existing General Fund support, indicate that public transit could be funded at current levels for 18 months, an additional transfer of revenues would be needed to accommodate any growth in transit programs over the 18-month period.

Climate Change: Senate Environment and Public Works Committee Democrats quashed a three-day GOP boycott and passed climate change legislation using a procedural maneuver that could undermine support from moderate lawmakers should the bill eventually reach the Senate floor. Chairwoman Barbara Boxer (D-CA) and nine Democrats signed off on the measure without considering any amendments after trying without success to wait out Republican committee members. The ranking GOP member on the committee, Sen. James Inhofe of Oklahoma, urged Boxer not to pass the legislation, adding that Republicans still hold firm in their belief that the U.S. Environmental Protection Agency (EPA) should conduct a more thorough economic analysis before any vote. Boxer and her Democratic allies, on the other hand, insist that the bill is but one step in the process and that the EPA has already done enough work to give lawmakers adequate information. However, Boxer's quick move has brought criticism from several moderate GOP senators, all of whom are seen as being critical in order to reach the 60 votes that are needed to allow the legislation to be debated on the Senate floor.

As approved by the Senate Environment and Public Works Committee, the legislation outlines the distribution of revenues from the auction of emission allowances—permits for the release of

carbon dioxide and other greenhouse gases under a cap-and-trade program. The bill specifies that roughly 2.5 percent of the allowances would be auctioned for transportation investments. Half of these revenues would be distributed directly to public transit agencies through the various federal transit formula programs. The other half would be allocated through a new competitive multimodal grant program for projects designed to implement regional and state greenhouse gas emission reduction plans.

The EPA has provided preliminary estimates of the value of the emission allowances. Based on these estimates, the set-aside for transportation investments would be between \$1.4 billion and \$3 billion annually. The level of allowances dedicated to transportation would fluctuate each year under the legislation, and the market price of emission allowances would set the final value. Under the provisions of the bill, the trading of allowances would begin in 2012.

As a point of comparison, climate change legislation passed by the House earlier this year merely provides states with the option of using up to 1 percent of their allowances, about \$600 million, for transportation investments.

Obama Presidency: One year since his historic election, President Obama has come to realize what all of his predecessors did—that governing a large, fractious nation is even tougher than campaigning for office. As the clock starts to tick toward the next major political test—the November 2010 congressional elections—the outlines of the Obama Presidency have taken shape. He faces at least six big challenges that will likely determine how memorable his actual term in office will be:

1. **Jobs:** With the nation's unemployment rate climbing above 10 percent, President Obama has deemed jobs to be his top priority. He and congressional Democrats will no doubt pursue plans designed to get the jobless rate down, at least to a point where Americans are persuaded that things are headed in the right direction.
2. **Health Care:** Senate and House Democrats are struggling to put together a final health care reform bill by the end of the year. That deadline could be important, given that the prospects for such legislation probably will not get much better in the election year of 2010, especially if moderate Democratic lawmakers start to worry about their jobs. Success or failure on health care could affect the rest of the President's domestic agenda, particularly climate change legislation and new Wall Street regulations.
3. **Deficits:** Budget Director Peter Orszag recently stated that the Obama Administration plans to take steps to reduce budget deficits estimated as high as \$9 trillion over the next decade. The deficit for the last fiscal year was \$1.4 trillion. Republicans are using this issue to attack the President on increased federal spending, though the White House is blaming most of the deficit on policies from the George W. Bush Administration.
4. **Afghanistan:** In the next few weeks, President Obama will make what could turn out to be the most important decision of his presidency—whether to deploy more U.S. troops to Afghanistan. A months-long reassessment of the war comes in the face of increasing attacks by Taliban insurgents and al-Qaeda terrorists along the Afghanistan-Pakistan

border. Gen. Stanley McChrystal, the top U.S. commander in Afghanistan, has recommended a strategy that reportedly calls for up to 40,000 new troops.

5. Iraq: The United States is on track to withdraw its combat forces from Iraq by August 2010, and all American troops by the end of 2011. The White House hopes Iraq will remain relatively stable amid the U.S. withdrawal.
6. Iran: President Obama's attempts to strike a deal on nuclear power with Iran could affect his efforts to broker peace between Israel and the Palestinians. It may also influence U.S. relations with China, Russia and other major allies. Iran is probably the biggest test of the President's new, more conciliatory approach on foreign affairs. Without a deal, the White House's critics will be left to wonder if—or when—Iran will develop a nuclear weapon.

STATE

Water: Ending months of tense negotiations, the Legislature approved a five-bill package to overhaul California's water system. The package includes efforts to improve conservation, oversee restoration of the Sacramento-San Joaquin Delta, better manage groundwater supplies, and stiffen penalties for illegal diversions of water. It also calls for placing before the voters, perhaps in November 2010, an \$11 billion bond measure to pay for recycling, drought relief, water storage, underground water banking, and wastewater treatment programs. However, it does not take a stand on whether to construct a controversial canal through or around the Delta, but rather proposes the creation of a seven-member Delta Stewardship Council to oversee management of the Delta and to potentially decide such delivery issues.

Under the provisions of the water deal, the stewardship council would be required to prepare a "Delta Plan" by January 1, 2012. This plan must describe how ecosystem restoration and reliability of water delivery would be achieved. The council would have the power to withhold funding for some environmental projects associated with a water diversion canal if it determines that the canal would not help restore wildlife. This is a higher standard than similar federal rules, which require only the protection of wildlife. If the canal project meets this higher standard, it automatically must become part of the Delta Plan; the stewardship council could not reject it. However, the council could reject other state projects that do not satisfy the Delta Plan. The council also would be charged with protecting the Delta's cultural heritage and farm economy, as well as ensuring that spending on flood protection and habitat are done effectively.

While the water package does not approve nor reject the canal project, it does prohibit the Department of Water Resources from starting construction until it obtains a new water diversion permit from the state Water Resources Control Board. However, before the board could issue such a permit, it must establish "flow criteria" for Delta waterways. This process would consist of setting minimum flows to sustain Delta habitat. California has never attempted to determine these minimum environmental flows. The very idea has been controversial among water users because it may result in having less water left over to divert to cities and farms.

Finally, the package requires 20 percent water conservation statewide by 2020 and provides several paths to local water agencies to reach that goal. Agencies that fall short would not be eligible to receive state water grants.

Auto Insurance: Insurance Commissioner Steve Poizner released regulations authorizing mileage verification for “pay-as-you-drive” auto insurance policies. However, the regulations do not dictate what form such policies should take. The goal is to use per-mile pricing for auto insurance to entice Californians not to drive so much, thus easing air pollution, relieving traffic congestion and lowering the number of traffic collisions.

A first-of-its-kind plan is MileMeter, available only in Texas, which last year began offering six-month policies with chunks of insured miles ranging from 1,000 to 6,000 miles. When the “tank” runs dry, motorists buy more. A more conventional pay-as-you-drive plan might offer a year-long policy based on projected mileage, then upon expiration, provide a refund or rebill the driver based on actual mileage as verified by odometer readings or an electronic device. State Farm, Allstate and Progressive said they are considering the issue, but have not decided whether to offer pay-as-you-drive in California.

Under Proposition 103, which was approved by the voters two decades ago, California insurance premiums already are based partly on miles driven, but insurers say they have lacked the authority to adequately verify motorists’ estimates, thus resulting in an honor system that often is abused. The new regulations issued by Poizner allow both mileage-estimated and mileage-verified plans in an attempt to encourage options.

Poizner and other supporters tout pay-as-you-drive as a way to accurately tie insurance costs to accident risk, and to provide an incentive to walk, bike or use public transportation. But Consumer Watchdog, a non-profit public policy group, said the new regulations cater to the insurance industry by neither requiring firms to offer pay-as-you-drive policies nor requiring premiums to drop as mileage does. The group expressed concerns that insurers could abuse the new regulations by proposing policies that verify miles driven, something the industry has desired, without offering price breaks.

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.