ITEM 13 - Information
July 16, 2008

Review of Current Study and Legislative Proposals for the Reauthorization of the Federal Surface Transportation Act

Staff Recommendation: Receive briefing on the current status of study and legislative proposals for the reauthorization of the Federal Surface Transportation Act due in 2009.

Issues: None

Background: In addition to the National Surface Transportation Policy and Revenue Study Commission effort reported under agenda item 12, Congress authorized a second commission under SAFETEA-LU: the National Surface Transportation Infrastructure Financing Commission. This second commission is focusing on options for financing future federal transportation programs. Other current legislative initiatives that could affect the reauthorization of federal transportation programs include national infrastructure bank and climate change proposals.

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MEMORANDUM

Date: July 10, 2008

To: Transportation Planning Board

From: Ronald F. Kirby
Director, Department of
Transportation Planning

Re: Current Study and Legislative Proposals for the Reauthorization of the Federal Surface Transportation Act

The Problem:

There is growing consensus that the current structure of federal transportation funding is ill-suited to addressing pressing needs for system maintenance, new infrastructure, and the increasingly urgent problems of congestion, rising energy costs, and global warming.

The Congressional Budget Office and the Office of Management and Budget are projecting a deficit in the Highway Trust Fund (HTF) for FY 2009 in the order of $3.2 billion. Since SAFETEA-LU overcommitted funds available for surface transportation, a 34% cut in 2009 highway funding would be necessary to balance the HTF if additional revenues are not identified. A proposal currently under consideration in the Senate would transfer up to $8 billion from the U.S. Treasury general fund to the HTF. Other plans include transfers from the Mass Transit Account, which is currently $4.4 billion in the black.

The current SAFETEA-LU legislation expires on September 30, 2009. Therefore, the impending reauthorization of transportation funding provides an important opportunity to address these funding problems, and also to address other urgent transportation issues, such as rising congestion and global warming. This opportunity has been recognized throughout the transportation sector and has been reflected in several sets of proposals for restructuring the federal program. It has also received attention from national lawmakers involved in climate change legislation, which has already included transit funding within its scope. The development of national climate change legislation on a similar timeframe to the 2009 transportation reauthorization may lead to the kind of linkage that was seen between ISTEA of 1991 and the Clean Air Act Amendments of 1990.

Proposals to Date:

SAFETEA-LU, the current transportation reauthorization bill, mandated the creation of two independent commissions to study the problems highlighted above and to provide recommendations regarding current transportation funding and system development: the National Surface Transportation Policy and Revenue Study Commission and the National Surface Transportation Infrastructure Financing Commission.

Final Report of the National Surface Transportation Policy and Revenue Study Commission

The National Surface Transportation Policy and Revenue Study Commission was the first of the two commissions to be created, release recommendations and complete its charge. The Commission includes transportation stakeholders from both the public and private sector, and was charged with completing a comprehensive study of the national surface transportation system and the Highway Trust Fund and developing a conceptual plan with alternative approaches to ensure that this system continues to serve the needs of the United States.

Early in 2008, the Commission released its final report, which outlined its recommendation for a new 10 program nationally-focused transportation funding structure that departs significantly from the current model. The Commission explicitly states that "the current Federal surface transportation programs should <u>not</u> be "re-authorized" in their current form."

The 10 new recommended programs are intended to replace the 108 different programs under SAFETEA-LU and include national asset management, freight, congestion relief for metropolitan mobility, safety, rural and small city access, intercity passenger rail, environmental stewardship, environmentally-friendly alternative fuels, federal lands, and research, development, and technology. The asset management program splits maintenance and operation of the current system apart from other priorities in order to ensure that all existing infrastructure would be efficiently and cost-effectively kept in a state of good repair. The Commission also recommends that a distinct program be established to fund projects that reduce congestion in the largest metropolitan areas (of 1 million or more in population). The planning and project selection authority is recommended to be vested in a metropolitan transportation agency, such as the MPO for the region. The primary method of funding these new programs is through a recommended increase in the Federal fuel tax, user fees for both transit and roads, and an exploration of methods such as congestion pricing.

Interim Report of the National Surface Transportation Infrastructure Financing Commission

The National Surface Transportation Infrastructure Financing Commission mandated under SAFETEA-LU was established after the first commission had begun developing their positions. It is currently still working to analyze future highway and transit needs and the finances of the Highway Trust Fund, and to eventually make recommendations for alternative approaches to financing transportation infrastructure, such as ways to augment or replace the Highway Trust Fund. This commission will look specifically into the financing element of a new transportation funding structure rather than developing a new policy model.

The Commission, including members from think tanks, banks, consulting firms, and government, recently released an interim report that presents the Commission's assessment of current problems with transportation funding. It also broadly discusses how the Commission will move forward to analyze options and reach recommendations for its final report expected to be completed in 2009. The Commission identified several main issues to frame its recommendations, such as an inadequate fuel tax, which is expected to decline as fuel efficiency goes up, maintenance costs that are competing with necessary expansion, and transportation demand that is quickly outpacing required investment. The Commission states that all of these issues have compounded to prevent state and local governments from making necessary capacity enhancements. One particular focus for the Commission is to explore the role of user fees and pricing mechanisms.

Proposed Infrastructure Banking Legislation

The funding issues hampering transportation development have also been taken up by U.S. lawmakers outside of the formal transportation reauthorization discussion. The House Transportation and Infrastructure and House Budget Committees recently held a joint hearing on the introduction of several new pieces of legislation that would authorize new funding mechanisms and practices specifically for infrastructure investments. These pieces of legislation include the National Infrastructure Development Act of 2007, the National Infrastructure Bank Act of 2007, the Build America Bonds Act of 2007, and RIDE 21.

The first, the National Infrastructure Development Act of 2007, would provide for a self-sustaining revolving fund fed by user charges and other dedicated revenue and would provide funding for a variety of infrastructure projects, including highways, transit, and wastewater treatment. The second, the National Infrastructure Bank Act of 2007, would set up a national bank that would select projects of at least $75 million in total costs and then develop a financing package comprised of grants, loans, and bonds. The Build America Bonds Act of 2007 would authorize a similar banking mechanism as the National Infrastructure Bank, but would issue Build America bonds, which are exempt from federal, state, and local taxes. The final piece of legislation, RIDE 21, would authorize states or interstate compacts to issue bonds to finance high-speed passenger rail infrastructure.

Proposed Climate Change Legislation

Some of the climate change legislative proposals under consideration by the House and Senate include direct provisions for funding transportation projects that meet goals for reducing greenhouse gas emissions. For instance, the most prominent piece of climate change legislation to date, the Lieberman Warner Climate Security Act, included a provision of 1% of funds raised through the auction of carbon emissions allowances specifically for mass transit.

Under an amendment to the Lieberman Warner bill from Senator Cardin of Maryland, a Transportation Sector Emission Reduction (TSER) Fund would be created and funded through the auction of emission allowances. Under this plan, the percentage of allowances to be auctioned with proceeds deposited in the TSER fund and dedicated to public transportation and transportation alternatives gradually rises from 1% in 2012 to 2.75% in 2022-2050. The use of the funds is grouped into three categories of grants:

a) 65% of TSER funds to maintain or improve public transportation and associated measures (such as planning activities, transit enhancements, bicycle/pedestrian projects, GHG-reducing lighting and HVAC for stations) to currently designated recipients in section 5307(a) of title 49.
b) 30% for construction of new public transit projects to state and local governments
c) 5% for transportation alternatives and travel demand reduction projects to state and local authorities, including regional planning organizations and MPOs. Activities would include VMT reduction, bicycle/pedestrian infrastructure, telecommuting and carpool projects that do not include new highway capacity, transportation and land-use scenario analysis, and travel and land-use data collection related to GHG measurements.

U.S. Department of Transportation Proposals

Secretary of Transportation Mary Peters has stated that the US DOT position is focused on three areas of greatest federal interest: transportation safety; the Interstate Highway System and other nationally significant corridors; and mobility in metropolitan areas. In this last focal area Secretary Peters emphasizes the importance of pricing, technology, and private sector participation:

> "The massive congestion problem in our urban areas demands urgent and strong federal focus. We can use federal dollars to encourage state and local officials to pursue congestion-relief strategies we know can provide almost immediate relief from traffic and from high gasoline prices, if we are willing to use them. Already forward-leaning Governors and Mayors are leading a quiet revolution by taking advantage of dynamic road pricing, cutting-edge technologies, and a creative private sector."

Testimony to House Transportation and Infrastructure Committee, Panel on Transportation Challenges in Metropolitan Areas

On April 9, 2008, I was invited to provide testimony to the House Transportation and Infrastructure Committee regarding transportation reauthorization from the perspective of metropolitan areas. (A copy of this testimony was included in the letters packet for the April 16th, 2008 TPB meeting.) My testimony noted that the mid-twentieth century goals of interstate highway construction and transit system recapitalization have been accomplished, and that a new federal program structure is needed to address current transportation challenges. Three major goals were noted as national priorities around which a new federal program could be structured:

a) Preservation and operation of the existing system
b) High value investments in new infrastructure capacity
c) Support for metropolitan areas to address pressing congestion, environmental and social challenges.

Metropolitan Mobility Caucus

On July 9, 2008, Congresswoman Ellen Tauscher (D-CA) and Congressman Tom Petri (R-WI) issued a Dear Colleague letter inviting other members of the House of Representatives to join a newly formed Metropolitan Mobility Caucus. This Caucus will focus on issues of urban infrastructure and mobility, such as congestion and its effects on economic development and air pollution. In the development of the next reauthorization of the highway bill, the Caucus will advocate for stronger partnerships between federal, state, and local transportation officials; greater use of transit and intercity passenger rail; regional mobility goals; and performance standards.

The Caucus will hold its first briefing on these issues on July 21, 2008, hosted jointly by the Association of Metropolitan Planning Organizations (AMPO) and the American Planning Association (APA). I have been invited to participate on a panel with other MPO and APA representatives to discuss the role of MPOs in the transportation planning process.

While the members of the Caucus may span the entire House, members of the House Transportation and Infrastructure (T&I) Committee are likely to be the main participants. Congresswoman Eleanor Holmes Norton (D-DC) is a member of the T&I committee and will also be on the Caucus.

Common Themes

There are a number of common themes in the above studies and proposals concerning the restructuring of federal transportation programs:

1. Significant increases in resources are needed for the maintenance, operation and improvement of the nation's transportation system; as a nation we are under-investing in transportation.

2. Fundamental changes are needed in the current approach to funding surface transportation infrastructure; current federal surface transportation programs should not be "reauthorized" in their current form.

3. Current planning, programming, and environmental processes are overly cumbersome and inefficient; numerous opportunities exist for simplification, consolidation, and streamlining of federal transportation programs.

4. Investment decisions should be based on a rigorous analysis of costs and benefits, supporting system-wide solutions regardless of mode or intermodal status.

5. An explicit program focus is needed to put and keep the nation's infrastructure in a state of good repair.

6. A declining percentage of total surface transportation expenditures (local, state and federal) comes from the fuel tax; absent major tax increases the fuel tax is inadequate over the long term.

7. Technology innovations are enabling new pricing strategies across all modes of travel, including rates that vary by time of day, type of vehicle, level of emissions, and specific infrastructure segments used; the feasibility and potential of these strategies need to be examined.

8. The application of tolling and congestion pricing to the transportation system should be facilitated so as to attain the greatest efficiency from the system.

9. Federal transportation policy should take a fresh approach to metropolitan problems, including stronger partnerships between federal, state and local transportation officials and greater use of public transportation, including inter-city passenger rail, to meet regional mobility goals.