Waterman & Associates GOVERNMENT RELATIONS

MEMORANDUM

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CC: Karen Keene, Director of Federal Affairs, CSAC

DATE: July 3, 2012

SUBJECT: Summary of Key Provisions of MAP-21

On June 27th, House and Senate negotiators struck a long-awaited agreement on a multi-year highway and transit reauthorization bill (HR 4348). Conferees reached their deal 33 months after the previous surface transportation law, SAFETEA-LU, first expired back in September of 2009. Because of the delay in producing a new transportation measure, lawmakers needed to approve a series of short-term extensions of SAFETEA-LU in order to avoid a lapse in federal transportation funding to states and localities.

All told, the new transportation bill – which is named the "Moving Ahead for Progress in the 21st Century Act," or MAP-21 – is expected to cost roughly $120 billion. Unlike the Senate-passed reauthorization legislation (S 1813), which would have renewed transportation programs through fiscal year 2013, the final bill will keep programs operational through the end of fiscal year 2014.

Notably, MAP-21 is not solely a surface transportation package. Due to other expiring programs, lawmakers included in the legislation provisions that extend federal subsidies for college student loans, as well as a long-delayed reauthorization of the National Flood Insurance Program.

Funding and Implementation

MAP-21 provides funding for the federal-aid highway program through fiscal year 2014 at current levels, with a modest inflationary adjustment. For fiscal year 2013, the highway obligation limit is set at roughly $39.7 billion; for fiscal year 2014, the obligation limit rises to nearly $40.3 billion.

Likewise, the Act provides inflationary funding increases for transit programs (formula programs, capital investment grants, research and training). Investment levels are set at roughly $10.6 billion for fiscal year 2013 and $10.7 billion for fiscal year 2014.

MAP-21 extends federal motor fuel taxes through September 30, 2016; the fuel taxes are the primary source of revenue for the Highway Trust Fund (HTF). The bill also transfers $2.4 billion from the Liquid Underground Storage Tank Trust Fund into the HTF and shifts $18.8 billion to the HTF from the General Fund, including $16.6 billion to the Highway Account and $2.2 billion to the Mass Transit Account.

It should be noted that the legislation provides programmatic authority for surface transportation programs throughout the life of the bill. However, most of the policy-related provisions of Division A (Federal-Aid Highways), Division B (Public Transportation), and Division C (Transportation Safety and Surface Transportation Policy) are slated to take effect on October 1st of this year. In the meantime, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) will be developing interim guidance and regulations regarding MAP-21 implementation.

Highway Program – State Distribution Formula

For fiscal year 2013, each state will receive a total apportionment of highway program funds equal to its fiscal year 2012 apportionment. For fiscal year 2014, the formula will begin with the fiscal year 2012 apportionment followed by an adjustment to ensure that no state will receive less than 95 percent of its contribution to the HTF.

With regard to California, the state's highway contract authority apportionment will be $3.54 billion in fiscal year 2013 (the same as FY 12, as prescribed above). California's highway apportionment will increase to approximately $3.57 billion in fiscal year 2014.

Each state's total apportionment will be divided among programs as follows:

- Congestion Mitigation and Air Quality Improvement Program (CMAQ) and Metropolitan Planning: the same share of the state's total apportionment as in fiscal year 2009
  - CA's estimated apportionments – CMAQ: $445 million (FY 13); $449 million (FY 14); Metropolitan Planning: $47.5 million (FY 13); $47.9 million (FY 14)

- 63.7 percent of the remaining funds to the National Highway Performance Program
  - CA's estimated apportionment – $1.89 billion (FY 13); $1.91 billion (FY 14)

- 29.3 percent of the remaining funds to the Surface Transportation Program
  - CA's estimated apportionment – $872 million (FY 13); $880 million (FY 14)

- 7 percent of remaining funds to the Highway Safety Improvement Program.
    - CA's estimated apportionment – $208 million (FY 13); $210 million (FY 14)

"Core" Highway Programs

About 60 programs are either eliminated or consolidated into four "core" programs, structured as follows:

- **National Highway Performance Program** – consolidates the Interstate Maintenance, National Highway System (NHS), and Highway Bridge programs into a single new program designed to provide increased flexibility while guiding state and local investments to maintain and improve the NHS.

- **Surface Transportation Program (STP)** – Retains the same structure and goals of the previous program to allow states, metropolitan areas, and other areas of states to invest in highway and bridge projects. Activities that previously received dedicated funding via SAFETEA-LU, but are being consolidated under MAP-21, would be retained as eligible activities under STP (including border infrastructure projects, as well as certain transportation enhancement-related activities).

  With regard to the allocation of STP dollars, 50 percent of funds will be sub-allocated to the following areas of a state based on their relative shares of population within the state: urbanized areas with a population over 200,000; non-urbanized areas with a population over 5,000; and, other areas of the state. The remaining 50 percent of STP funds may be obligated in any area of the state.

- **Congestion Mitigation and Air Quality Improvement Program (CMAQ)** – CMAQ would continue to provide funds to states for transportation projects designed to reduce traffic congestion and improve air quality. The bill would require a performance plan in large metropolitan areas to ensure that funds are used to improve air quality and congestion in those regions. The bill includes particulate matter as one of the pollutants addressed by CMAQ.

- **Highway Safety Improvement Program (HSIP)** – MAP-21 would significantly increase the amount of funding for the HSIP program in an effort to build upon strong results in reducing highway fatalities. Comparable to current law, States would need to develop and implement State Strategic Highway Safety Plans that identify highway safety programs. Plans would need to be developed after consultation with a highway safety representative of the Governor, regional transportation planning organizations and metropolitan planning organizations, county transportation officials, and other state and local representatives and stakeholders.

  Under the HSIP, construction and operational improvements on high risk rural roads would be one of a number of allowable highway safety improvement project areas. Although the bill would not provide dedicated funding for the High Risk Rural Roads (HRRR) program, the legislation specifies that if the fatality rate on rural roads in a State increases over the most recent two-year period, the State is required to increase spending on rural roads in the next fiscal year. Funds spent on rural roads would need to be equal to at least 200 percent of the amount of funding the State received for fiscal year 2009 for such roads.

Off-System Bridges

The final transportation measure retains language from the Senate bill that maintains a dedicated federal funding stream for off-system bridges. Consistent with current law, MAP-21 would require a State to obligate for local bridge projects not less than 15 percent of the funds that were apportioned to the State under the Highway Bridge Program in fiscal year 2009. Should State and local officials determine that the State has inadequate needs to justify the expenditure, the Transportation Secretary can rescind this requirement.

SRS and PILT

MAP-21 includes a one-year continuation (through fiscal year 2012) of the Secure Rural Schools and Community Self-Determination Act (SRS), as well as an additional year (through fiscal year 2013) of funding for the Payments-in-Lieu-of-Taxes (PILT) program. SRS will be funded at 95 percent of fiscal year 2011 levels, and PILT will be fully funded. In fiscal year 2011, California received a total of $39.3 million in SRS funding, which was distributed to 32 counties. Accordingly, California counties can expect to receive approximately $37.4 million in fiscal year 2012.

Environmental Streamlining

MAP-21 includes various provisions aimed at shortening the length of the transportation project delivery process. The bill, for example, makes permanent the Surface Transportation Project Delivery Pilot Program, which has allowed California to significantly streamline the process for the delivery of highway projects. Additionally, under the legislation, the program is expanded to include rail, public transit, and multimodal projects.

Although the final package does not establish a program to eliminate duplicative state and federal environmental reviews and approvals (similar to CSAC-endorsed “reciprocity” legislation (HR 2389)), it would require the Government Accountability Office (GAO) to undertake a related study. Pursuant to MAP-21, GAO will be required to review state laws and procedures for conducting environmental reviews. The study will also identify the states that have environmental laws that provide protections and opportunities for public involvement that are equivalent to those provided by federal environmental laws. GAO must submit its findings to Congress no later than two years after the date of the legislation’s enactment.

MAP-21 includes several other significant changes to the environmental review and approval process for transportation projects. Significantly, the Department of Transportation (DOT), or other modal “lead agency,” will have the option to call a meeting of participating agencies and set a schedule for the review process in order to expedite project planning and approval.

The bill also provides for accelerated decision-making by setting deadlines for decisions by the lead agency, as well as other federal agencies with responsibilities for environmental review. MAP-21 provides for financial penalties for agencies that do not complete other environmental reviews by certain deadlines. Additionally, the legislation puts in place a dispute resolution process to settle differences between cooperating agencies.

MAP-21 also establishes time limits on permitting decisions. Under the bill, transportation agencies must issue decisions on permits for projects within 180 days of the application or the final NEPA decision on the project, whichever is later.

In addition, the legislation allows for the expanded use of categorical exclusions (CEs), which are actions that do not involve significant environmental impacts and for which neither an environmental assessment nor an environmental impact statement (EIS) is required. The bill will allow CEs to be used for the following: projects within an existing right-of-way; repair and reconstruction of existing roads, highways, and bridges; certain components of multi-modal projects; projects damaged by natural disasters; and, projects receiving minimal federal funds.

MAP-21 also allows project sponsors that are developing a final EIS to simply attach an errata sheet to the original document in cases in which there are minor changes to the scope of the project. Additionally, the bill includes language designed to accelerate the completion of complex transportation projects and requires DOT to establish schedules for the completion of all reviews for a project within four years after a Notice of Intent was issued.

Metropolitan Planning Organizations

With regard to transportation planning, the legislation would ensure that existing Metropolitan Planning Organizations (MPOs) retain their designation as an MPO. The bill also maintains the existing population threshold for the designation of new MPOs (urbanized areas with a population of more than 50,000 individuals). Within two years of enactment, however, each MPO must include representation by providers of public transportation. It should also be noted that Caltrans will be required to reimburse MPOs for eligible expenditures within 15 days (current law is 30 days).

In addition, MAP-21 improves metropolitan and statewide planning processes to incorporate a more comprehensive performance-based approach. Pursuant to the legislation, MPOs will be required to establish targets to track their progress towards attainment of outcomes for the region. To ensure consistency, these targets will be established in coordination with Caltrans and providers of public transportation. Within five years, the Transportation Secretary will report to Congress on the effectiveness of performance-based planning for each MPO.

TIFIA

MAP-21 includes a title on "America Fast Forward Financing Innovation," which would build upon the current Transportation Infrastructure Finance and Innovation (TIFIA) program. TIFIA, which provides direct loans, loan guarantees, and lines of credit to surface transportation projects at favorable terms to leverage private and other non-federal investment in transportation improvements, would be modified by, among other things, increasing the maximum share of project costs from 33 percent to 49 percent. The bill increases annual funding for TIFIA from $122 million to $750 million in fiscal year 2013 and $1 billion in fiscal year 2014. Additionally, the legislation sets aside funding for projects in rural areas at more favorable terms.

Transportation Alternatives

The final legislation consolidates the Transportation Enhancements (TE), Safe Routes to School (SRTS), and Recreational Trails (RTP) programs into a new program called Transportation Alternatives. The bill sets total funding for the program at two percent of total highway funding (not including the Mass Transit account). Of that funding, 50 percent will be directly allocated to local entities, and the rest will go to the state. States will have some flexibility in how to use the funding allotted to them.

California's estimated Transportation Alternatives apportionment for fiscal years 2013 and 2014 is $72 million and $73 million, respectively.

National Freight Policy

Unlike the original Senate bill, the final version of MAP-21 does not include a separate freight program. However, the legislation creates a National Freight Policy, which is designed to improve the condition and performance of a new national freight network.

Under the bill, the secretary of DOT is required to establish a national freight network, comprised of up to 27,000 centerline miles of existing roads that are critical to the movement of freight in the U.S. (defined as the Primary Freight Network), as well as portions of the Interstate Highway System and any rural road designated by a state that carries significant truck traffic.

The secretary also is required to develop, in consultation with States and other stakeholders, a national freight strategic plan. Among other things, the plan must include an assessment of the condition and performance of the national freight network, strategies to improve intermodal connectivity, a process for addressing and encouraging multijurisdictional collaboration, and identification of significant bottlenecks on 20-year forecasts of freight volumes.

We hope this information is useful to you. Please do not hesitate to contact us if you have any questions.