Agenda Item 4a

METROPOLITAN
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Memorandum

TO: Legislation Committee DATE: December 2, 2011

FR: Executive Director W. I. 1131

RE: S. 1813 (Boxer): Moving Ahead for Progress in the 21st Century (MAP-21)

Overview

On November 9, 2011 the Senate Environment and Public Works (EPW) Committee unanimously approved S. 1813, a two-year, $80 billion surface transportation authorization bill. The bill, titled Moving Ahead for Progress in the 21st Century (MAP-21), contains only the highway, research, safety and planning portions of surface transportation law, consistent with the EPW committee's jurisdiction. The transit section of the bill will be drafted by the Senate Banking Committee and is expected to be introduced within a couple of weeks.

The bill's overall funding level for the Federal Highway Administration in FY 2012 is $39.9 billion, two percent above the $39.1 billion approved by Congress for FY 2012 in the recently adopted appropriations bill. S. 1813 overhauls the current structure of the highway program, shrinking 90 separate funding programs to 30, as shown in Attachment A. As a result of this consolidation, the formula programs are much larger than under current law — the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA). For instance, the Congestion Mitigation and Air Quality (CMAQ) program grows from $2 billion in FY 2010 to $3.3 billion in FY 2012, a 61 percent jump. Similarly, a new Transportation Mobility Program (TMP) that replaces the current Surface Transportation Program (STP) grows from $7.6 billion to $10.4 billion, a 38 percent jump. As shown in Attachment B, we estimate the Bay Area would receive almost $50 million more per year in suballocated funds than in FY 2010 (the most recent year for which complete details are already known), for a total of $204 million in FY 2012.

Bill Provides a Modest Increase in Funding Overall

While the bill avoids the draconian 30 percent cuts that were threatened by the House earlier this year (and result from constraining spending to anticipated Highway Trust Fund receipts), it represents only a down-payment toward providing sufficient funding to restore our transportation system to a state of good repair and modernize it to a condition that helps, rather than hinders, our ability to compete in the global economy. According to the U.S. Department of Transportation (DOT), federal funding levels need to be increased *threefold* to preserve and improve our state highway system. On the transit side, funding levels need to be more than *doubled.* Given a political climate focused on reducing the federal deficit and opposition by both parties to raising the gas tax, opportunities for providing substantially higher funding levels are extremely limited.

The Senate Finance Committee is tasked with identifying an additional $12 billion in funds to offset the discrepancy between the estimated receipts into the Highway Trust Fund and S. 1813's funding level. At the time this memo was finalized, it was still unclear where those savings would be found.

Bill's General Structure & Themes Are Promising, But Fine Print Could Be Improved
Overall, Chair Barbara Boxer and the EPW Committee should be commended for addressing many of the key goals that MTC and entities across California (through the "California Consensus Principles") have championed in our annual visits to Washington, D.C. over the last three years, including:

- program consolidation to focus federal funds on core national objectives;
- preserve our existing system in a state of good repair;
- performance measures and accountability, at a national, state and regional level;
- a new national freight program;
- expedite project delivery; and
- eliminate earmarks.

However, there are a number of areas where the bill could be strengthened. The remainder of this memorandum outlines key areas of the bill that staff has identified as most ripe for improvement.

Bill Does Not Focus Sufficient Funds on Metropolitan Mobility
The bill does not create a program focused on metropolitan mobility. Instead, as noted previously, the bill replaces the current STP program with a new, substantially larger Transportation Mobility Program (TMP), but only half of each state's share is distributed on the basis of population, with decision-making regarding the population-based funds delegated to MPOs. This 50 percent share is a significant reduction from STP's current 62.5 percent distribution on the basis of population and accordingly, moves this program away from focusing on those areas that suffer the greatest mobility challenges. However, because the TMP program is almost $3 billion larger than STP, in dollar terms, MAP-21 provides metro areas a significant increase in funding, including about $17 million more for our region than we received in FY 2010.

California has a unique perspective on this program because state law directs 62.5 percent of the state's STP funds to programming directly by MPOs in proportion to their share of the state's urbanized population. Federal law simply requires that 62.5 percent of funds be *spent* within urbanized areas in proportion to population, but leaves project selection decision-making up to each state. To preserve the metro area focus that California has given to this program, we will work with our MPO partners across California to pursue an amendment that 'grandfathers' our more generous state arrangement in federal law.

CMAQ Funding Increased Significantly, but "Reserved Funds" Requirement Brings New Claimants to the Table.
As noted previously, MAP-21 provides $3.3 billion in Congestion Mitigation & Air Quality (CMAQ) funding nationwide, an increase of $1.2 billion (or 60 percent) over current levels. It is important to note that about $900 million of the increase results from shifting the Transportation Enhancement (TE) program to CMAQ (formerly funded as a ten percent "takedown" of STP funds). While the bill identifies these funds as "CMAQ reserved funds," they may be spent anywhere in the state, including areas that are <u>in attainment</u> for air quality. Project eligibility for the reserved funds is also expanded from traditional TE categories to include bicycle and pedestrian programs (including Safe Routes to Schools), recreational trails programs, projects to achieve compliance with the Americans with Disabilities Act, carpool, vanpool and carshare projects, traffic calming programs, among others. As a result, the region's share of CMAQ funds does not grow at the same rate as the CMAQ program overall. While calculating an exact amount for the region is premature as the bill proposes to change the formula to take particulate matter into account, based on

the *current* factors, we estimate the region would receive about $106 million in CMAQ funding in FY 2012 compared to $75 million in FY 2010, an increase of more than 40 percent.

Bill Would Tie Up $16 Million in Annual CMAQ Funds for Construction Equipment
The bill requires that 50 percent of the region's funding be spent on projects that reduce fine particulate matter (hereafter referred to as $PM_{2.5}$). This general provision is not too restrictive as most air quality projects provide benefits to all pollutants, including $PM_{2.5}$. However, the bill also requires that 30 percent of that amount be spent solely on diesel-powered construction equipment retrofits and repairs. This would take $16 million of the region's annual CMAQ funds (about half of the growth over SAFETEA levels) off the table for other regional transportation priorities, including Transportation for Livable Communities, Safe Route to Schools, greenhouse gas emission reduction grants, and ITS-related projects, to name a few. MTC will pursue an amendment to exempt states that are already addressing the problem of $PM_{2.5}$ emissions from construction equipment from this set-aside requirement. This would exempt California, where the California Air Resources Board has issued a final rulemaking package that is set for action on December 14th, 2011 to go into effect in 2014 specifically focused on this source of $PM_{2.5}$ emissions.

Planning Provisions Create New Layers of Review
The metropolitan planning section of the bill is generally consistent with the performance target work MTC is doing for Plan Bay Area, our long-range plan. However, we are concerned that the bill sets some unrealistic deadlines on MPOs. For instance, the bill requires that MPOs adopt performance targets within 90 days after the state DOT adopts performance targets. As you are well aware, 90 days is an unrealistic timeframe for meaningful consideration of performance targets that reflect the numerous and sometimes conflicting goals for how a metropolitan transportation system can best improve the economic vitality, mobility, environmental sustainability, livability and public health of its region. Additionally, some language in this section of the bill could be construed to foreclose the adoption of more ambitious targets at the regional level. Staff will work to amend this section to require MPOs to adopt performance targets within one year of the state's adoption and to allow MPO targets to exceed those set by the state DOT.

National Freight Program is Important Advance, but Should Be Mode Neutral
MAP-21 provides $2 billion per year for a new National Freight Program. The program is structured as a formula program, allowing funding for corridors designated by U.S. DOT as part of a "primary freight network" to be eligible for funding, as well as those deemed "rural" and not part of a new federally "primary freight network." Additionally, the bill imposes a constraint on the types of freight projects that can receive funds, placing a five percent cap on the share of freight funding that can be spent on rail or maritime projects. This cap undermines the ability of state and regional agencies to determine, based on a performance assessment of the various options, which projects can best achieve the desired objectives and at the lowest cost. We will pursue an amendment that removes, or at least raises, this cap.

Acceleration of Project Delivery
In an encouraging development, MAP-21 contains an entire section devoted to accelerating the notoriously slow federal project delivery process. This includes provisions related to allowing certain activities (such as right-of-way acquisition) to occur prior to final approval of the environmental impact report (EIR), expansion of projects qualifying for "categorical exclusion" under the National Environmental Policy Act (NEPA), incentives to encourage the use of "design-build" contracting methods, and a new process, including hard time-limits for resolution

of EIR issues, if requested by the lead agency. We believe more can be accomplished in the area of faster and more cost effective project delivery, while still maintaining a robust environmental protection process by following on the recommendations of the National Surface Transportation Policy and Revenue Study Commission report. That report included a number of recommendations including the addition to the expansion of projects qualifying for "categorical exclusion" under the National Environmental Policy Act (NEPA) and a more simplified NEPA process for projects that have few significant impacts.

Innovative Finance
With regard to innovative finance, the bill significantly expands the size and scope of the Transportation Infrastructure Finance and Innovation Act (TIFIA) programs — a federal loan, loan guarantee, and line of credit program. Specifically, the bill expands TIFIA from $122 million per year to $1 billion and allows TIFIA to make up to 49 percent of a project's total cost. It also allows TIFIA to be used to fund a group of projects, rather than just a single project and enables rates to be "locked in" at an earlier stage in the project development process. All of these changes enhance the role TIFIA can play in supplementing traditional federal funding. In particular, MTC staff is interested in what role an expanded TIFIA program could play in delivering the regional express lane program.

Next Steps
The next step for S.1813 is for the Senate Banking Committee, the Senate Commerce, Science & Transportation Committee and the Senate Finance Committee to present their proposals for the transit, rail and safety and funding sections, respectively. At the time this memorandum was finalized, no dates had been announced. On the House side, House Transportation & Infrastructure Committee Chair John Mica, R-Fla., announced on November 30 that there was not sufficient time left in 2011 for his committee to take up a reauthorization bill and that a bill would likely not be released until February, leaving about six weeks before the current SAFETEA extension expires on March 31, 2012. Chairman Mica also indicated a desire for a five-year bill. The greatest impediment to a longer-time frame is identifying funds to offset the gap between revenues and expenditures, assuming funding remains at or above current levels. Approximately $50 billion in additional funds would be needed to provide a five-year bill at current spending levels. Revenues from expanded oil and gas drilling have been proposed by Speaker John Boehner as one mechanism to finance the bill, but these don't come close to that level. Staff will keep you informed as new developments unfold, along with new opportunities to help shape the next surface transportation authorization bill.

Steve Heminger

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Restructuring of Core Highway Programs Under the Senate's MAP-21 Transportation Reauthorization Proposal

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Att. A

Transportation for America

Current Formula Programs	MAP-21 Core Program Structure
Interstate Maintenance National Highway System Highway Bridge Program	NATIONAL HIGHWAY PERFORMANCE PROGRAM (NHPP - New) ~$20.6 billion
15% For Off-System Bridges Equity Bonus Appalachian Highway Development System Border Infrastructure Program Railway Highway Crossings Surface Transportation Program (STP)	TRANSPORTATION MOBILITY PROGRAM (TMP - New) ~$10.4 billion
	NATIONAL FREIGHT NETWORK PROGRAM (New) ~$2 billion
Transportation Enhancements (10% of STP) Congestion Mitigation and Air Quality Safe Routes to Schools Recreational Trails	CONGESTION MITIGATION AND AIR QUALITY (CMAQ) ~$3.3 billion
Highway Safety Improvement Program	HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP) ~$2.5 billion

All above programs are eliminated except Highway Safety Improvement Program (HSIP) and Congestion Mitigation and Air Quality (CMAQ). Transportation Enhancements, Safe Routes to School and Rec. Trails are eliminated but become eligible uses in a new reserve fund within CMAQ.

San Francisco Bay Area Suballocated Funding in MAP 21

Dollars in millions

	FY 2010	FY 2012	FY 2013	Two Year Total
Transportation Mobility Program				
Authorization Level	$ 7,588	$ 10,402	$ 10,578	$ 20,980
Less State Planning & Research	$ 7,493	$ 10,194	$ 10,366	$ 20,560
California Share	$ 749	$ 1,019	$ 1,037	$ 2,056
MPO Share	$ 421	$ 510	$ 518	$ 1,028
SF Bay Area Share (19.2%)	**81**	**$ 98**	**$ 100**	**$ 197**
CMAQ				
Authorization Level	$ 2,058	$ 3,310	$ 3,366	$ 6,675
California Share	$ 432	$ 695	$ 707	$ 1,402
California's Share of Reservation Amount		$ 83	$ 83	$ 167
Less 10% Set Aside		$ 612	$ 623	$ 1,235
SF Bay Area Share (17.4%)	**75**	**$ 106**	**$ 108**	**$ 215**
PM Setasides		*$ 53*	*$ 54*	*$ 107*
Section 330 Construction Equipment Setaside		*$ 16*	*$ 16*	*$ 32*
Subtotal from TMP/CMAQ Programs	**156**	**$ 204**	**$ 208**	**$ 412**
Metropolitan Planning				
Authorization Level	304	$ 332	$ 338	$ 670
California Share	$ 40.8	$ 44.6	$ 45.3	$ 89.9
Bay Area Share (16.4% based on FY 2010 actual)	**$ 6.7**	**$ 7.3**	**$ 7.4**	**$ 14.8**
SF Bay Area Grand Total Suballocated	**$ 163**	**$ 212**	**$ 215**	**$ 427**