



PB Washington Update

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Congress remains on recess so there is little legislative activity to report; however, there is a tremendous amount of campaign and political activity going on which will definitely have an impact on future legislation, both in the post-election lame duck session and in the new 112th Congress.

Congress is scheduled to return to session on November 15, remain in session for one week, recess for Thanksgiving and then return again for one or more weeks. The length of time they remain in session will depend on the outcome of the election. There are a number of issues they must deal with in the lame duck session including passing the FY'11 annual federal agency funding bills to supplant the short-term Continuing Resolution (CR) which runs through December 3. Funding could be provided either as another CR (funding programs at FY'10 levels) or an Omnibus Appropriations bill (combining all 12 FY'11 bills in one large bill). Congress must also extend some or all of the Bush Administration tax cuts and other expiring or expired tax provisions, either permanently or temporarily. Of importance to the infrastructure industry, Congress must extend the short-term FAA authorization bill (expires December 3) and the short-term SAFETEA-LU bill (expires on December 31). At this point there have been no decisions made about the length of the next extensions.

FY'11 Appropriations

If Republicans take over control of the House, they may push for a Continuing Resolution (CR) extending temporary funding into early 2011 to allow them to write their own FY'11 funding bills or possibly a full-year CR in order to keep federal spending at the FY'10 levels which in many cases are lower than the draft FY'11 levels. On the other hand, the current Congress could opt to roll the FY'11 funding bills into a large omnibus bill in order to finish the FY'11 process before the new Congress begins. In the absence of agreement, there is the risk of a government-wide shutdown like the one that occurred when there was an impasse between President Clinton and the newly elected Republican majority in 1994.

The House Republican leadership has already indicated in a [letter](#) to Speaker Pelosi that if Congress opts for a massive Omnibus Appropriations bill, they want all project earmarks removed from the bill (a short-term CR typically does not include earmarks). Since the House Republican Caucus previously agreed not to submit any FY'11 earmarks, few of the earmarks in the House funding bills are for Republican-backed projects. The leadership's letter was signed by 50 House Republicans, none of which are members of the Appropriations Committee or the T&I Committee. It is not clear how the Senate will react to such a demand since they have generally been more supportive of earmarks, regardless of party. A funding bill without earmarks would be reminiscent of FY'07 when a similar



omnibus bill was passed without any earmarks. In that case, there were no highway "Surface Transportation Priority Project" earmarks and US DOT was given the discretion to divide up the FTA Bus and New Start discretionary funding as they saw fit. The result was very controversial because the Bush Administration opted to use FTA funds for their own, "unauthorized" priorities – the Urban Partnerships and the Congestion Pricing programs. The current Administration has used unallocated/unearmarked FY'09 and FY'10 discretionary transit funds to provide more broadly distributed competitive grants such as the recent "Bus State of Good Repair" grants.

Here is a [link](#) to a list of the status of current FY'11 House and Senate appropriations bills.

Surface Transportation Authorization

In yet another holiday weekend address, on Columbus Day President Obama reiterated his support for a multi-year surface transportation authorization bill front-loaded with \$50B. However, once again, few details were provided, including where the funding would come from to pay for a six-year bill and how the \$50B proposal would actually work. It is still expected that additional information will be part of the President's FY'12 budget request which will be released in early February. The transportation industry again expressed strong support for the President's efforts to raise the visibility of the importance of infrastructure investment, but also frustration over the continued lack of details.

As part of the President's announcement, the Administration released a new report in support of infrastructure investment prepared by the Department of Treasury and the Council of Economic Advisors. It can be found [here](#). The report builds on the recently released University of Virginia Miller Center for Public Affairs Report which can be found [here](#). Both Mort Downey and Steve Lockwood of PB participated in the conference which developed this report.

In a highly political, election-year response, House Transportation & Infrastructure (T&I) Committee Ranking Republican John Mica (R-FL) stated that, "Unfortunately this last minute report is a pitiful and tardy political excuse for the Administration having killed last year any chance of a long-term transportation measure. Even more astounding is their regurgitation and attempted justification of a \$50B spending proposal while more than 60% of the stimulus infrastructure dollars remain unspent".

There seems to be general agreement that a multi-year authorization bill will not be passed in the short lame duck session and a sense that the first six months of 2011 may be the only window of opportunity before the frenzy of presidential election politics takes over. However, if the Republicans take control of either body, the first six months could be a chaotic time of reorganization, personnel changes, and focus on controversial Republican priorities such as repealing the healthcare reform bill.



In other news, AASHTO is floating the idea of replacing the existing flat excise tax rate on gas with a percentage tax on the sale of fuel. The idea is to set the rate to levels that would not increase motorists' costs in the first year, but would increase in future years bringing in additional revenue. A sales tax of approximately 8.4% on gasoline and 10.6% on diesel is estimated to bring in the same revenues in the first year of a six-year bill, but would provide \$43B in additional money based on price inflation over the next five years. It is not clear if this idea would be supported on Capitol Hill, although House T&I Committee Ranking Republican John Mica (R-FL) has expressed some interest.

Election Impact

In at least 17 states voters have already started to cast their ballots as part of early voting, however, given the closeness of many key races, many are predicting that final election results won't be known for several days after November 2. More details about the impact of the November elections on the federal legislative agenda will be provided once the outcome of the elections is known; however, some trends are becoming clear. Under all potential scenarios, Republicans are expected to pick up a significant number of new seats in the House and Senate, increasing their representation and potentially resulting in more gridlock, particularly in the Senate where getting the 60-vote "super majority" needed to pass most bills will be even more difficult, unless the shift in relative strength returns the process to a more bi-partisan approach where both parties are required to work together in order to accomplish anything.

If Republicans pick up the 39 seats they need to take over the majority in the House, which many observers now predict will happen, infrastructure funding could be at risk. In their recently released "Pledge to America", House Republicans pledged to permanently stop all tax increases (which could be read to include a gas tax increase and perhaps even an increase in the FAA's Passenger Facility Charge), significantly cut and roll-back federal discretionary spending and cancel all unspent ARRA stimulus funding.

If Republicans take over a majority of seats in either or both houses, it will mean a change in control of all committee leadership. Some of those changes are fairly apparent such as Rep. John Mica (R-FL) would presumably become the new chairman of the House T&I Committee. In other cases, the changes are less clear because of the "musical chairs" which occurs as members jockey for better committee assignments. The appropriations subcommittees are particularly hard to predict since there is usually a significant amount of movement among subcommittees. The process is further complicated by a standing rule in the Republican Conference that combined service as a Ranking Member and as a Chairman cannot exceed six years.

Even if Democrats retain control of the Senate, between retirements and tight races there could be major changes in committee leadership. For instance, Senate Banking Committee Chairman Chris Dodd (D-CT) is retiring. He is expected to be replaced by Tim Johnson (D-SD), a senator from a rural state who is not considered to be a strong champion of transit



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on the committee that has jurisdiction over transit authorization. If Republicans were to take control, Senator Richard Shelby (R-AL) is likely to once again chair the committee. On the Senate Environment & Public Works Committee, current chair Barbara Boxer (D-CA) is in a challenging re-election fight. If she were to lose, Senator Tom Carper (D-DE), a strong champion of livable and sustainable transportation and former member of the Amtrak Board, would likely become chair. Under Republican control, the chair would be Senator Jim Inhofe (R-OK), a strong supporter of highway and water resources funding, who is the polar opposite of Boxer on many other environmental issues, particularly climate change and "cap and trade". On the Senate DOT Appropriations Subcommittee, Chair Patty Murray (D-WA) is also in a very difficult race. Potential Democrat or Republican replacements for her are difficult to judge right now.

In addition to the congressional races, there are an unusually large number of governor races this year – 37 in total with 24 of them being open seats. This means there will be at least 24 new state governors with some observers predicting many more since a number of Democratic incumbent governors are in very tight races. The large number of new governors will have a significant impact on the 2012 congressional redistricting efforts and the 2012 presidential election. In the near term, new governors usually mean new state DOT agency leaders and fewer experienced and knowledgeable state leaders to lobby Congress in support of critical infrastructure legislation.

Other News

FTA and FRA are expected to announce the latest round of TIGER II and high-speed rail discretionary grants any day now. The expectation is that they will be announced before the November 2 elections. There is up to \$600M available to fund TIGER II construction grants, up to \$75M to fund TIGER II/HUD planning grants and \$2.4B in FY'10 high-speed rail discretionary grants.

Check the PB Transportation Update website at www.PBTransportationUpdate.com for more information and copies of bills and other documents.