



December 9, 2011

Congress is expected to adjourn for the year as early as next Friday, December 16, but possibly as late as December 23. Either date leaves very little time to wrap up a considerable amount of business, including passing legislation to fund the vast majority of the federal government through the end of FY'12 and to extend many critical expiring tax provisions. Although the FY'12 annual appropriations bill for US DOT programs (as well as Agriculture and Commerce/State/Justice) has been signed by the President, the remaining nine funding bills, including the Department of Defense, still must be passed. The current short-term Continuing Resolution (CR) expires on December 16.

The goal is to include the remaining nine bills in a so-called "megabus" bill which will provide new appropriations for the remainder of FY'12. However, unresolved issues may force as many as three of the funding bills (Labor/HHS/Education, Interior/Environment and Financial Services) to be dropped from the larger bill and be funded under a Continuing Resolution (CR) which, for most programs, simply extends existing funding levels for another year.

The year-end tax extenders bill may well be the last bill to pass before the holidays and therefore, as usual, there is a clamor to add numerous extraneous provisions. The primary tax breaks proposed for extension are the payroll tax cut and unemployment benefits. PB is actively working to support inclusion of an extension of the expiring transit commuter tax benefit. The current transit tax benefit of \$230 per month – on par with the parking tax benefit – is due to roll back to only \$125 a month in 2012 unless extended by Congress, even as the parking benefit is bumped up to \$240 as an inflation adjustment. Unlike some other tax extenders, the commuter benefit cannot be fixed retroactively next year.

Unfortunately, one bill that will not be debated before the end of the year is a House surface transportation authorization bill. Last week, House Speaker John Boehner announced that there is not enough time to bring a House authorization bill to the floor and House T&I Committee Chair John Mica (R-FL) said that therefore the Committee would not introduce or mark-up a bill until early next year.

Surface Transportation Authorization

On November 17, House Speaker John Boehner announced that he and House T&I Committee Chairman John Mica planned to introduce and quickly pass, HR 7, the "American Energy & Infrastructure Jobs Act", which would authorize surface transportation programs for five years and be funded in part by revenues from fees and royalties from expanded oil and gas exploration and drilling.



Before the bill was ever introduced, however, the Speaker and Chairman Mica announced last week that there is not sufficient time to mark-up or debate a bill this year. Some observers speculate that the postponement is due more to the controversy surrounding the proposed revenue source and the preliminary estimates that suggest the proposed oil and gas revenues would not produce nearly enough revenue.

There also seems to be some differences between Chairman Mica and the Republican leadership regarding the length of an authorization bill. Mica has been adamant about the need for a six-year bill, while his leadership seems to be exploring a shorter term measure that could be characterized as a jobs bill funded with whatever revenues can be found.

The delay is a serious concern given how little time there is until the current short-term authorization expires on March 31, 2012. Congress is only in session approximately six days in January and will be on recess at least one week in February.

In the Senate, despite the EPW Committee passing a bi-partisan highway authorization title, MAP-21, by a unanimous vote, the Banking Committee still needs to act on the transit title of the Senate two-year bill and the Commerce Committee must act on safety and rail titles. The Banking Committee is tentatively scheduled to mark-up the transit title on Thursday, December 15. The Commerce Committee may proceed to mark-up the highway safety, hazmat and research provisions next week, but will not act on a rail title before the recess. More importantly, the Senate Finance Committee must still identify the approximately \$12B in additional revenue needed to pay for the bill. Although Finance Committee Chairman Max Baucus (D-MT) continues to say he will find the necessary offsets, he has not yet identified any specific source.

The issue of the Highway Trust Fund funding gap has been further confused by the recent release of OMB estimates that suggest a need for less than \$12B to pay for a two-year highway program, but also notes a need for up to \$2.4B in additional revenues to support the transit program through FY'13.

This week, seven of the 11 Republican members of the Senate Finance Committee wrote a [letter](#) to Chairman Max Baucus recommending a variety of options to pay for the funding gap. Their recommendations include rescission of funds provided for DOE's embattled Advanced Technology Manufacturing Loan Program (approximately \$3.5B), transfer of funds from the Leaking Underground Storage Tank Trust Fund (approx \$3B), reclamation of Highway Trust Funds transferred to the Land & Water Conservation Fund and redirection of Outer Continental Shelf receipts (approx \$250M a year), expanded oil and gas exploration in Alaska and the Outer Continental Shelf (approx. \$5.2B over 10 years), and rescission of various unspent federal funds. They do not support a gas tax increase.

The Republican Senators also recommend ways that highway funds could be spent more efficiently such as by repealing or relaxing Davis-Bacon requirements. They also note that a two-year bill is not sufficient to meet the needs of the program and they urge the start of a discussion of a longer term plan. No word yet on Chairman Baucus' response. EPW Chair



Barbara Boxer (D-CA) said she is very encouraged that these key Senators are engaged and weighing in even though many of the recommendations are very controversial. Boxer suggested there is a slight possibility that the \$12B funding fix could be included in the year-end tax extenders bill.

FAA Authorization

As of yesterday, it appears that all the remaining issues holding up passage of a multi-year FAA authorization bill have been resolved except for one – a very controversial union mediation issue which has now been passed up to House Speaker Boehner and Senate Majority Leader Harry Reid to resolve. There is still hope that the bill could be finalized before Congress adjourns for the year, but that may not be possible. The current short-term FAA extension expires on January 31, 2012, which leaves very little time to complete a bill. Earlier this fall, Chairman Mica said he would not support another short-term FAA bill after Congress passed the 21st extension. In other aviation news, FAA Administrator Randy Babbitt resigned this week following a DUI arrest. No word yet if the Administration will nominate a replacement for the fixed five-year term, which requires Senate confirmation, before the election.

High Speed Rail

Earlier this week, House T&I Committee Chairman John Mica held an oversight hearing on high-speed rail, entitled “The FRA’s High-Speed Intercity Passenger Rail Program: Mistakes and Lessons Learned”. Here is a [link](#) to a committee background memo on the issue, a video of the hearing and the witness testimony. Secretary Ray LaHood testified on behalf of the Administration and provided a vigorous defense of the program. In general, Republican members of the Committee severely criticized the Administration’s HSIPR program, in particular for spreading funds around to numerous projects instead of funneling the bulk of the money to the Northeast Corridor which has proven ridership.

The Committee will hold another hearing next week on December 15 specifically on the California high-speed rail project.

TIGER Grants

US DOT Secretary Ray LaHood announced that once again the demand for TIGER discretionary grants has been overwhelming. DOT received over \$14B in requests for the



\$527M available for the TIGER III program representing 828 applications from all fifty states. DOT has announced that they plan to expedite award of the TIGER grants and name the recipients before the end of 2011.

FHWA FY'12 Discretionary Program Grants

As previously reported, FHWA has announced the solicitation for its FY'12 discretionary programs. Applications are due by January 6. These are funds which had traditionally been earmarked by Congress in the annual appropriations bills but are now subject to a competitive selection process. Each of the 12 programs has its own eligibility and selection criteria. Here are links to each program along with the approximate nationwide amount available:

- [Interstate Maintenance](#), \$47.3 million
 - [Transportation, Community, and System Preservation](#), \$29 million
 - [Ferry Boats and Terminals](#), \$22.2 million
 - [Rail Highway Crossing Hazard Elimination in High Speed Rail Corridors](#), \$7.1 million
 - [Truck Parking Facilities](#), \$2.9 million
 - [Public Lands Highways](#), \$45 million
 - [National Scenic Byways](#), \$20.6 million
 - [Highways for LIFE](#), \$9.5 million
 - [Innovative Bridge Research and Deployment](#), \$4.2 million
 - [National Historic Covered Bridge Preservation](#), \$4.7 million
 - [Value Pricing Pilot Program](#), \$6.9 million
 - [Delta Region Transportation Development](#), \$4.7 million
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