WASHINGTON UPDATE

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Congress is in the final stretch of the 2017 session. Two pieces of legislation are dominating the agenda – the tax cut bill and FY'18 appropriations – both of which Congress hopes to complete before adjourning for the year.

Tax Bill

Both the House and the Senate have passed separate versions of HR 1, the Tax Cuts and Jobs Act. An effort is underway to reconcile or "conference" the two bills, which is not an easy task. While many aspects of both bills are the same, there are a number of key provisions which differ greatly. The goal is to complete negotiations on a final bill – which then must be approved by the House and the Senate - and get it to President Trump to sign before Christmas. Both bills passed their respective bodies with Republican votes only and by close margins. Republican party leaders fear that after the healthcare debacle, if they don't pass a long promised tax bill, their majority could be in jeopardy in the 2018 elections.

One provision of serious concern to the infrastructure industry is the House provision to eliminate the current tax exemption for the interest on Private Activity Bonds (PABs) after 2017 – saving $38B over ten years in revenue. PABs are a valuable tool for financing transportation, water, and other infrastructure projects. This proposal was quite a surprise as it had not been discussed or rumored in the weeks and months leading up to the bill's introduction. In addition, the Trump Administration's preliminary infrastructure plan calls for expanding the eligibility for PABs and for eliminating the current funding cap on PABs as part of its push for greater use of Public Private Partnerships (P3s). The Senate bill does not address PABs. In a related provision, both bills propose to eliminate advance refunding of municipal debt issues.

A major industry effort is underway to preserve PABs in the final version of the tax bill. In addition, Rep. Sam Graves (R-MO), the chair of the House T&I Highways & Transit Subcommittee, has organized a "Dear Colleague" letter to Republican leaders and conferees signed by many House members strongly urging the retention of PABs. A similar letter was organized by Rep. Randy Hultgren (R-IL), Chair of the Municipal Finance Caucus. One rumored compromise may be to retain PABs but tighten their eligibility/applicability and another is to revisit the PABs issue when Congress takes up the Trump Administration's infrastructure plan – assuming that occurs.

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Most concerning, there are no provisions in either bill to provide additional revenue for the Highway Trust Fund or to fund the Trump Administration's infrastructure plan. The Highway Trust Fund (HTF) will be insolvent by 2020. Over $100B in additional revenue will be needed in order to pass the next five-year FAST Act surface transportation authorization bill just to continue current funding levels. AASHTO sent a letter to Congress last week expressing serious concern that tax bills do not address the looming HTF revenue shortfall.

Here are some of the other provisions which impact infrastructure/transportation projects in the House and Senate tax bills:

- Both bills eliminate the current deduction for state and local income and sales taxes and to cap the property tax deduction at $10,000. Many state and local transportation projects are funded through sales and property taxes.

- Neither bill extends the Alternative Fuel Tax (ALT) credit which expired on December 31, 2016. These tax credits are offered to transit agencies utilizing compressed (CNG) or liquefied (LNG) natural gas fleets.

- Both bills retain the employee pretax payroll deduction option of the Commuter Tax Benefit, but the ability of employers to deduct the cost of the transit benefit (as well as the existing parking benefit) is eliminated.

FY'18 Appropriations

Last week, Congress passed another short-term Continuing Resolution (CR) to continue funding the federal government beyond the December 8 expiration date of the previous CR. The latest CR extends funding for only two short weeks to December 22 in an effort to keep the pressure on Congress to pass full year funding.

House and Senate Appropriations Committees have been working to draft a year-long omnibus FY'18 federal funding bill that would combine all 12 pending federal agency funding bills into one massive bill. However, they cannot finalize the bill until there is an agreement on the overall, top-line funding levels. Congress must first vote to raise the defense and non-defense budget caps established by the 2011 Budget Control Act (BCA) in order to accommodate the spending levels proposed by the appropriators and avoid the across-the-board cuts required under sequestration. Any agreement on lifting the budget caps will likely be a two-year deal covering FY'18 and FY'19.

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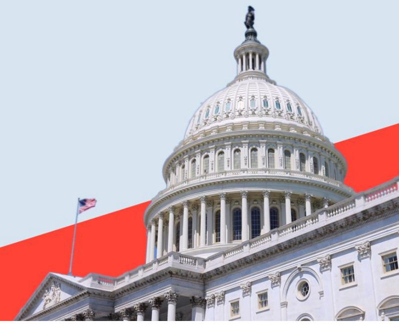

Not only is voting to increase the budget caps very controversial, particularly if the cost is not fully offset with spending cuts or new revenue, the effort is further complicated by attempts to add other, unrelated provisions to the “must-pass” bill, such as approximately $60B for hurricane/fire emergency relief, another increase in the debt limit, and Democratic attempts to attach the DACA/Dreamers bill. Most observers believe that yet another CR extending into mid-to late January will ultimately be necessary.

Under a CR, federal programs are funded at FY’17 funding levels. However, most federal agencies, including US DOT, typically do not release discretionary funds, such as FTA’s Capital Improvement Grants (CIG) and TIGER funds, until a full-year funding bill has been approved.

Both the pending year-long House and Senate FY’18 US DOT appropriation bills fully fund the FAST Act-authorized formula programs, such as the highway program, however, other important programs such as CIG, TIGER, and Amtrak are funded at different levels in each bill and must be reconciled.

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