March 31, 2015

Congress is currently on a two-week spring recess and will return to session on April 13. That is only seven short weeks before MAP-21 expires on May 31. While only a few Members of Congress are willing to state the obvious, that is clearly not enough time to draft, debate, pass, and most importantly fund, a multi-year surface transportation bill. The general assumption is that Congress will have to pass another short-term extension. The big question is whether they will extend the program through the end of the fiscal year on September 30, the end of the calendar year, into 2016 or possibly even beyond the 2016 elections into early 2017. The first two options seem the most likely since Congress will have to find substantial new revenue to fund even a short, flat program extension. Approximately $5B is required through September (down from earlier estimates of $8B because of reduced outlays from the Highway Trust Fund) and $10B through the end of 2015 just to continue current funding levels.

In an effort to provide some stability for the spring and summer construction season, there was talk of trying to pass a short-term extension in early March, well in advance of the May 31 deadline, but it never came to pass.

The good news is that everyone – Congress, the Administration, the media, mayors and governors, stakeholders – is now talking about MAP-21 and the looming Highway Trust Fund (HTF) insolvency. The bad news is that there is not a consensus on how to fix the problem. The popularity of various options seems to ebb and flow. At times, a gas tax increase seems to be gaining traction, then repatriation becomes the go-to solution, now a variety of hybrid approaches (see below) are being proposed.

One piece of positive news is that "devolution" appears to be off the table. Senator Jim Inhofe (R-OK), the chair of the Senate Environment & Public Works Committee (EPW) and one of the fathers of the devolution movement, stated recently that he no longer supports the concept. A House devolution bill, the Transportation Empowerment ACT (TEA), which garnered a number of co-sponsors in the previous Congress, has not been reintroduced. The Transportation Construction Coalition (TCC) recently released an analysis showing that if the TEA bill passed, states would have to increase their state gas tax by an average of 23.5 cents.

US DOT GROW AMERICA Act

Yesterday, US DOT Secretary Anthony Foxx re-submitted the Administration's GROW AMERICA surface transportation reauthorization bill. The bill's programs and policies are almost identical to the 2014 version, but with a significant increase in funding - $478B, up from $302B, and

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two additional years of authorization - turning a four-year bill into a six-year bill. Here is a link to the February 2 PB Washington Update which outlined many of the features of the bill which were first unveiled in the Administration's FY'16 Budget Request. A few new provisions added to the 2015 version include the creation of an Assistant Secretary for Innovative Finance position, a new category within the transit capital program for new corridor or regional-based premium bus service in metro areas under 200,000, an expansion of the ITS R&D program to include autonomous vehicles, and authorization of FRA capital grant funding to pay for the credit risk premiums for RRIF rail loans.

The Administration proposes to pay for the increased funding and length of the bill by supplementing current HTF revenues with a mandatory "14% transition tax" on overseas profits held by US companies, also referred to as repatriation. It appears unlikely, at this time, that the Republican-majority Congress will support such a mandatory repatriation proposal.

Here is a link to a US DOT GROW AMERICA fact sheet.

Other HTF Funding Proposals

Congress does not currently seem to have the political will to vote for a gas tax increase to fund a long-term, sustainable surface transportation bill. An alternative plan to raise revenue by taxing repatriated overseas profits is a one-time only fix that likely will not be implemented unless Congress passes it as part of a comprehensive tax reform bill. As a result, a number of industry groups and individual members of Congress are proposing alternative solutions.

ARTBA recently proposed a "Getting Beyond Gridlock" (GBG) plan that would pair a 15-cent gas and diesel tax increase with a 100% offsetting income tax rebate for middle and lower income taxpayers. The revenue raised would enable a $401B, six-year bill. The tax rebate would be paid for with revenue generated by repatriation. Here is a link to details of the GBG proposal.

Last week, Rep. Jim Renacci (R-OH), a prominent Republican member of the critical House Ways & Means tax writing committee, floated a proposal that is still being fleshed out to provide 10 years of sustainable funding for the HTF.

The plan, as it stands now, would index gas and diesel fuel to inflation prospectively. Renacci estimates this would raise $27.5B and assure the HTF is funded through December 2016 – 1.7 years. In addition, it would create a bicameral, bi-partisan 18-member commission (including two members of the Executive Branch) that would come up with recommendations to fund the HTF by September 1, 2016. By December 31, 2016, Congress would have to either approve the recommendations on an up or down vote, or the gas tax would automatically increase to a level sufficient to fund the next 3-year shortfall – approximately 3.5 cents. This appears aimed to set up a vote in a 2016 post-election Lame Duck session.

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By the time 4.7 years of funding expires – 1.7 years plus 3 years – Congress must pass any other options that get to a minimum of 5.3 years of funding in order to reach a total of 10 years of funding. If Congress fails to do so, the gas tax would again increase to fill the shortfall. Here is a link to a fact sheet on Renacci's draft plan.

This proposal has a long way to go before it could ever pass Congress, but it is a start. The plan is somewhat confusing and does not appear to grow the program, but it is noteworthy that Renacci is the first Republican to publicly support a gas tax increase and he did it despite the opposition of his chairman at the House Ways & Means Committee, Rep. Paul Ryan (R-WI). Rep. Bill Pascrell (D-NJ), also a member of the Ways & Means Committee, is the bi-partisan co-sponsor.

In addition, Rep. Peter DeFazio (D-OR) is espousing a barrel of oil tax coupled with indexing - essentially pushing the tax upstream, and Senators Rand Paul (R-KY) and Barbara Boxer (D-CA) expect to formally introduce a voluntary repatriation bill shortly. Rep. John Delaney (D-MD) continues to push his version of a repatriation bill, Senator Ron Wyden (D-OR), the senior Democrat on the Senate Finance Committee, intends to introduce an infrastructure bonding bill, and Rep. Earl Blumenauer (D-OR) is still advocating for his gas tax increase bill which continues to attract strong industry support.

TIGER Grants

US DOT is expected to release a Notice of Funding Availability (NOFA) for the FY'15 round of popular TIGER discretionary grants later this week or next week. It is expected that applicants will have approximately 60 days to submit applications for the $500M in grants – down from $600M available in FY'14. In anticipation of the NOFA, US DOT will hold a seminar for current and prospective grantees on April 16 from 9:00am to 3:30pm at the US DOT DC headquarters. The seminar will include technical assistance, lessons learned, best practices, and next steps in applying for and implementing a TIGER grant. Registration is required – here is the link to register.

Rail Bills

A number of important rail bills have been introduced and several have been acted on in the past few weeks.

HR 749 – the "Passenger Rail Reform & Investment Act (PRRIA) of 2015" was passed by the full House on March 4 by a vote of 316 to 101. The previous rail authorization bill expired on September 30, 2013. The bill authorizes $5.8B for Amtrak over the next four years. This is approximately the same level of funding per year as the current FY'15 appropriated level, but less than what was authorized (but never funded) in the original 2008 PRIIA bill and much less

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than Amtrak had requested. The bill proposes to keep Northeast Corridor operating profits on the Corridor as called for by the Administration and the states along the NEC. It would also streamline environmental reviews, accelerate project delivery, encourage private sector involvement, put more responsibility on states to fund local routes, expedite RRIF loans, and accelerate private development around stations. The bill does not authorize any funding for non-Northeast Corridor high-speed rail projects. The Senate has not yet introduced a companion bill. Here is a link to information on HR 749. Here is a link to the bill text, a link to the House T&I Committee Report - H. Report 114-30, and a link to a House T&I Committee press release.

S. 650 – The "Railroad Safety and Positive Train Control Extension Act" extends the current December 31, 2015 Positive Train Control (PTC) implementation deadline for five years until December 2020, subject to regular progress reports. The bill was introduced by Senator Roy Blunt (R-MO). The bill was approved on March 25 by the Senate Commerce Committee. Here is a link to the bill text and a link to a fact sheet.

S. 769 – the "Track, Railroad and Infrastructure Network Act" (TRAIN) would extend the expedited environmental streamlining permitting process that was included in MAP-21 for highway and transit projects to rail projects. The bill was introduced by Senators Roy Blunt (R-MO) and Joe Manchin (D-WV). Here is a link to the bill text and a link to a Blunt press release.

S. 797 – the "Railroad Infrastructure Financing Improvement Act" (RIFIA) makes changes to FRA's Railroad Rehabilitation and Improvement Financing (RRIF) innovative financing program to provide more flexibility by extending the maximum period for loan repayment from 35 to 50 years, streamlining the application process, and authorizing appropriations to assist applicants to pay the federal cost of the loan. The bill was introduced by Senator Cory Booker (D-NJ). Here is a link to the bill text and a link to a Booker press release.

S. 808 – the "Surface Transportation Board (STB) Reauthorization Act of 2015" would reform the STB review process, set timelines for rate reviews, expand voluntary arbitration between shippers and carriers and expand the board from three to five members. The bill was introduced by Commerce Committee Chair Senator John Thune (D-SD) and Ranking Democrat Bill Nelson (D-FL). The Commerce Committee voted to approve the bill on March 25. The bill is the same as the STB bill that was introduced last session of Congress which did not pass before Congress adjourned. Here is a link to a fact sheet and the bill text.

HR 1405 – the "Reassuring Adequate Investment in Lifesaving Systems Act" (RAILS) would authorize $200M per year in 2015 to 2020 for installation and testing of Passenger Train Control (PTC) systems. The bill was introduced by Reps. Dan Lipinski (D-IL) and Mike Quigley (D-MA). Here is a link to the bill text.

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