



PB Washington Update

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Congress was back in session last week following its two-week recess; however, it was a fairly quiet week on the legislative front. This week, the Senate plans to debate its version of the FY'12 budget resolution which is expected to be very different than the House-passed version, the House Appropriations subcommittees continue their hearings on the FY'12 funding bills, the bi-partisan Senate "Gang of Six" finalizes its deficit reduction plan and Vice President Joe Biden holds the second meeting of the Administration's deficit reduction task force.

While deficit reduction continues to be a top congressional priority, the US Treasury has announced that the date by which the debt ceiling must be legislatively increased so that the US government does not default has been pushed back from early May to early August. This postponement provides some additional time for Congress to grapple with the highly controversial issue, which is helpful since the House will be on recess again the week of May 16.

Surface Transportation Reauthorization

Over the past week several pieces of an unofficial, draft version of the Administration's surface transportation authorization bill have "leaked" to various industry groups. In general, the proposal is very similar to the broad outline which was included in the President's FY'12 Budget Request. The draft calls for a total investment of \$556B over six years, but without any indication of where the funding would come from other than a vague reference to a possible, unspecified new energy tax.

Among the proposals are:

- replacement of the Highway Trust Fund with a Transportation Trust Fund to include funding for high-speed rail programs
- establishment of a National Infrastructure Innovation and Finance Fund, essentially an infrastructure bank, which would also encompass the TIFIA program
- creation of a Surface Transportation Alternatives Office in FHWA to study and test options to replace the gas tax and to implement a VMT revenue collection system
- consolidation of 60+ highway programs into six categories
- permission to toll the Interstate upon approval of the Secretary in areas over 1 million population
- creation of an Office of Freight Policy tasked with developing a National Freight Plan and designating a National Freight System
- making permanent a pilot program to allow states to assume authority over environmental reviews



- development of a new pilot program allowing large (over 2.5 million population) metropolitan areas to become direct recipients of federal-aid highway funding

There is speculation that the Administration may never release an official version of the bill because they are running out of time to get something approved by OMB in advance of the introduction of House and Senate bills, anticipated possibly as early as Memorial Day.

Here is a [link](#) to the leaked draft bill, which the White House has denied is an official expression of Administration policies and a [link](#) to a draft section by section analysis which summarizes the provisions in layman's terms. The documents contain a number of drafting errors and inconsistencies and are subject to change.

In the meantime, in the House, Chairman John Mica (R-FL) continues to work on his version of a six-year bill with the hope that he can introduce it before Memorial Day, but with the realization that the process is taking longer than expected and early June may be more realistic. In recent public remarks, Mica said his bill would strongly emphasize public private partnerships, leverage private capital and significantly reduce the federal bureaucracy's involvement in transportation projects, stating "We'll devolve decisions to the states and take the federal government out of the approval process".

While Chairman Mica continues to draft a six-year bill, there is growing speculation that only a two-year authorization bill may be possible given the large, politically unacceptable funding cuts that would be required in a six-year bill without additional funding revenues. The Senate Environment & Public Works Committee appears to be making progress on a bi-partisan, six-year highway title using the policy provisions in the US DOT draft bill as a starting point, but without any funding numbers.

FY'12 Appropriations

On May 2, the House DOT/HUD Appropriations Subcommittee issued a "Dear Colleague" letter to House members with instructions for submitting requests for the FY'12 THUD funding bill. Here is a [link](#) to the letter. Unlike common practice in previous years, project earmark requests will not be considered in compliance with the Republican moratorium on earmarking. This includes corrections to past earmarks which could be a problem for some projects whose scope has changed. The Subcommittee will only be considering "programmatic" and "language" requests.

Programmatic requests appear to be requests to increase or decrease the funding level for a program compared to what was included in the Administration's FY'12 Budget. Language requests appear to be requests to change current DOT policy. Although both types of requests can be considered as "authorizing on an appropriations bill" and may be opposed by the House T&I authorizing committee, in recent years it has become more common for transportation appropriations bills to contain some programmatic and language changes.



All requests from House Members are due to the subcommittee by May 20. Individual House members may set earlier dates for the submission of requests from local agencies. The Senate subcommittee has not yet issued its FY'12 instructions.

FY'11 Appropriations Implementation

The FY'11 government-wide appropriations bill was finally signed into law on April 15, six and a half months after the start of the fiscal year. Now the focus turns to agency implementation. Several of the items US DOT must act on include issuing a supplemental FY'11 apportionment notice of transit formula and discretionary funds for the remainder of the fiscal year, a Notice of Funding Availability (NOFA) for the \$527M in TIGER III grants, the rescission of \$280M in FY'10 New Start funds and a potential NOFA for the \$1.6B in FY'11 New Starts/Small Starts funding.

High Speed Rail

Even after the recent rescission of \$400M in FY'10 federal high-speed rail funds, US DOT still had \$2B to allocate from funds previously rejected by Florida. By the April 4 deadline to submit proposals, US DOT received more than 90 applications from 24 states, DC and Amtrak, totaling close to \$10B. Today, Secretary Ray LaHood travelled to New York City and Detroit to announce the grants. Here is a [link](#) to the US DOT press release which lists the grant recipients. Grants went to 15 states and Amtrak for 22 high-speed intercity passenger rail projects. The Northeast Corridor (NEC) will receive \$795M for a variety of projects, the Midwest, \$404.1M, and California high speed-rail, \$300M. In addition, \$336.2M is being made available for investment in state-of-the-art "next generation" locomotive and rail cars for California and the Midwest.

In reaction, House T&I Committee Chairman Mica (R-FL) stated that he was disappointed that, "Once again the Administration has scattered funding to numerous slower-speed rail projects and allowed Amtrak to hijack 21 of the 22 grants".

This brings the total amount of high-speed rail funding under the Obama Administration to \$10.1B, the amount the White House had originally requested through FY'11 despite the rescission of FY'10 funds and zeroing out of new FY'11 funding by Congress.

FAA Reauthorization

The current short-term FAA authorization bill expires on May 31. Although both the House and Senate have passed multi-year FAA authorization bills, they have not yet met formally to resolve the differences in the two bills. While the differences are not overwhelming, there are a number of issues, particularly labor issues, which must still be resolved. Given



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that the House will be on recess next week, it is likely that yet another short-term extension may have to be passed – perhaps one extending through the end of the fiscal year in order to avoid additional extensions, which are approaching 20 in number.

3% Withholding

Last Friday, the IRS issued a final ruling on the 3% tax withholding issue which calls for a one-year delay in the implementation of the 3% withholding – from January 1, 2012 to January 1, 2013. This issue relates to Section 511 of the Tax Reconciliation Act of 2005 which mandates that federal, state and local governments withhold 3% from payments for goods and services. The provision, when implemented, will be very costly and cumbersome for engineering firms, among many other entities affected, to comply with. The IRS action is not expected to deter on-going House and Senate efforts to pass a bill to repeal this requirement entirely or at a minimum to require a multi-year delay. Here is a [link](#) to the IRS regulation.

Additional information and materials can be found on the PB Transportation Update website at www.PBTransportationUpdate.com
