June 27, 2014

Congress has adjourned for the July 4th recess. They will return to session on July 8 and remain in session until the summer recess begins on August 1. That will give Congress four weeks to complete a number of critical bills, in particular a "must do" fix for the Highway Trust Fund. The Trust Fund crisis seems to have finally gotten the attention of Congress and the media, but how to solve it, even in the short-term, is proving difficult.

MAP 21 Reauthorization

There was significant activity this week on the looming Highway Trust Fund (HTF) solvency crisis, but Congress adjourned for the recess before taking any specific legislative action.

On Tuesday, Senator Ron Wyden (D-OR), the chair of the Senate Finance Committee, introduced the "Preserving America's Transit and Highways Act of 2014" – the PATH Act, a bill which would transfer $9B (a subsequent version reduces it to $8B based on updated CBO estimates) from the General Fund to the Highway Trust Fund to ensure its solvency through December 31, 2014. The transferred funds would be "paid for" by a variety of sources. Wyden's initial plan included only one transportation-related "pay for", an increase in the heavy vehicle use tax, but that proposal was later dropped. Wyden had hoped to act on the bill in committee yesterday, but the ranking Republican, Senator Orrin Hatch (R-UT) strongly opposed the plan, primarily because of the offsets. Wyden agreed to pull the bill and work with the Republicans over the July 4 recess to come up with a bi-partisan plan. Senator Barbara Boxer (D-CA), chair of the Senate EPW Committee, held a press conference on Wednesday to indicate her support for Wyden's bill despite her strong desire to avoid short-term fixes in favor of a longer term approach, such as S. 2322, the six-year MAP-21 reauthorization bill she recently moved through her committee.

Reaching bi-partisan consensus may be difficult since Senate Republicans and Democrats currently do not agree on how to pay for the Trust Fund patch. Wyden is proposing a variety of miscellaneous changes to the tax code dealing with inherited IRAs, denial of passports for delinquent taxpayers, and transfers from the Leaking Underground Storage Tank Trust Fund. Hatch and Senate Republicans seem to be leaning towards spending cuts, potentially such as Amtrak subsidies and bike and ped funds, and rolling back federal regulations, such as Davis Bacon. Of general concern is the fact that most of the proposed offsets use 10 years-worth of cuts/savings to pay for only a few months of additional revenue.

Almost 50 amendments to the PATH Act have been filed to date by various Senators, with almost all being miscellaneous tax provisions having nothing to do with the HTF. However, Senator Tom Carper (D-DE), chair of the EPW subcommittee on Transportation & Infrastructure, has filed an interesting amendment which would restore the purchasing power of the gas tax by retroactively indexing the gas

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and diesel taxes back to 1993 – the last time the taxes were increased. The increases would be phased in over three years until the gas tax reached 30.3 cents a gallon.

In the House, the previous leadership plan to pay for a Trust Fund fix by reducing Saturday mail service is now dead. House Ways & Means Committee Chairman Dave Camp (R-MI) says he is working on a proposal that he will introduce after the July 4 recess. House Speaker John Boehner (R-OH) has indicated he prefers a longer, nine to twelve month fix through mid-2015. Most transportation industry stakeholders prefer a shorter patch, only through the end of the calendar year, in order to keep the pressure on Congress to act on a long-term fix, such as a gas tax increase, perhaps during a post-election Lame Duck session.

In the meantime, US DOT Secretary Anthony Foxx sent a letter to transit agencies this week outlining DOT's need to curtail federal payments if Congress does not act in time to bail out the Highway Trust Fund. This follows a similar letter sent to state DOTs last week which said that US DOT will soon need to institute cash management strategies designed to keep the highway account solvent, such as delaying reimbursements to states. The highway account is expected to hit its minimum practical balance of $4B in late July or early August with the transit account following suit around early October.

On a related issue, last week Senators Chris Murphy (D-CT) and Bob Corker (R-TN) announced a bi-partisan proposal to increase the gas tax and then index it for inflation. Their plan would increase both the federal gas and diesel tax by 12 cents (phased-in over two years) in order to fund a long-term reauthorization of highway and transit programs. The increase would potentially raise $190B in additional revenue for the Highway Trust Fund over 10 years, which would be enough to maintain current funding levels plus inflation.

The impact of the gas tax increase on families and businesses would be offset with a variety of proposed tax cuts, including permanent extensions of the research and development tax credit, state and local sales tax deduction, and other elements of the "tax extenders" package currently under consideration in Congress.

The Murthy/Corker proposal received very positive reaction from the transportation industry in particular because it is bi-partisan and because Senator Corker is a very well respected senior Senator, close to leadership, from a rural, Red state. In addition, the concept of "offsetting" the impact of a gas tax increase on lower and middle income taxpayers seems to make the proposal more palatable to many Members, particularly Republicans.

FY'15 Appropriations

The FY'15 appropriations process got off to a quick and unusually early start this spring, including the THUD bill which funds US DOT programs. However, the progress came to a halt last week when the THUD bill was pulled from the Senate floor. The DOT funding bill

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has passed the House and was being debated on the Senate floor as part of a three-bill "minibus". Democratic concerns over taking votes on potential Republican amendments to roll back recent Obama Administration environmental directives on reducing greenhouse gas emissions from power plants and expanding the scope of Corps of Engineers' jurisdiction over "waters of the US" caused Majority Leader Harry Reid to discontinue debate on the bill.

The delay in Senate consideration of the FY'15 funding bills makes it more likely that Congress may simply pass a short-term Continuing Resolution (CR) extending current level funding until after the November elections.

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

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