August 3, 2011

Yesterday morning, the US Senate voted to approve the highly controversial budget/debt ceiling package by a vote of 74 to 26. This follows House passage Monday night by a vote of 269 to 161. President Obama signed the bill yesterday afternoon in time to avert a debt ceiling crisis. Despite a scheduled recess date of August 5, both houses of Congress opted to recess for the month of August immediately following the debt ceiling votes and will not return to session until after Labor Day on Wednesday, September 7. Congress is scheduled to be on recess again the week of September 26, leaving only about 12 legislative days in September before the October 1 start of the new fiscal year.

The schedule also does not leave much time before the September 30 expiration of the current short-term SAFETEA-LU authorization extension. In related news, Congress did not act to extend the lapsed FAA authorization before leaving town.

Debt Ceiling/Deficit Deal

The now signed debt ceiling/deficit reduction bill authorizes the Administration to increase the debt limit by at least $2.1 trillion in several steps in return for significant spending cuts. First, approximately $900B in spending cuts over ten years will be implemented immediately through the establishment of discretionary spending caps. Then, a new “super” committee made up of 12 Members of Congress (3 members each of the House, Senate, Republicans and Democrats) will work to identify additional specific spending cuts or revenue increases worth at least $1.5 trillion by November 23. If the Committee fails to produce the cuts or Congress does not approve them by December 23, then about $1.2 trillion in cuts will be taken in across-the-board cuts with 50% coming from defense programs and 50% coming from domestic programs.

The bill does not include any revenue raisers or tax increases and entitlement programs are exempted from the cuts. The bill requires Congress to vote on, but not necessarily pass, a balanced budget amendment by December 31, 2011.

It is too early to tell what these “top line” spending cuts will mean for transportation and other infrastructure programs. The initial $900B in cuts impact *discretionary* programs. The highway program and those transit programs funded through the Highway Trust Fund are considered to be *mandatory* spending and therefore may not be as affected as much as high-speed and intercity passenger rail, transit New Starts, Amtrak, water and Corps of Engineers’ programs which are funded from the General Fund. However, even the mandatory programs could get caught up in budget constraints when future annual budget resolutions are enacted under the new spending caps. With the Trust Fund firewalls/guarantees no longer in place, the Appropriations Committees will be free to reduce Highway Trust Fund budget authority in order to gain outlay savings to be used for other priorities.

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FAA Extension

Despite pleas from the White House, US DOT, many Members of Congress, and aviation stakeholders, Congress not only allowed the short-term FAA authorization extension to expire on July 22, but it left town until after Labor Day without resolving the issue.

As a result, more than 4,000 FAA employees (not including air traffic controllers and safety inspectors) have been furloughed indefinitely, no Airport Improvement Program (AIP) construction grants are being made, and the FAA and many individual airports have issued "stop work" orders to engineers and contractors working on FAA capital investments and AIP-funded infrastructure projects. In addition, no ticket taxes are being collected and deposited into the Aviation Trust Fund. The ticket tax is equal to approximately $30M in revenues per day that will be permanently lost to the Trust Fund. Here is a link to a continuously updated list of direct FAA contracts that have been put on hold.

Although there are several controversial issues which have not yet been resolved between the House and Senate on their versions of a multi-year FAA authorization bill, the 21st short-term extension bill was held up over a primarily political issue related to the Essential Air Service (EAS) program. House T&I Committee Chairman John Mica (R-FL) insisted on adding a provision to the short-term extension bill that would have cut off EAS subsidies to 13 small, rural airports around the country, including ones in the states of three of the top Democrats in the Senate.

With neither side willing to blink, what was hoped would be a non-controversial, "clean" bill extending FAA programs and the aviation ticket tax through September 16, died when the House was not willing to drop the EAS provision and the Senate was not willing to accept it. Republican Senators also refused to accept a last minute, bi-partisan proposal that would have created budget savings equivalent to those produced by the House EAS cutoff.

Surface Transportation Authorization and SAFETEA-LU Extension

Despite a variety of activity by both the House and Senate authorizing committees during July on a multi-year surface transportation bill, neither body actually introduced a formal bill before leaving town for the August break. This makes it essentially impossible to pass a multi-year bill before the September 30 expiration of the current short-term extension. However, before leaving for the August recess, Senate Majority Leader Harry Reid (D-NV) announced that sufficient revenues had been "found" by the Finance Committee to allow the Senate to move forward with a bipartisan, two-year authorization bill funded at current levels. EPW Chairman Barbara Boxer (D-CA) then announced that a committee markup would occur on the bill upon the Senate's return in early September.

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While past extensions have generally been both “clean” and non-controversial, there are already signs that it may not be that easy this time. There will almost certainly have to be a reduction in the highway and transit funding levels to reflect the significantly lower levels in the FY’12 House Budget Resolution.

In addition, the recent lapse of the short-term FAA authorization extension (see article above), despite the general belief that Congress would never let that happen, has alarmed surface transportation stakeholder groups. They fear that such disregard for the value of a critical infrastructure program and the integrity of a dedicated transportation trust fund could also impact extension of the surface transportation programs and the federal gas tax which must be renewed by September 30.

An article in the August 2 issue of “Politico” says that, “renewing the (gas) tax could be the next political controversy to spark a brawl in an ever more deeply divided Capitol Hill” and “already a handful of conservative groups are eyeing the expiration (of the gas tax) as the next potential front in the spending and tax fight”.

The original SAFETEA-LU bill expired almost two years ago on September 30, 2009.

FY’12 Appropriations

Congress left for its August break without making much progress on the FY’12 federal agency funding bills. Most action, particularly in the Senate, was put on hold while the debt ceiling debate raged. Neither the House nor Senate has introduced or acted on an FY’12 DOT funding bill. Given how far behind schedule Congress is in completing the annual appropriations bills, it is likely that it will have to pass a short-term Continuing Resolution (CR) to keep federal government programs funded as of October 1.

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

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