



August 6, 2012

Congress has started its summer recess/district work period and will not return to Washington until the week of September 10, a week later than usual to accommodate the Democratic convention being held in Charlotte, NC September 4, 5 and 6. The Republican convention will be held in Tampa, FL just prior to the Labor Day weekend on August 27, 28, 29 and 30.

When they return in September, Congress will only be in session for about two weeks before they recess again through the November 6 elections. With significant unfinished work, it is assumed that Congress will return after the elections for a *Lame Duck* session in late November and into December.

The unfinished issues include many controversial items such as numerous tax extenders, the expiring Bush tax cuts, and the massive government-wide sequester due to go into effect on January 1, 2013 as required by passage last fall of the Budget Control Act, which imposes automatic spending cuts on all domestic discretionary programs as well as all defense programs. The only good news about the sequester is that recent analysis shows programs funded by the Highway and Aviation Trust Funds will be exempt from the cuts, however, other transportation programs that are funded from the General Fund, such as transit New Starts and Amtrak, will face cuts of as much as 7.8% if Congress does not agree to postpone the sequester.

One issue that Congress will not have to deal with in the *Lame Duck* is completing all 13 federal agency FY'13 annual funding bills. Last week, the bi-partisan and bi-cameral congressional leadership decided to postpone final action on all the appropriations bills until early next year. When they return in September, Congress plans to pass a six-month Continuing Resolution (CR) to provide continued government spending from the October 1 start of the new fiscal year through March 31, 2013, thereby avoiding any fears of a government shutdown before the elections which both parties could be blamed for. It will be a "clean" CR, meaning it will not include any extraneous provisions or "riders". It will provide partial-year FY'13 funding based on the current FY'12 funding levels which were established by the 2011 Budget Control Act, the bill that created last year's "SuperCommittee", rather than the greatly reduced levels proposed by the House Budget Committee.

MAP-21 Implementation

US DOT, stakeholder groups and even congressional committee staff continue to plow through the new MAP-21 law (PL 112-141) to better understand the provisions, the implications and the impacts. Since the final bill was pulled together very quickly, under



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tremendous political pressure, there are still many questions and issues to be resolved. A number of drafting errors and typos have already been identified by committee staff that may require the need for a technical corrections bill. Other questions, such as whether the new highway environmental streamlining provisions apply to transit programs under Chapter 53 of Title 49, will have to be resolved through US DOT guidance and rulemaking, although that can sometimes be a lengthy process.

There is no timing yet for undertaking a potential technical corrections bill and congressional staff insists it would be purely technical in nature, not an opportunity to re-open debate on specific policy provisions. The most significant issue identified thus far is the establishment of a set-aside for transit Small Starts projects. Congress intended to include a \$150M per year set-aside as part of the FTA Capital Investment Grants (New Starts) program. This is similar to current law (although at a lower funding level) and was agreed to by the conferees, but was mistakenly left out of the final bill.

FTA and FHWA continue to add materials to their MAP-21 implementation websites, including funding and apportionment tables, summaries, Power Point presentations and webinar information. Here are links to their sites – [FHWA](#) and [FTA](#).

In addition, many stakeholder groups have released ~~new summaries~~ and documents, which can be found on the [PB Transportation Update website](#).

~~One of the few MAP-21 programs to receive a major funding increase~~ is the TIFIA financing program. Last week, US DOT Secretary Ray LaHood announced a major effort to promote TIFIA saying that up to \$17B in TIFIA loans, loan guarantees and lines of credit could be made by the \$1.75B authorized for TIFIA in MAP-21 for FY'13 and FY'14. After leveraging state, local and private dollars, this could result in up to \$50B of infrastructure investment.

It is unclear how the six-month CR will impact the FY'13 TIFIA funding since the CR only appropriates 50% of the current, much lower TIFIA funding level of \$150M. Here is a [link](#) to the US DOT Notice of Funding Availability (NOFA) for MAP-21 TIFIA financing. LaHood also announced the creation of a new Project Finance Center (PFC) at US DOT to help provide technical assistance to project sponsors, however, the TIFIA program management will remain in the TIFIA office under the FHWA Innovative Programs office.

US DOT hosted two webinars last week to review the new TIFIA program, both of which were oversubscribed in a matter of hours. Here is a [link](#) to the presentation from the webinars. During the webinars, the presenters indicated that although MAP-21 authorizes US DOT to finance up to 49% of the cost of a project, the Department expects to continue financing most projects only up to the previous maximum of 33% in order to ensure the funds go further. They also stated that although MAP-21 changes the application process to a first-come, first-served approach, DOT strongly encourages potential applicants to take their time and develop well thought out projects and financial plans, rather than rushing to



submit early. Projects that previously submitted unsuccessful letters of interest under the previous SAFETEA-LU TIFIA program must reapply in response to the new NOFA.

FY'12 Funding – Discretionary Grant Announcements

In recent weeks, both FTA and FHWA have announced major FY'12 discretionary grants. On July 23, Secretary LaHood announced \$787M in FY'12 discretionary grants to 255 projects as part of the FTA State of Good Repair and Bus Livability programs to repair and modernize bus vehicles and facilities. This is the third year these funds have been awarded to projects on a competitive basis in response to an FTA NOFA. As usual, the program was oversubscribed with 836 requests worth nearly \$4B. Here is a [link](#) to the list of projects awarded funding. The MAP-21 bill transforms this discretionary program into a formula grant program so this is the final year that US DOT will make project selections.

On August 2, FHWA announced the recipients of \$363M in FY'12 highway and bridge discretionary grants. Here is a [link](#) to the list of grants by state. They include funding from 12 FHWA discretionary programs including TCSP, Ferry Boats, Value Pricing, Railway-Highway Crossing Hazard Elimination, Interstate Maintenance and National Scenic Byways. Under MAP-21, these programs are all eliminated as stand-alone discretionary programs and are now eligible under the state formula program.

Other News

- The Senate Finance Committee approved a package of tax provisions and extenders in a bi-partisan vote just before recessing. The package must still pass the full Senate and be introduced in the House, so its outcome is unclear, but the Senate did include an extension of the popular transit commuter tax benefit parity with parking which expired in December. If passed, the transit commuter benefit would increase from \$125 a month to \$230 a month through December 31, 2013. The Senate bill would also make the provision retroactive to January 1, but that would be very difficult to actually implement.
- On July 17, FTA released final guidance on incorporating Environmental Justice (EJ) principles into plans, projects, and activities that receive funding from FTA. The notice clarifies the differences between EJ and Title VI and contains guidance on how to conduct an EJ analysis, including fully engaging EJ populations in the public transportation decision-making process, determining whether EJ populations would be subject to disproportionately high and adverse effects, and how to avoid, minimize, or mitigate these effects. The notice also provides guidance on



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incorporating EJ principles into the NEPA process. Here is a [link](#) to the Federal Register notice.

- The US Government Accounting Office (GAO) recently issued a 54-page report on Bus Rapid Transit (BRT). Here is a [link](#) to the report. The report found that the BRT projects they reviewed generally increased ridership and improved service over the previous transit service, capital costs were generally lower than for rail projects, and that local officials believe that the projects contributed to economic development and TOD efforts.
- US DOT recently announced plans to expedite the federal review and permitting process for seven port projects at five East Coast seaports, the first of 43 total port projects to receive expedited review. The projects selected to date include Port of Miami, Port of Jacksonville (two projects), Port of Savannah, Port of New York and New Jersey (two projects) and Port of Charleston. Here is a [link](#) to the official announcement and project descriptions.
- Thirteen innovative practices to expedite project delivery and encourage new technologies were announced by FHWA on July 25 as part of the second round of its "Every Day Counts (EDC2)" initiative. Here is a [link](#) to the EDC2 selected initiatives. The practices selected include programmatic agreements, locally administered federal-aid projects, three-dimensional modeling, accelerated bridge construction, design-build contracting and geospatial data collection.
- The Senate Commerce Committee approved the nomination of Acting FAA Administrator Michael Huerta to a five-year fixed term as FAA Administrator. The nomination must still go to the Senate floor which now will not happen until at least September. A least one Republican Senator has put a hold on Huerta's nomination, saying that the post should not be filled until after the November elections.

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