



September 8, 2015

Congress has returned to session following its five-week summer recess with a full and urgent agenda. Most pressing is passage of the FY'16 federal agency funding bills – none of which have been approved to date – by the October 1 start of the new fiscal year. However, Congress is only scheduled to be in session approximately 12 legislative days in September and is faced with other distractions, including the papal visit.

Other time sensitive issues include passing multi-year surface transportation and FAA reauthorizations, extending the Export Import Bank authorization, approving the Iran nuclear deal, increasing the debt ceiling, passing a tax extenders bill, and potentially negotiating a massive budget deal.

Surface Transportation Reauthorization

Right before adjourning for the August recess, Congress passed yet another short-term extension of MAP-21, this one through October 29, 2015. The bill, HR 3236, reauthorizes the existing federal highway and transit programs for an additional three months. However, it includes enough new revenue - \$8B in transfers from the General Fund to the Highway Trust Fund (HTF) - to fund the programs through the end of calendar year 2015.

The goal of the extension is to give the House enough time to draft and act on a companion bill to the Senate DRIVE Act, the multi-year surface transportation reauthorization bill which the Senate passed on July 30. House T&I Committee staff have been working throughout the recess to draft a bill. T&I Committee Chairman Bill Shuster (R-PA) hopes to have the committee act on the bill in mid-September and then take the bill to the floor. The main stumbling block is finding sufficient new funding to pay for the bill. A six-year authorization bill, funded at current levels, will require almost \$100B in new revenue.

The Senate ended up funding only the first three years of its six-year DRIVE Act bill because they could not come up with sufficient new revenue for a longer bill. The \$45.6B identified to pay for FY'16 to FY'19 comes from various, non-transportation related offsets, such as selling barrels of oil from the Strategic Petroleum Reserve, indexing custom fees, and extending TSA security fees beyond the year 2023. House leaders were very critical of the Senate "payfors" and some, such as House Ways & Means Committee Chairman Paul Ryan (R-WI), have indicated that they prefer to pass an international tax reform bill this fall that would raise new revenue for the HTF through repatriation of overseas corporate profits. However, even if successful, this would produce a one-time only, non-sustainable windfall for the Trust Fund.



While there is significant support for an international tax reform bill, including in the Senate where Senators Chuck Schumer (D-NY) and Rob Portman (R-OH) are leading the charge, there is also considerable skepticism about whether there is enough time to pass such a complex bill before the end of the year. There are also questions about whether potential new revenue from repatriation should be used to lower the overall corporate tax rate, or for other purposes, rather than to bail out the Trust Fund.

It will be difficult for the House T&I Committee to draft a multi-year reauthorization bill without knowing how much revenue it has to work with and even more difficult to potentially bring a bill to the floor without a revenue title. However, there is some speculation that the House may in fact opt to pass a reauthorization bill without identifying where the additional revenue would come from and instead sort that out when they go to conference with the Senate on its DRIVE Act.

Another option for paying for a robust, sustainable, multi-year bill is to increase the federal gas tax, especially since gas prices keep dropping, but that option is not popular in Congress. However, Senators Tom Carper (D-DE) and Dick Durbin (D-IL) recently introduced S. 1994, a bill to phase-in a gas tax increase – 4-cents a year for four years (2016 to 2019) - and index the tax. The bill would raise \$100B over 10 years.

Here is a [link](#) to the bill text of the final Senate-passed DRIVE Act

Here is a [link](#) to a summary of the DRIVE Act prepared by ARTBA which includes program funding tables

Here is a [link](#) to the DRIVE Act State Apportionment Tables

FY'16 Appropriations

While the House has passed a number of the annual federal agency appropriations bills (including the US DOT funding bill), the Senate has not yet passed any of its bills because the Senate Democratic leadership is threatening to filibuster floor debate on any bill funded under sequestration. Funding levels cannot be increased unless Congress can identify additional revenue – which is easier said than done. Many in Congress are calling for a bipartisan budget deal, similar to the one in 2013, which would allow an increase in the discretionary spending caps which would eliminate the need for sequestration.

Since it is very unlikely that a budget deal can be reached by October 1, Congress will need to pass a short-term Continuing Resolution (CR) in order to avoid shutting down the government on October 1. CRs typically fund programs at the current funding levels – which could actually be good news for some popular infrastructure programs that are proposed to be cut in FY'16 such as Amtrak, FTA's Capital Improvement Grants, and TIGER. The big question is what will be the duration of the CR – one or two months, until the end of 2015, or into 2016 – and whether any controversial riders will be attached to the bill.



FAA Reauthorization

The current FAA authorization expires on September 30. The House, in particular, had hoped to complete a multi-year bill this spring, but the bill now seems to have taken a back seat to the surface transportation bill. Chairman Shuster's efforts to write a "transformational" bill that would move the Air Traffic Control system out from under federal government control is proving to be very controversial and currently does not have Democratic support, even in committee. In addition, the Senate Commerce Committee does not appear to be ready to produce a companion bill.

Therefore, Congress will have to pass a short-term FAA extension by October 1. Again, the question is how long the extension will last and will it be a "clean" extension of the existing program or will any potentially controversial provisions be added. The last time the FAA bill expired, there were twenty-three short-term extensions of varying length before a multi-year bill was finally passed in 2012.

Other

FRA has submitted its Status of Positive Train Control Implementation Report to Congress. The report was mandated by the House Appropriations Committee and shows that even after seven years, most railroads will miss the December 31, 2015 Positive Train Control (PTC) implementation deadline that Congress established in 2008. Here is a [link](#) to the FRA press release and a [link](#) to the full report.

On August 14, FTA published an NPRM for the establishment of a Public Transportation Safety Program. This authority was established by Congress in MAP-21. The proposed rule would adopt Safety Management Systems (SMS) as the basis for FTA's new safety program. The rule applies to all transit systems. It is directly tied to the Asset Management Program and the definition of "state of good repair". It addresses FTA's compliance and enforcement powers and the tools available to FTA in the event that a finding is made. Comments are due by October 13, 2015. Here is a [link](#) to the Federal Register notice.

Right before the Senate adjourned for the August recess, it approved the nomination of Greg Nadeau to be the FHWA Administrator. Nadeau previously served as the Deputy Administrator. Also approved was the nomination of Marie Therese Dominguez to be the Administrator of DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA).