MARCH 19, 2010

This has been a very busy week in Congress with progress made on several infrastructure-related bills. It will get even busier this weekend with the highly controversial House vote on healthcare reform scheduled to occur on Sunday. Congress will be on recess for two weeks from March 26 to April 12.

<u>Surface Transportation Authorization Extension:</u>

Yesterday, President Obama signed HR 2847, the HIRE jobs bill, which includes an extension of the SAFETEA-LU surface transportation authorization through <u>December 31, 2010</u>. While this is far short of a new six-year bill, it is preferable to the previous extension through March 31 and significantly better than the total lapse of the program which occurred earlier this month resulting in the furlough of many US DOT employees and suspension of US DOT reimbursement of federal-aid highway expenditures to state DOTs. The December extension will permit FHWA and FTA to allocate/apportion the remainder of their FY'10 funds.

The HIRE bill also includes a transfer of $19.5B in General Funds to the Highway Trust Fund to pay for the highway and transit programs through the end of the calendar year and a restoration of the $8.5B FY'09 rescission of highway obligation authority. It does <u>not</u> include any new infrastructure funding, unlike the ARRA jobs bill did.

The House also passed a separate bill this week, HR 4853, will includes a now unnecessary SAFETEA-LU extension through July 3. It also amends the HIRE Act (see above), at House T&I Committee Chairman Jim Oberstar's request, to require that FY'10 funding for SAFETEA-LU Projects of National and Regional Significance and National Corridor projects be distributed to <u>all</u> states in the ratio which states receive <u>total</u> highway rather than only to those few states (such a as CA and IL) which received the bulk of the original SAFETEA-LU funding for these discretionary programs. The Senate has not yet passed this bill.

<u>Multi-Year Surface Transportation Authorization</u>:

While there is certainly cause for celebration that the existing surface transportation programs have been extended for approximately 10 months, it does not resolve the critical need for a long-term solution. Despite all the discussions on policy issues, until a politically acceptable revenue source is identified, it is impossible to pass a reasonably funded multi-year reauthorization bill. There have been some recent promising signs, such as a commitment by Senate Majority Leader Harry Reid (D-NV) to bring a multi-year bill to the Senate floor this year, US DOT Secretary Ray LaHood's recent statement that the Department will release a list of authorization "principles" within 90 days, and Senate Environment & Public Works Committee Chairman Barbara Boxer's (D-CA) announcement that she will hold hearings on a bill this spring.

Senator Boxer also surprisingly said that she plans to use the House T&I Committee's STAA bill as the starting point for development of a Senate reauthorization bill. This is unusual since the Senate typically drafts its own version reflecting its own priorities and member interests. Boxer has asked industry groups and others to submit analysis and critiques of the Oberstar bill to her committee.

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However, without a robust revenue source, it is hard to see how a long-term $500+B bill could pass this year. One possibility being mentioned by some is consideration of a bill during the "Lame Duck" session following the November 2 elections. It may be the one window of opportunity before the presidential election cycle begins in earnest in 2011. However, if Republicans pick up a significant number of seats in the House and/or Senate, it is likely the Republican leadership will want to wait until the new Congress, when they will have more influence over the contents of the bills, to begin the reauthorization debate.

FAA Authorization:

Congress acted on two separate pieces of the FAA authorization process this week. The House passed HR 4853, another three-month extension of the current FAA program and aviation taxes through July 3, 2010 so that the current short-term extension (the 11th), which is due to expire on March 31, does not lapse. The Senate has not yet passed this bill.

In addition, the Senate debated a multi-year bill on the Senate floor, HR 1586. The Senate was not able to finish the two-year bill this week because of debate on numerous non-germane amendments. A final vote will hopefully occur early next week.

The Senate bill differs from the House FAA bill, HR 915, which passed in May 2009, so the bills will have to go to a conference to resolve the differences. Of primary importance to the engineering industry, the funding authorized for the Airport Improvement Program (AIP), $4.1B annually, is the same in both bills. However, among many other things, the bills differ in their treatment of Passenger Facility Charges (PFCs) which also fund airport construction. The House bill proposes to increase PFCs, while the Senate bill does not. A summary of the Senate bill is here.

Appropriation Earmarks:

Project earmarks continue to be a hot button in Congress. This week the House Republican Conference voted to prohibit Republican members from requesting any FY'11 project earmarks. The Democratic leaders of the House Appropriations Committee announced that they would not earmark any funds going to for-profit entities. For-profit earmarks generally occur in DOD and DOE appropriations bills and rarely in the DOT or Water-related appropriations bills.

There were several attempts this week to get the Senate to agree to a similar moratorium on all earmarks, but amendments to do so by Senators McCain (R-AZ) and DeMint (R-SC) were both defeated.

It is somewhat unclear if these earmark restrictions apply only to the FY'11 federal agency appropriations bills or also to authorization bills such as SAFETEA-LU reauthorization and the Corps' Water Resources bill. Further complicating the situation, many House Republicans had already submitted appropriation earmark requests in advance of this week's deadline which they now must withdraw.

The assumption is that many House Republican project sponsors will try to get around the earmark moratorium by going through their Senators to insert earmarks, however, in states such as California, Washington and many others with two Democratic senators, that may prove difficult.

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Secretary LaHood Announces Funding for Over 50 Innovative, Strategic Transportation Projects through Landmark Competitive TIGER Program

Recovery Act-Funded Projects Will Create Jobs, Spur Lasting Economic Growth

KANSAS CITY, MO - One year to the day after President Obama signed the historic American Recovery and Reinvestment Act (ARRA) into law, Secretary of Transportation Ray LaHood will announce Recovery Act awards to states, tribal governments, cities, counties and transit agencies across the country to fund 51 innovative transportation projects.

The TIGER (Transportation Investment Generating Economic Recovery) Discretionary Grant Program was included in the Recovery Act to spur a national competition for innovative, multi-modal and multi-jurisdictional transportation projects that promise significant economic and environmental benefits to an entire metropolitan area, a region or the nation. Projects funded with the $1.5 billion allocated in the Recovery Act include improvements to roads, bridges, rail, ports, transit and intermodal facilities.

In an overwhelming show of demand for the program, the U.S. Department of Transportation was flooded with more than 1,400 applications from all 50 states, territories and the District of Columbia requesting funding for almost $60 billion worth of projects – 40 times the amount available through the program.

“TIGER grants will tackle the kind of major transportation projects that have been difficult to build under other funding programs,” said **U.S. Transportation Secretary Ray LaHood.** “This will help us meet the 21st century challenges of improving the environment, making our communities more livable and enhancing safety, all while creating jobs and growing the economy.”

The projects announced today will create jobs and spur lasting economic growth, reduce gridlock for the traveling public, and provide Americans with more safe, affordable and environmentally sustainable transportation choices. They will also help factories, farms and businesses across the U.S. move goods more efficiently and better compete in the global economy. Sixty percent of the funding will go to economically distressed areas, which are home to 39 percent of the U.S. population.

Awardees were selected based on their contribution to economic competitiveness of the nation, improving safety and the condition of the existing transportation system, increasing quality of life, reducing greenhouse gas emissions and demonstrating strong collaboration among a broad range of participants, including the private sector.

Projects were funded in large cities as well as rural and tribal communities across the country and were selected based on merit. Selected projects represent some of the most innovative projects as well as multi-modal, multi-jurisdictional projects that are often overlooked by the existing funding system. The winning TIGER projects highlighted the diversity of transportation needs throughout the U.S. from grand Moynihan Station in New York City, which will carry millions of train and subway riders each year to “the most beautiful drive in America” – Wyoming’s Beartooth Highway – the gateway to Yellowstone National Park. They ranged from major billion dollar freight rail corridors in the Midwest and South, to bridge repairs in Oklahoma and South Carolina to port projects in Maine and Hawaii.

TIGER funds will also help construct the Union Passenger Terminal/Loyola Streetcar Loop in New Orleans, make safety improvements to a key highway in New Mexico Najavo country and spur economic growth in Appalachia through the Appalachian Regional Short Line Rail Project and the Gateway Project.

The U.S. Department of Transportation required rigorous economic justifications for projects more than $100 million and will require all recipients to report on their activities on a routine basis. A complete list of recipients can be viewed HERE.

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