

MAY 26, 2009

Congress is currently on a week-long Memorial Day recess. When it returns to session next week, there are only four short weeks before the July 4th recess which is followed four weeks later by the month-long August recess. This schedule leaves very little time to make progress on the numerous Obama Administration priorities, the 13 annual appropriations bills, climate change legislation and a Supreme Court nomination.

ARRA Economic Stimulus Implementation:

As of May 26, FHWA reports that it has obligated 45% (\$12.18B) of the \$26.8B in ARRA highway formula funds. It has authorized 3572 projects throughout all 50 states, DC and two territories. FTA reports that it has obligated 39 transit grants (7% of the total available) worth \$529.4M, with 242 grants (30%), worth \$2.2B, pending review and approval.

On May 21, the House Transportation & Infrastructure Committee released another of its monthly reports on ARRA implementation. Click here to review the report. The committee report states that 7,653 new jobs have been either created or sustained through the \$8.9B in ARRA funds obligated to date for infrastructure projects nationwide. The committee plans to hold another oversight hearing in mid-June.

As reported in the May 15 PB Interim Update, US DOT published the criteria for the \$1.5B TIGER multi-modal discretionary grants in the May 18 Federal Register. Click here to view. Comments on the criteria are due by June 1 and applications are due by September 15. Many expect a significant portion of these funds to be focused on freight movement and port projects.

FRA is holding a series of regional workshops around the country to gather comments in advance of the June 17 deadline for the release of the guidance/criteria for the \$8B ARRA high-speed rail grant program. Workshops were held in Charlotte, NC and Orlando, FL last week. This week sessions will be held in Seattle on May 27, Sacramento on May 28, Houston on May 29, Chicago on June 1 and Philadelphia on June 2. These sessions are primarily for stakeholders in the 11 federally-designated corridors. A separate session will be held in DC, potentially on June 19, for industry groups and the private sector. Click here for an FRA press release with more details, including information about format, times and locations, on the remaining sessions. FRA is also accepting written comments and recommendations on the potential guidance from the public which are due by June 5.

The Senate version of the FY'09 Supplemental appropriations bill, which is currently pending in Congress, includes a provision to permit all transit agencies to use up to 10% of their <u>ARRA transit stimulus formula funds on operating assistance</u>. Senator Shelby (R-AL), the senior Republican on the authorizing committee and an ardent foe of operating assistance, agreed to the provision because it is a one-time deal and it will help to assure that transit money is spent quickly to create jobs. It is likely the House will agree to the provision during conference committee negotiations with the Senate.



Surface Transportation Authorization:

House Transportation & Infrastructure Committee Chairman Jim Oberstar (D-MN) has announced that he plans to introduce his successor to the SAFETEA-LU bill during the first or second week in June with committee mark-up to follow immediately. His goal is to then take the bill to the House floor before the July 4th recess; however, some believe that is an overly optimistic schedule given that there is no agreed upon plan on how to finance what may be a \$450B six-year bill. Oberstar's bill is expected to consolidate the existing 108 surface transportation program categories into four core formula programs (and possibly a few additional targeted, smaller programs such as for Ferry Boats). It is also expected to include discretionary programs, one of which would be a new Metropolitan Mobility program focused on reducing congestion in metro areas of one million or more, similar to what the SAFETEA-LU Revenue and Policy Commission recommended. The House bill would establish performance standards and accountability requirements. It would also create an office of intermodalism to coordinate between DOT modes as well as the Coast Guard and the Corps of Engineers. More details will be provided once the bill is introduced.

While the Senate EPW and Banking Committee staffs continue to work on developing their version of an authorization bill, they have not announced a schedule for action and it is generally believed there is not enough time to debate and pass a bill in the Senate this year.

<u>Highway Trust Fund Financing</u> – Rep. Richard Neal (D-MA), the chair of the House Ways & Means Select Revenue Subcommittee, announced last week that he plans to hold a series of hearings on infrastructure financing, particularly related to the Highway Trust Fund, during June. While this could be a sign of some progress in funding SAFETEA-LU reauthorization, many say it could be simply a delaying tactic by Speaker Pelosi in order to run out the clock on floor consideration of reauthorization for this year while appearing to show interest in the issue.

<u>High Priority Project (HPP) Earmarks</u> – The T&I Committee reported that a total of 405 House members (out of 435) submitted 6,868 earmarked project requests totaling \$136.3B to be included in the draft reauthorization bill. Even if the final bill totals the \$450B that Chairman Oberstar is predicting, it is likely that only a small percentage of the requests will be included in the bill. The requests have now been submitted to US DOT for their review to ensure the projects meet all program eligibility criteria. All members must post their requests on their websites. To see what projects your local member of Congress has requested go to http://www.member's last name.house.gov.



Climate Change:

The House Energy & Commerce Committee drafted, marked-up and approved a controversial bill to address climate change last week. The bill may be debated on the House floor as early as next week. Committee Chairman Rep. Henry Waxman's (D-CA) bill, HR 2454 - America's Climate and Energy Security Act, includes a plan to establish a cap and trade program for greenhouse gas emissions. Unfortunately, no allowances/revenues from this program were set-aside for the transportation industry. An amendment may be offered during the floor debate by Rep. Doris Matsui (D-CA) and others to set-aside allowances/revenue for transit, but it will be very difficult since it is now a zero sum game – any new allowances would have to be taken away from some other sector such as oil and gas, utilities, domestic oil refiners, or consumer rebates.

Eight House committees have been given joint referral on the bill providing them a chance to comment. However, the House T&I Committee has joint referral on only a very narrow section of the bill dealing with planning, Section 222.

The Senate Environment & Public Works Committee, chaired by Senator Boxer (D-CA), appears to be waiting to see what the House does before proceeding to draft its own bill. Boxer's bill from the 110th Congress included significant revenue from a cap and trade program for transit, TOD and transit-supportive land use.

FAA Authorization Bill:

On May 21, the full House easily passed a three-year FAA authorization bill (HR 915) by a vote of 277 to 136. The \$53.5B bill is very similar to the bill passed by the House in the 110th Congress, but which never became law because the Senate did not pass a companion bill. The previous authorization expired last September 30 and a series of short-term extensions have been passed to keep the program going through September 30, 2009. However, the outlook for final passage by then is not promising since the Senate continues to be unable to reach agreement on how best to finance air traffic control system modernization.

The House bill funds a total of \$12.3B for the construction-related Airport Improvement Program (AIP) - \$4B in FY'10, \$4.1B in FY'11 and \$4.2B in FY'12 versus the current \$3.5B per year. The bill would also increase Passenger Facility Charges (PFCs) from \$4.50 per flight segment to \$7 which is estimated to raise an additional \$1.1B a year for airport construction projects. A number of key House T&I Committee Republicans, including the two senior members, Reps. John Mica (R-FL) and Tom Petri (R-WI) voted against the bill because of concerns about provisions to sunset anti-trust immunity agreements for code sharing agreements and to require FAA inspection of foreign aircraft repair facilities.

Nominations:

Just prior to adjourning last week, the full Senate approved three key <u>US DOT nominations</u> – John Porcari to be Deputy Secretary, Peter Rogoff to be FTA Administrator and Randy Babbitt to be FAA Administrator. The three will likely be sworn into office this week. A confirmation hearing by the Senate EPW Committee for FHWA Administrator nominee Victor Mendez is scheduled for June 2. Mendez was most recently the head of Arizona DOT.



Chuck Hurley, the nominee for NHSTA Administrator, has withdrawn his name after opposition was raised by some environmental groups over his past positions regarding increased fuel economy for cars. No one has been named in his place yet.

No nominations have yet been announced for the Assistant Secretaries for Policy, Budget or Aviation & International Affairs or modal administrators for the Federal Motor Carrier Safety Administration, the Maritime Administration or the Pipeline and Hazardous Materials Safety Administration.

The Senate has confirmed Craig Fugate as Administrator of the <u>Federal Emergency Management Agency (FEMA)</u>, now part of the Department of Homeland Security. Fugate previously ran Florida's emergency management agency under Republican governors Jeb Bush and Charlie Crist.

Other News:

- <u>FY'10 DOT Appropriations</u> Last week House DOT Appropriations Subcommittee chair, Rep. John Olver (D-MA), held a hearing on project earmark requests. Only four members testified on behalf of projects. The Senate deadline for FY'10 project requests was May 15. The House does not plan to markup its FY'10 annual funding bill in subcommittee until the end of July, which is unusually late.
- FTA has released new proposed New Starts/Small Starts Guidance for public comment.
 Comments are due June 19. The Federal Register notice is available here and the actual draft guidance is available here. The notice outlines proposed changes that reflect direction from Congress contained in the June 2008 SAFETEA-LU Technical Corrections bill:
 - 1. Weights assigned to the project justification criteria would change:
 - a. Proposed weights for New Starts: mobility (20%), cost effectiveness (20%), land use (20%), economic development (20%), operating efficiencies (10%), and environmental benefits (10%).
 - b. Proposed weights for Small Starts: cost effectiveness (1/3), land use (1/3), and economic development (1/3).
 - Project sponsors considering alternatives that include tunnels would be required to develop and consider information relating to the benefits of transit tunnels during the Alternatives Analysis phase.