



# PB Washington Update

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Congress has two more weeks left before they recess for the July 4th holiday. The Senate is having more and more difficulty finding the necessary 60-vote super majority to pass even "must-do" bills such as an FY'10 war supplemental (which includes \$24B in emergency funding for schoolteacher, fire and police salaries) and a stimulus-focused tax extender bill. Fiscal conservatives, both Republicans and Democrats, are increasingly concerned about the cost of these bills and the need to find offsets to pay for them rather than add to the growing deficit.

One possibility for revenue offsets that has been raised by some is a rescission of unobligated ARRA stimulus funds. Two of the programs with the largest balances are DOT's \$8B in high-speed rail funds and the \$1.5B in TIGER I funds. Although all of these funds have been committed to various projects around the country, the funds have not yet been obligated because of the need to establish detailed project scopes and budgets. See more below under High-Speed Rail Grants.

Senate floor time will soon be consumed by the debate on the Supreme Court nomination. The House, meanwhile, is reluctant given the difficult election year to take tough votes on bills that have a low chance of passing in the Senate.

## **FY'11 Appropriations:**

Despite the lack of an approved FY'11 Budget Resolution or funding allocations to individual appropriations subcommittees, the House plans to start introducing and marking up FY'11 funding bills for federal agencies. On June 24, the Energy & Water Subcommittee plans to act on its bill with the Agriculture and Military Construction bills likely to be marked-up before the July 4<sup>th</sup> recess. There is no date set yet for action on the DOT funding bill and it may be one of the last to go.

Despite some progress on the annual funding bills, Congress is not expected to complete any of the appropriations bills before the start of the October 1 fiscal year or by the time they adjourn in early October for the November elections. Therefore, it is likely that there will be a Continuing Resolution (CR) through the end of the calendar year, with the hope of finishing some or all of the bills in a post-election Lamé Duck session. Some observers even suggest the possibility of a year-long CR. CR's generally fund federal programs at the current year's funding level and usually do not include project earmarks.

Looking forward to FY'12, the Obama Administration recently announced that it has requested all federal agencies to identify how they could cut 5% from their FY'12 domestic discretionary budget requests.

## **Surface Transportation Reauthorization:**

There has been no formal progress on reauthorization in the past week or so and there appears to be little hope of completing a bill this year. The holdup continues to be a lack of a source of revenue. Transportation advocates are urging redrafting the Kerry-Lieberman climate change proposal, the American Power Act, to direct more or all revenue derived from the transportation sector through a



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carbon fee into the Highway Trust Fund rather than the very limited amounts in the original draft. However, other interests do not want to see changes in the bill and there is no strong sense that the Kerry-Lieberman bill itself will receive floor consideration, let alone pass this year.

Another revenue option that is gaining some traction is an informal proposal by AASHTO, which appears to have the support of House T&I Committee Chairman Jim Oberstar (D-MN). It suggests having the US Treasury loan the Highway Trust Fund up to \$135B that would be repaid with the revenue from a gas tax increase of up to 25-cents set to kick in by 2016 - presumably when the economy would be in better shape. The tax would then automatically increase by 2-cents every year until the loan is repaid. This is an intriguing, but risky plan. With a vote on an near-term gas tax increase looking less and less politically viable, this may be the program's best chance, but there will certainly be opposition to the "spend now, pay later" approach.

The Treasury Cash Advance option is outlined on page 21 of a recent presentation, "[Strategies for Raising Revenue](#)" presented to the AASHTO Board of Directors.

## Notices of Funding Availability:

US DOT issued two notices of funding availability (NOFAs) recently. One is the **June 1** final [NOFA](#) for the \$600M **NI/TIGER II** program. This is an update to the April 26 interim notice.

Some of the key revisions to the April interim guidance are as follows:

- For the \$35M of TIGER II Planning Grants, US DOT has decided to perform a multi-agency evaluation and award process along with HUD's Community Challenge Grants. More details on this process and the joint program will be released through a joint notice of funding availability to be published in the near future.
- The notice revises the environmental approvals section to clarify that US DOT generally expects the project's NEPA review to be substantially complete by the pre-application deadline, although exceptions will be made in some cases (e.g., if it was previously assumed that the project would not have received any federal funds).
- The notice makes some revisions to the Economic Competitiveness criterion and offers some clarifying guidance for conducting the benefit-cost analysis that is expected.

The pre-application form will be available **June 23<sup>rd</sup>** and must be submitted by 5:00 EDT **July 16<sup>th</sup>**. Basic information (e.g., the lead applicant, scope of the project, project cost, TIGER II request amount, NEPA assurances, and local match funding assurances) needs to be included in the project's pre-application. The final applications are due by **August 23**.

In addition, FTA issued a [NOFA](#) for the unearmarked FY'10 funds for Alternative Analysis projects. FTA is soliciting grant applications for up to \$25.7M in **Section 5339 Alternatives Analysis funds**. Applications are due by **July 12**. FTA will prioritize the funds to transit planning studies that support the six US DOT-



HUD-EPA partnership livability principles. The program can fund up to 80% of the study cost, with grants ranging in size from \$50K to \$2M.

FTA is still soliciting applications for \$75M of TIGGER II (as opposed to TIGER II) transit greenhouse gas and energy reduction grants. These applications are due by **August 11**.

FRA is expected to release a NOFA, perhaps as early as next week, for additional **high-speed and intercity passenger rail grants** (see below) and FTA is likely to issue a NOFA in the next few weeks for the unearmarked **FY'10 New Starts/Small Starts funds**.

NOFAs that have already closed and are pending project selection announcements include the FTA Urban Circulator grants, the FTA Clean Fuels grants, the FTA FY'10 Bus and Bus Facility grants, as well as FRA's \$115M in high-speed intercity rail grants and \$50M in Rail Safety Technology grants.

## **FTA ARPRM on Major Capital Investment Projects**

FTA published an [Advance Notice of Proposed Rulemaking \(ANPRM\)](#) on Major Capital Investment projects (a.k.a New Starts and Small Starts) in the June 3 Federal Register. Comments are due by **August 2**.

This notice solicits comments and suggestions from the transit industry on ways that FTA might change how some of the New Starts and Small Starts project justification criteria are measured. This includes the way Cost Effectiveness is measured (and whether a New Starts Baseline Alternative is the appropriate measure of comparison for the calculation), how Economic Development benefits could be forecasted/assessed, and how FTA might rate the Environmental benefits of proposed projects. FTA makes clear that Cost Effectiveness will continue to be one of the New Starts / Small Starts criteria, but it is open to rethinking how it is measured. This is consistent with the Administration's prior comments on New Starts cost effectiveness.

After reviewing industry comments on the ANPRM, FTA will then proceed to publish a Notice of Proposed Rulemaking (NPRM) later this year that will reveal FTA's proposed regulatory changes for the New Starts/Small Starts program. No regulatory changes will go into effect until FTA issues a Final Rule, which could not happen until sometime after 2010.

Although the ARPRM is rather narrowly focused, FTA staff has indicated that they will accept and consider comments on any aspect of the New Starts/Small Starts criteria and process.

FTA is hosting a series of listening sessions on the ANPRM. The next sessions are June 29 in Chicago, June 30 in San Francisco, July 12 in Dallas and July 15 in DC. More information on the [time and locations of the sessions](#) is available.



## High-Speed Rail Grants:

The Obama Administration's popular high speed rail initiative is under fire from several fronts. On May 12, FRA issued a [Stakeholder Guidance](#) document which has caused considerable consternation with the Class I freight railroads because of the perceived onerous requirements for high-speed trains running on freight ROW, which most of the proposed projects do. Secretary LaHood held a meeting this week with representatives of the freights and has pledged to work to find a compromise.

In addition, as mentioned above, in an effort to find money to offset the cost of additional stimulus funds and tax breaks, some in Congress are beginning to focus on unobligated ARRA funds for potential rescission, including the \$8B in committed, but unobligated high-speed rail funds. However, since the \$8B has been promised to some politically powerful states such as CA, FL and IL, another option might be to instead rescind the \$2.5B in FY'10 appropriated high-speed rail dollars which have not yet been allocated. In related news, the word is that FRA expects to release a NOFA as early as next week for applications for this \$2.5B.

The US Conference of Mayors this week released a report on high-speed rail, "[The Economic Impacts of High-Speed Rail on Cities and their Metropolitan Areas](#)". The report focuses on LA, Chicago, Orlando and Albany.

**Clarification** - the May 27 Update said that the \$80M in HSR grants released by FRA on May 27 was new money. In fact, the grants were part of the \$8B in funding previously announced in late January.

## Other News:

- **Transit Safety Oversight:** The Senate Banking Committee has developed its own bi-partisan version of the Administration's transit safety oversight bill. It is currently in the form of a discussion draft. The Committee would like to mark it up before the July 4th recess in advance of the NTSB report on DC's WMATA Red Line crash which is due out in July. On the House side, House T&I committee staff continues to say they prefer to roll transit safety oversight in with SAFETEA-LU reauthorization.
- **Senate Transit Operating Assistance Bill** - Key senators, including Senators Dodd (D-CT), Durbin (D-IL) and Schumer (D-NY), continue to look for a legislative vehicle for their proposal to provide emergency operating assistance for public transportation systems. The bill, the Public Transportation Preservation Act, would authorize, but not directly pay for, \$2B in new operating assistance to larger transit agencies to help reverse or avoid service cutbacks and layoffs. Currently public transit agencies in areas of over 200,000 in population are not eligible for federal operating assistance. An effort to attach the bill to the pending FY'10 supplemental appropriations bill was not successful. A separate proposal by Rep. Russ Carnahan (D-MO) to permanently permit larger systems to use federal funds for operating assistance has met opposition from some transit agencies and even resistance from APTA. The [text of the Senate Banking bill](#) is available online.



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- **Highway Formula Fix** - Controversy over the cost and lack of offsets to pay for a major tax extenders bill has delayed passage of a fix for a glitch in the distribution of additional highway discretionary funds. The fix, orchestrated by House T&I Chairman Jim Oberstar, which now includes close to \$500M in additional funds to hold harmless those states which would lose funds in the redistribution, was attached to the tax bill with the expectation that it would pass quickly. Congress still hopes to complete the tax bill before the July 4th recess.
- **FAA Reauthorization** - Congress continues to struggle to reconcile the differences in the House and Senate versions of the multi-year reauthorization bill. Both bodies have passed versions of the bill and staff has been working hard to resolve the less controversial issues. A contentious labor issue regarding Fed Ex is one of the few remaining items. However, the current short-term extension expires on July 3. Senate Majority Leader Reid has indicated he hopes to complete the bill before the July 4th recess. However, if that is not possible, another extension will be needed - probably through the end of the fiscal year.
- New documents and information have been posted on PB's Transportation Update website at [www.PBTransportationUpdate.com](http://www.PBTransportationUpdate.com)