



August 5, 2010

With the November elections looming, Congress is on the verge of leaving town for its August recess. The House left last Friday, a week early, and the Senate will recess at the end of this week. However, just yesterday, House Speaker Nancy Pelosi announced she is calling the House back into session briefly next week to vote on a bill to extend Medicare coverage and to fund teacher salaries, which the Senate passed yesterday. Neither body will return to session until September 14. That will leave only a few short weeks before the October 1 start of the new fiscal year and the early October tentative adjournment date.

Congress is expected to return to session after the November elections for a "Lame Duck" session, but until the results of the election are known, it is impossible to tell how long that session will last and how productive it will be. Any bills not completed by the time of final adjournment (typically before the end of the calendar year) will die and must be reintroduced in the new 112th Congress.

Election year politics, the possibility of a change in party control, the growing deficit, and a lack of public confidence are making it very difficult for Congress to make progress on critical legislation.

FY'11 Appropriations

Despite earlier predictions that Congress would make little or no progress before the August recess on the annual federal agency funding bills, both the House and Senate appropriations committees have acted on a number of the bills. The DOT Appropriations bill has made particular progress with the full House and the full Senate Appropriations Committee approving their respective versions of an FY'11 bill. The bill will not come to the Senate floor for final passage until September. A conference to resolve the differences in the two bills will occur after Senate passage.

However, it does not seem likely that the DOT bill or any of the FY'11 funding bills will be completed by the October 1 start of the new fiscal year. Therefore, the programs will be funded under a Continuing Resolution (CR) which generally funds programs at their current-year level. CRs usually do not include project earmarks. The hope would be to complete the bills, possibly as part of a multi-bill Omnibus appropriation, during the Lame Duck session. If that is not possible, federal programs may have to be funded under a CR into early 2011.

US DOT Appropriations

Below is information about the House, Senate (Committee only) and current FY'10 funding levels for key DOT programs.



PB Washington Update

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Program	Current FY'10 Funding	House FY'11	Senate Appropriations Comte FY'11
Federal-aid Highways	\$41.1B	\$45.2B	\$41.8B
Livable Communities Initiative	\$0	\$500M (\$300M from the transit account and \$200M from the highway account – see note below)	\$0 (although the bill contains a \$200M planning program for livability)
FTA Total	\$10.7B	\$11.3B (contingent on additional authorization)	\$10.7B
FTA New Starts/Small Starts	\$2B	\$2B	\$2B
FTA Formula & Bus	\$8.3B	\$8.9B (contingent on additional authorization)	\$8.4B
FRA High Speed Rail	\$2.5B	\$1.4B	\$1B
FRA Positive Train Control	\$50M	\$75M	\$150M
Amtrak Capital/Debt	\$1B	\$1.2B	\$1.4B
Amtrak Operating	\$563M	\$563M	\$563M
FAA AIP	\$3.5B	\$3.5B	\$3.5B
TIGER III	\$600M	\$400M	\$800M



The higher obligation limits for both the highway and transit programs in the House-passed bill are not feasible under existing budget authority. Additional authorizing legislation (such as SAFETEA-LU reauthorization) must be passed to provide sufficient contract authority to support the higher House levels, therefore it is unlikely these levels will be included in the final version of the bill.

Neither the House nor the Senate agreed to fund the Administration's budget request for \$4B for a National Infrastructure Innovation and Finance Fund (NIIFF).

A House floor amendment offered by Rep. DeFazio (D-OR) that was agreed to would prohibit the transfer of \$200M in federal highway contract authority to a new discretionary Livable Communities program unless separate authorizing legislation is passed.

A list of the House project earmarks (highway, transit, aviation) is [here](#) and the Senate earmark list is [here](#). A list of FTA New Start/Small Start and AA project earmarks in both bills, prepared by the New Starts Working Group, is attached to this email. Keep in mind the final funding levels for these projects will not be determined until Congress has resolved the differences in the two bills.

Several amendments to cut funding for various programs and earmarks, particularly Amtrak, were defeated on the House floor.

The Obama Administration's Statement of Administration Policy (SAP) on the bills, which supports passage, is [here](#).

FAA Reauthorization

Once again Congress was not able to complete action on a multi-year FAA authorization bill. Both the House and Senate have completed their respective bills, but the inability to resolve a few controversial issues has held up final passage. Since the latest short-term extension was due to run out on July 30, last week Congress quickly passed yet another extension (HR 5900), this time until **September 30**. However, rather than passing a "clean" extension, as they have done in the past, they opted to include a package of aviation safety provisions in response to pressure from safety groups and relatives of those killed in the 2009 Colgan Air commuter plane crash in upstate New York.

The hope is to finalize the multi-year bill in September, however, there is concern that without the political pressure from the safety advocates and given the short amount of time left in the session, the bill might not be completed. The multi-year bill includes numerous provisions of interest to the engineering industry, including a reauthorization of the Airport Improvement Program (AIP) which funds airport construction and a potential increase in the Passenger Facility Charge (PFC) which also funds capital construction.



Further complicating final action is the fact that the Senate leadership took over the legislative vehicle being used to move the multi-year FAA authorization, making it likely that each house will have to begin the process anew in September.

Other News

- The Amtrak Board has renewed the contract of former FRA Administrator **Joe Boardman to continue as President and CEO of Amtrak** through 2013.
- FTA has released a study entitled "**National State of Good Repair Assessment Study**" which estimates the cost of bringing the nation's rail and bus transit systems into a state of good repair (SGR) at \$77.7B with an additional annual average of \$14.4B to maintain the systems. Most of the cost is attributed to rail systems. One of the key issues is agreeing on uniform definitions, standards and measurements of SGR. A copy of the report is [here](#) and additional information on SGR is [here](#).

Status of Pending Infrastructure Legislation, Regulations and Grant Notices

With Congress taking a break in its legislative activity, this is a good time to review where things stand on various infrastructure-related bills, regulations/guidance and grant notices.

I. Legislation

SAFETEA-LU Reauthorization – The current extension expires on December 30, 2010. Congress will have to extend the authorization again before they adjourn for the year. There is little expectation that a multi-year bill can be passed this year. US DOT Secretary LaHood reiterated last week that the Administration will not support a gas tax increase. US DOT has yet to issue its authorization "principles". There is significant speculation now that a bill may not pass before 2013.

FAA Authorization – Congress has passed a 14th short-term extension through September 30. Final action on a multi-year bill is very close with only a few issues to be resolved.

US DOT Appropriations – The House has passed its version of the FY'11 bill as well as the full Senate Appropriations Committee. Senate floor action will take place after Labor Day. It is unlikely a final bill will be completed before Congress recesses for the November elections and DOT programs will need to be funded under a CR at current year funding levels.

Climate Change/Cap and Trade – The House passed its version of a climate/energy bill, the Waxman Markey bill, last year. Several versions of a companion bill have been proposed in the Senate, most recently the Kerry Lieberman bill, but Senate leadership



announced last week they would not take up the bill prior to the election and possibly not at all this year. The Senate is now working on a much narrower oil spill liability bill.

Highway Discretionary Fund Fix – The House passed a “fix” to deal with the controversy over the distribution of additional highway discretionary funds authorized by the HIRE Act, but the Senate has not yet passed the bill despite several efforts to attach it to must-pass bills. The House bill provides approximately \$500M in new money to hold harmless those states which will lose funds in the redistribution.

FREIGHT – Last week a major freight bill was introduced in both the House and Senate, HR 5976 and the identical S. 3629, the “Focusing Resources, Economic Investment and Guidance to Help Transportation Act of 2010 (FREIGHT). The bills define the federal government’s role in freight transportation policy and instruct US DOT to develop a strategic plan for investing in goods movement infrastructure. It calls for the creation of a new \$4B per year freight grant program, but currently does not authorize any actual funding. A summary of the bill is [here](#). While supporters would like to see the bill move quickly as a stand-alone bill, most observers expect the bill to be included as part of the SAFETEA-LU reauthorization debate.

Transit Safety – The Senate Banking Committee has passed the Public Transit Safety Act of 2010 which establishes federal safety oversight of transit rail systems. An effort to bring the bill to the Senate floor recently was not successful. The House introduced the Administration’s transit safety proposal, but has not yet acted on a version of its own. House T&I Committee leadership prefers to move the bill as part of the SAFETEA-LU reauthorization process.

Transit Operating Assistance – Several key Senators introduced a bill (S. 3412) to authorize (but not directly pay for) \$2B in new operating assistance to help larger transit agencies reverse or avoid service cutbacks or layoffs. Several unsuccessful efforts were made to attach the Public Transportation Preservation Act to a must-pass bill. There is currently no companion bill in the House. The House version of the FY’11 DOT Appropriations bill includes a provision setting aside some formula funds for operating assistance, but is subject to passage of authorizing language.

Earmark Rescission – On July 27 the full House passed a bill (HR 5730) to rescind unused highway project earmark funds. The bill cancels \$713M from 309 highway projects going back to 1987 and includes projects earmarked in ISTEA (any funds not obligated to date) and TEA 21 (any projects that have not obligated at least 10% of their earmarked funds). No SAFETEA-LU earmarks are affected. The funds would revert back to the Highway Trust Fund. A summary of the bill is [here](#). A list of rescinded projects is [here](#). The Senate has not introduced a similar bill. The funding will not actually be rescinded until the full Congress passes the bill.

Build America Bonds – House Ways & Means Committee Chairman Sander Levin (D-MI) introduced a bill (HR 5893) on July 28 that would extend the Build America Bond program.



The bill would extend the highly popular program through 2012, but the value of the interest subsidies to bond issuers would be reduced. There was an effort to pass the bill quickly before the August recess, but it was unsuccessful. Similar efforts in the Senate have not been successful either.

Livable Communities – The Senate Banking Committee this week passed S.1619, the Livable Communities Act. The measure authorizes \$2.85B to support the planning and construction of livable communities, a major priority of the Obama Administration. The bill establishes a Sustainability Challenge Grant program and a Comprehensive Planning Grant program.

II. Regulations/Guidance

FTA Major Capital Investments (New Start/Small Start) ANPRM – Issued on June 3. Comments were due by August 2. Following a review of the comments FTA will issue an NPRM on revisions to the New Start/Small Start program criteria. A separate NPRM may also emerge covering State of Good Repair investments, such as the Fixed Guideway Modernization program.

FTA FY'12 New Start/Small Start Guidance – Issued on July 30. Reporting Instructions and Templates are posted on the FTA website [here](#). Transit agencies who want to be included in the "FY'12 Annual Report on Funding Recommendations" (expected to be issued in February 2011) must submit various pieces of information by August 20 and September 30. There are no proposed changes to the evaluation and rating process. Cost effectiveness thresholds will increase 50-cents for Medium-High, Medium-Low and Low ratings. There are new separate reporting instructions for Small Start projects.

FTA Capital Project Management ANPRM – Issued on September 10, 2009. Comments were due by January 8. Following a review of the comments, FTA will issue an NPRM proposing revisions to the project management requirements for projects using funds from various FTA programs.

FHWA Tunnel Inspection Standards NPRM – Issued on July 22. FHWA published proposed national tunnel inspection standards for all tunnels constructed or renovated with funds under the highway title – Title 23. Comments are due by September 20. The Federal Register notice is [here](#).

III. Grant Announcements - NOFAs

NII/TIGER II – Issued on June 1 - \$600M available. Pre-applications were due by July 26 and final applications are due by August 23. Approximately 1340 pre-applications totaling



over \$24B were submitted. Final project announcements cannot be made before September 15, but are likely to be made in the weeks preceding the November elections.

HUD Sustainable Communities – Issued jointly by DOT and HUD on June 24 - \$40M available from HUD and up to \$35M from DOT TIGER II planning grants. Pre-applications were due by July 26 and final applications by August 23. Over 1,000 pre-applications were submitted totaling over \$2.1B

FTA TIGGER – Issued on April 13 - \$75M available for transit greenhouse gas and energy reduction grants. Applications are due by August 11.

FTA Alternative Analysis – Issued on May 28 - up to \$25.7M available in unallocated FY'09 and FY'10 Section 5339 Alternatives Analysis funds. Applications were due by July 12.

FTA Urban Circulators and Bus Livability – Grants were announced on July 8 for \$293M in unallocated FY'10 Section 5309 discretionary Bus and Bus Facility funds for two new programs – the Urban Circular program and the Bus and Bus Livability program, which are part of US DOT's Livability Initiative. Six cities were selected for the Urban Circulator (primarily streetcars) grants (\$130M) and 47 selections (\$163M) were made for the bus program. Grantees must still submit a formal grant application before the funds are released. A list of all the projects selected is [here](#).

FTA FY'10 Capital Investment – No notice of availability has been issued yet for up to \$135M in unallocated FY'10 New Start/Small Start funds.

FRA High Speed Rail FY'09 Construction and FY'10 Planning Grants – Three separate notices were issued on April 1 – a total of \$155M available. Applications were due by May 19. No grant announcements have been made yet.

FRA High Speed Rail FY'10 Project and Corridor Grants – Issued July 1 - \$2.5B in FY'10 appropriated funds for high speed intercity passenger rail engineering, design or construction grants. Applications are due by August 6.

FRA Rail Safety Technology Program – Issued on March 29 - \$50M available for the new Rail Safety Technology, including PTC. Applications were due by July 1. No grant announcements have been made yet.

The Notice of Funding Availability (NOFA) for these grant programs are available on the PB Transportation Update website at www.PBTransportationUpdate.com.