



March 6, 2010

The Clouded Future of the Surface Transportation Program

House approval of the Jobs Bill (H.R. 2847) on March 4 by a vote of 217-201 has put an end to the series of temporary month-to-month extensions and placed the federal surface transportation program on a solid financial footing for the rest of the year. The bill, which extends the federal transportation program through December 31, 2010, transfers \$19.5 billion from the General Fund into the Highway Trust Fund and restores an earlier \$8.7 billion rescission of contract authority. These resources, when added to the expected revenue stream from the gas tax, should allow the Trust Fund to support highway and transit programs at the levels authorized for Fiscal Year 2009 through the end of 2010 and into 2011. Because the House altered the measure somewhat, the bill has been returned to the Senate for another vote before it is sent to the President for signature.

A Focus on Transportation Legislation

Passage of the Jobs Bill meets largely the Administration's original proposal to extend the existing law for 18 months (through March 2011). It also provides Congress and the White House with some welcome breathing room in which to come up with a longer term solution. However, the prospects for a multi-year bill remain murky. Several meetings in the past two weeks have focused on the outlook for transportation legislation but failed to shed any new light on how to pay for a long-term bill. The subject was discussed at a session on the Future of Surface Transportation at the National Governors' Association's (NGA) Winter Meeting (February 21); at a Senate Budget Committee hearing on February 23; at a Senate Environment and Public Works Committee transportation hearing on March 3; at a workshop with several members of Congress, sponsored by the Bipartisan Policy Center; and at AASHTO's annual "Washington Briefing" on March 1-3. The latter brought together a cross section of the transportation community for 3 days of intensive and revealing discussions about the future of the surface transportation program. Invited participants included state transportation officials, senior congressional staff, trade association executives and top DOT officials, including Transportation Secretary Ray LaHood and modal Administrators from the Federal Highway, Railroad and Transit administrations. Distinguished guests included former Transportation Secretary Mary Peters and Rep. Peter DeFazio (D-OR), chairman of the House Highways and Transit Subcommittee.

A Gas Tax Increase Off the Table

Running through all of the discussions was a common refrain: how to pay for the

needed improvements to the nation's transportation system. To close the funding gap between the projected revenue to the Highway Trust Fund (HTF) (\$235 billion from 2010 to 2015) and the program needs as estimated by Chairman James Oberstar (D-MN), would require an extra \$215 billion over the life of the next authorization (or an extra \$265 billion if the proposed rail program is included). Where is the money to come from? No one has yet produced an answer. "We cannot afford to continue funding our highways and transit out of the General Fund," Sen. Conrad said, urging Sec. LaHood to devise other funding alternatives. But the latest round of meetings broke no new ground.

The most obvious option --- an increase in the gas tax--- seems to have been taken off the table. The Administration's unwillingness to consider this option was forcefully reaffirmed by Secretary LaHood at the AASHTO Briefing. "It's easy for people who are not elected to talk about raising the gas tax," the Secretary observed. "They don't have to face the voters." He left no doubt that the Administration remains unalterably and unequivocally opposed to this option—at least as long as the country finds itself in an economic recession. Nor is there political will in Congress to enact a tax increase in an election year. And so, with only 100 legislative days left in this congressional session and with the window for legislative action rapidly closing as the November elections draw near, the transportation community has reluctantly concluded that the enactment of a multi-year federal transportation bill before the November elections is not in the cards— despite the best efforts by Senators George Voinovich (R-OH) and Barbara Boxer (D-CA) to advance the bill in the Senate.

A Lame Duck Session?

If electoral politics is the chief obstacle to voting for a gas tax increase, how about bringing the matter up in a lame duck session following the November elections, after the partisan passions have been spent? Some conference participants raised this possibility in informal conversations on the sidelines of the AASHTO meeting. This was how the gas tax increase was enacted back in 1982, recalled Gary Hoitsma, former special assistant to Federal Highway Administrator Ray Barnhart (1981-87), currently with the Carmen Group. In that year, just as this year, the debate over the prospect of raising gas taxes raged at a time of high budget deficit (or at least what was then considered as high deficit) a sluggish economy and Republican opposition to tax increases. The 97th Congress approached adjournment at the end of 1982 without passage of reauthorizing legislation. The measure finally cleared Congress in a lame duck session on Dec 23, 1982. The new Surface Transportation Assistance Act of 1982 (STAA) raised the federal tax on fuel from 4 to 9-cents per gallon and provided \$72 billion in transportation funds over a four-year period.

However, that was then, this is now. The dynamics this year appear different than in 1982. Unlike today, the Reagan White House, Transportation Secretary Drew Lewis and FHWA head Ray Barnhart were openly supportive of a gas tax increase and actively engaged in helping to build a bipartisan coalition behind it. The bipartisan support in Congress was key in persuading President Reagan to come out in support of the tax increase. "Without Reagan it would not have happened," says Hoitsma. The key question is whether this White House wants something to happen this year and is willing to negotiate budget compromises (likely to involve lower funding levels) with key congressional Republicans. The latter might see it in their interest to delay action until the following year, especially if either chamber (or both) pass into Republican hands.

Using General Funds

How about supplementing the HTF revenue with General Fund appropriations? This option, it was pointed out on more than one occasion in the recent meetings, is not exactly without precedent. It was pursued *de facto* to keep the Trust Fund solvent during the past year (with two transfers amounting to \$15 billion) and it will be used again in implementing program funding under the latest extension (\$19.5 billion). Overall, the federal surface transportation program has benefitted from almost \$60 billion in General Fund transfers over the past two years.

Objections to using General Funds are based on three grounds: that their use undermines the user-pays principle; that it means a potential loss of contract authority, i.e. the ability to enter into multi-year funding commitments in advance of appropriations; and that it opens the surface transportation program to competition for funds from other government programs. While the user-pays principle is not without merit, it has been already substantially weakened in recent years as the Highway Trust Fund assumed additional funding responsibilities for mass transit and other non-highway modes (walkways, bike paths, scenic trails) and, most recently, promoting the "livability" agenda. Today, as much as 25 percent of the Highway Trust Fund revenue is spent on non-highway programs. One way to partially restore solvency to the Highway Trust Fund, some participants at the recent meetings suggested, would be to limit the use of HTF funds to highway expenditures and transfer all of its non-highway obligations to the General Fund. It is estimated that this would free up approximately \$10 billion/year for highway expenditures.

At the state and local level much of the revenue for routine highway operations already comes from sources other than user fees. It includes developer impact fees, tax districts, local government bonding, and state and local sales taxes. Thus, another funding approach would be to follow the local example and reserve HTF tax revenues for the maintenance of the National Highway system in a state of good repair while shifting the expense of funding new capacity to the General Fund. The Administration seems to have embraced this philosophy by proposing to fund the \$4 billion National Infrastructure Innovation and Finance Fund (NIIFF)— designed to fund major capital transportation projects— with General Fund contributions.

The Need for Administration Leadership

The need for the Administration to become more engaged in advancing the transportation agenda was mentioned repeatedly at the recent meetings. "We need President Obama's leadership to move things forward," urged Sen. Voinovich at the Bipartisan Policy Center meeting. Implied in his statement was a widely shared perception that the White House has been largely absent from the debate about the future of the program. The Administration has yet to articulate a clear vision of where the federal program should be going. Its "livability" agenda—described by some critics as "a rhetorical abstraction" and alleged by the AASHTO community to be a code word for downplaying highway investment in favor of public transit—is no substitute for a coherent long-term strategy that clearly defines the federal role, establishes criteria and performance standards for federal investment and provides a financial plan. "It is critical that we get a long-term highway reauthorization plan from the Administration," Sen. Conrad said at the recent hearing to review the U.S. DOT's FY 2011 budget request. "We need to know how the Administration would bridge this funding gap."

Pressed to provide some indication as to when the Department may be expected to

unveil its blueprint for a multi-year transportation bill, Secretary LaHood told reporters at the AASHTO meeting that a set of "principles" will be released within the next 90 days. Will the principles include a funding proposal, the Secretary was asked. He would not say. But the Secretary's earlier testimony before the Senate Budget Committee made it clear that the Administration does not expect to release its full authorization proposal before the end of the fiscal year.

The Need for Public Support

Another recurrent theme at the recent meetings has been the need to seek public support and raise public awareness about the necessity for larger investment in transportation. But, as Tom Lynch, Legislative Aide to Sen. Max Baucus (D-MT), observed at the AASHTO meeting (and we pointed out in a previous NewsBrief), warnings about "crumbling infrastructure" do not resonate with the general public. People do not seem to share a sense of an impending infrastructure crisis, nor are they alarmed about the deteriorating state of the transportation system. Collapsing bridges are happily few and far between, and the focused attention that state and local highway agencies devote to system preservation and maintaining their assets in a state of good repair tends to keep signs of aging infrastructure largely hidden from view. The effects of disinvestment are not readily apparent and warnings about an "infrastructure deficit" fall on deaf ears.

No one denies the reality of the nation's aging infrastructure or the need for action. But the lack of visible signs of system deterioration offers a plausible explanation why there has been no popular outcry about the stalled transportation authorization and no groundswell of public demand to undertake a massive new program of infrastructure modernization.

To be sure, another current deficiency of the transportation system— traffic congestion— is highly visible and public dissatisfaction with it is well documented. But the driving public has grown skeptical that more money or program reform will bring effective congestion relief. Perhaps they have come to accept the truth of the oft-repeated refrain that "you cannot build your way out of traffic congestion." What is more, traffic congestion leaves vast stretches of rural and small-town America (and their elected representatives in Congress) unaffected and unconcerned. Mitigating traffic congestion may be of great importance to many individual urban communities, but it is not perceived as warranting federal intervention.

The End of "Business as Usual"?

With a multi-year transportation bill likely to be deferred to 2011 or beyond, will the surface transportation program, when finally reauthorized, retain its familiar features? The question was posed in a recent online exchange among the alumni of the Miller Center conference. The discussion was sparked by Steven Lockwood, Senior Vice President of Parsons Brinckerhoff and a well known and respected transportation professional. Wrote Lockwood in an e-mail:

"Even before the budget freeze, the growing conservative mood and shifting congressional politics, immediate legislation with a tax increase was not being seriously discussed. Congressional mid-term elections in 2010 and Presidential election 2012 were already seen as significant deterrents. Given the time for the Administration to convert legislation to a new program — including a cycle of regulatory changes— a new

program, with or without new funding, is likely to be postponed until 2013-2014. The discretionary budget freeze has, for the first time in history, included Highway Trust Fund expenditures. Even before this event, reauthorization of the surface transportation program had been on the back burner of major national policy initiatives. The existing transportation program and funding are now moving into the fourth extension with no sign of resolving either issue. Even without the proposed Presidential freeze on increasing discretionary spending, there has been little congressional or Administration appetite for taxing Mainstreet — especially in the face of mid-term and presidential elections. For the next four years, state and local transportation officials may have to reconcile themselves to living with the legacy of SAFETEA-LU, pumped up by occasional infusions of stimulus injections from the General Fund (GF).

"However, these events should also be a wake up call that a return to the status quo ante is not inevitable. Over the last 20 years, the current federal aid program structure—slightly tweaked— together with increased Highway Trust Fund (HTF) support, has always survived despite frustrating delays. Reauthorization has just been a matter of patience with White House and Congressional politics. However, as time goes by, there is a growing sense among some in the Beltway transportation community that political realities to be faced may go well beyond waiting it out. They may impose a possibly irreversible trend away from business-as-usual and towards a different program structure, funding mix, and legislative influence. One option --continuing the recent trend---could be a program framework mixing a capped Trust Fund with General Fund appropriations. Alternatively, deficit-reduction pressures might lead to a substantial increase in fuel taxes but shared now --- European style--- with other government programs and no longer dedicated to transportation. The reluctance of traditional stakeholders to contemplate the possibility of such a fundamental departure from tradition has limited serious public dialogue about the implications of major changes and interfered with efforts to develop an articulate defense of the current approach involving dedicated funding and multi-year authorizations."

Lockwood's scenario provoked a number of his colleagues to respond. Space constraints prevent us from reproducing all the comments. Those presented below are somewhat condensed.

Emil Frankel, Director of Transportation Policy, Bipartisan Policy Center:

"Steve makes a powerful argument about the current situation and the outlook for the next two or three years. I agree that we may not necessarily return to the status quo ante, when (and if) multi-year legislation is finally adopted. I am less willing than he to predict what form(s) the new programmatic structure might take (e.g., sharing of increased gasoline tax with non-transportation purposes, divided programs). However, we should expect – indeed, advocate – a program structure that is very different from what we have now, and we should be discussing what that new programmatic framework might look like. Without that kind of debate and without a consensus around a new set of goals and policies, there is a risk that we just may thoughtlessly drift along, extending current law, funding existing programs, and meeting growing HTF shortfalls with General Funds and adding to the annual federal budget deficit. Such an outcome would not, after all, be unheard of."

John Horsley, Executive Director AASHTO:

"Recent events provide some optimism that things are not quite as bleak as Steve's analysis articulated. We are not yet ready to throw in the towel on passing a five-year

bill which is funded at reasonable levels and contains the beginnings of needed reforms. However, how this can be funded is the critical question. I doubt that a tax increase will even be considered until after the Presidential elections in 2012. The passage of the 1990 and 1993 fuel tax increases was predicated on deficit reduction. Economic recovery and job creation have served us well as a justification for increasing investment in 2009 and hopefully 2010. I suspect a combination of those two arguments, plus showing how increasing fuel taxes could help reduce dependence on foreign oil will help us win the day in 2013."

Rob Martinez, Vice President, Norfolk Southern Corporation:

"The new program must be a redefinition of what constitutes the "federal interest" in a period when the public-driven highway market is a mature market. That redefined "federal interest" includes a slimmed down highway core program and a turnback to the States of both funding and programmatic responsibility. It also means a revamped and revitalized privately driven transportation regime that relies on much more flexible mixing of public and private monies across the modes, and is more focused on managing an aging infrastructure..."

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Political Imponderables

Making predictions even more difficult and speculative is the possibility of a major political realignment in Congress next November. Once considered a remote possibility, Republican take over of one or even both Houses of Congress now appears as a distinct possibility according to serious political observers such as National Journal's Charlie Cook. Would a Republican Congress make major reforms in the current transportation program more or less likely? Would it be less or more tax-averse? How seriously will President Obama persist in his announced intention to freeze discretionary spending for the next three fiscal years and would Congress cooperate? What would be the impact of a possible change in the leadership of the House Transportation and Infrastructure Committee? And how important will deficit reduction figure in the future budgetary cycles?

According to most economists, the projected budget deficit in the out years will not return to what is considered as "sustainable" levels any time in the foreseeable future. This has led one respected political analyst, NY Times's David Sanger, to predict that there will be virtually no room for major new domestic initiatives in the next ten years. Instead, as Emil Frankel speculated, we may continue to drift along, relying on General Fund appropriations to prop up the program until such time as the effects of the accumulated disinvestment become visible enough to create conditions of a genuine emergency. At that point, aroused public opinion will oblige the Congress and the President to act forcefully and decisively, setting the stage for a major multi-year program of infrastructure renewal akin in scope and ambition to the Interstate Highway Program.

Let us hope that Congress and the White House will not wait for this crisis scenario to unfold before they decide to act.

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