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Government Relations & Public Affairs Committee **Receive & File**

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Federal Advocacy Update

Attached is the monthly update from SACOG's federal policy services consultant, Transportation for America.

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Attachment

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Transportation for America

Attachment

Monthly Report to SACOG
July 30, 2015

CURRENT NEWS

SENATE CONSIDERS SURFACE TRANSPORTATION BILL

Overview

Senate has taken up a surface transportation reauthorization bill providing an authorization for $350 billion over 6 years but only enough funding to keep the program solvent (considering the expected shortfalls in funding collected through the gas tax) for 3 years. The bill provides $46 billion in new money above what is expected to come in from the gas tax receipts. All of the new money is generated by non-user fee funding mechanisms.

After decades of uncontroversial reauthorization bills getting overwhelming support in Congress, this bill ran into some difficulty gaining support, in spite of the fact that the transportation program is relatively unchanged by the legislation. This is due to the lack of conventional procedure in its consideration and the inability of Congress to discuss a long-term funding option with user-fees as the primary funding mechanism.

To consider the reauthorization bill, the Senate took up a piece of legislation that had passed the House – H.R. 22, the "Hire Our Heroes Act" – then removed all of the existing text and filled it with the various titles of the surface transportation reauthorization. Those titles are as follows:

- Highway title – the Developing a Reliable and Innovative Vision for the Economy, or DRIVE Act (S. 1647), which is now the name of the full package too, was passed by the Environment and Public Works (EPW) Committee on June 25;
- Rail and Safety title – the Comprehensive Transportation and Consumer Protection Act of 2015 (S. 1732), was passed by the Commerce, Science and Transportation Committee on July 15;
- Transit title – this was written by the Banking, Housing and Urban Affairs Committee but never considered in committee; and
- Funding title – this title was written by the Finance Committee but never considered in committee.

Majority Leader Mitch McConnell (R-KY) and Sen. Barbara Boxer (D- CA) referred to the bill as a 6-year bill with 3 years of funding, though there is no such thing. Moving Ahead for Progress in the 21st Century Act (MAP-21) was called 6 years of policy with 2 years of funding, but the program only exists so long as there is real funding behind it.

The full reauthorization bill was brought up on July 21st and got off to a rocky start. The cloture vote on the motion to proceed failed by a vote of 41-56 (60 votes are needed for cloture), mostly because most members of the Senate had not seen the bill language until a couple of hours before the vote. After a day with the language of the bill, Senate leadership brought the cloture vote back to the floor and it passed by a vote of 62-36.

The Senate began debate on the bill by considering unrelated amendments, like the reauthorization of the Export-Import Bank, which passed and was added to the transportation bill, and the repeal of Obamacare, which failed 49-43. Nearly 300 amendments, many of which were germane, or on-topic, were introduced and none were debated or voted on due to a procedural move called "filling the tree," in which the Majority Leader takes up all of the opportunities for amending the underlying bill. He then only permitted managers' amendments (a package of usually uncontroversial changes introduced by the bill sponsors) to be considered.

The Senate voted on final passage of the full DRIVE Act on July 30, and the bill passed by a vote of 65-34. This is the lowest number of votes for a surface transportation reauthorization bill, tracking back to the 1980s. Both California senators voted yes.

House leadership has announced that they will consider a reauthorization package in September. However, Speaker John Boehner (R-OH) severely criticized the Senate bill, using quite colorful language. Before they recessed for the August, the House passed a 3-month extension that takes the existing program until October 27, but provides 5-months of funding for the Highway Trust Fund (HTF). This was done to provide Congress "wiggle room" to get an agreement on a multi-year bill. The Senate passed the same bill, and sent it to the President to give Congress time to finish work on the full reauthorization package.

The DRIVE Act generally maintains the program structure created in MAP-21. But it also creates a freight program, brings the Projects of National and Regional Significance (now called Assistance for Major Projects, or AMP) under the trust fund and reauthorizes the rail and rail safety programs. The bill is discussed in greater detail below.

Funding Title

The challenge that the Finance Committee faced was that the gas tax has not been netting enough funding to cover the authorization of the program, which started in the early 2000's prior to MAP-21. Raising the gas tax was off the table because the majority party in the House and Senate believe such a move will not be supported by the public. At the same time, there was wide support for the program authorization to grow and all the painless revenue raisers (e.g., recapturing interest owed to the Highway Trust Fund, pension smoothing, etc.) were used up. So the Finance Committee came up with a long list of revenue raisers that are mostly unrelated to surface transportation and raise amounts as small as $172 million or as much as $16 billion over 10 years – to pay for 3 years of program.

Several of the revenue raisers were too controversial and eventually removed. One example is a provision that would have withheld Social Security payments from anyone with an open felony warrant, which was expected to raise $2.3 billion over 10 years. This was strongly opposed by AARP and social equity groups who pointed out that unpaid parking tickets can lead to a felony warrant, this would impact minorities and the poor most, and a felony warrant is not the same thing as a guilty verdict.

Some of the pay-fors that remain are questionable policy. One example is a requirement to sell 100 million barrels of the 693.7 million barrels of the Strategic Petroleum Reserve (SPR) between 2018 and 2025 to bring in $9 billion over 10 years, if it is sold at $95 per barrel. Some have expressed concern that this undercuts the effectiveness of the SPR: others point out that oil is at historic lows currently and is unlikely to bring in enough money.

Another revenue raiser is extending for two years and indexing of Transportation Security Administration (TSA) fees. The irony, of course, is that Congress is willing to index the TSA fee while showing no effort to index the gas tax. This additional funding is not being spent on TSA or transportation security, but to build and maintain highways and transit.

A complete list of the proposed revenue raisers can be found attached.

It is very important to note that all of the painless, or even palatable, pay-fors are gone. The ones dropped from this proposal due to controversy may become the least controversial ones in 3 years, if funding is not raised from a user fee, attitudes don't change that general fund transfers require offsets or the program is not cut.

Highway Title

The EPW Committee unanimously passed the highway and planning portion of the reauthorization bill on June 25. The signature achievement in this bill is the creation of a multimodal freight program, which will include a formula grant program, starting at $991 million in 2016 and growing to about $2.478 billion in 2021. This program began as a more robust one, but it was cut when some of the revenue raisers were deemed too controversial for inclusion and when more funding was needed to maintain the traditional 80-20 split between the highway and transit program. Most of the cuts came from the freight program, AMP and TIFIA.

This freight program is created in a new chapter of Title 49 and includes strong, thoughtful national- and state-level planning to analyze the condition and performance of the freight transportation system and identify the highest priority needs to create greater efficiency and reliability in freight movement. This planning process is comprehensive and fully multimodal, covering freight needs on highways, railroads, airports, seaports, pipelines and intermodal facilities.

The bill requires states to identify priority projects to improve freight movement, regardless of mode; however, the freight funding program would almost exclusively fund highway projects. Only 10 percent of a state's allocation can go to non-highway projects. At the current proposed funding level, the State of California's allocation would be approximately $90 million a year and, therefore, only $9 million would be available for non-highway projects in 2016.

The highway title also retools the Projects of National and Regional Significance program, renaming it AMP, and funding it through the HTF at $250 million in 2016 and growing to $400 million in 2021. There are other changes to make AMP operate more like TIGER, such as the bill removes the Congressional approval process. However, the focus of the program is on projects with great expense, rather than projects with great benefits. To be eligible, highway or transit projects would need to cost $350 million or 25 percent of the state's highway apportionment (in a rural state, that goes down to 10 percent).

Additionally, the highway title cuts the TIFIA program back to $300 million from $1 billion per year. This is a major reversal from MAP-21 when increasing the size of the TIFIA program was considered a top priority and main achievement of Ranking Member Barbara Boxer (D-CA). But it also adds to the eligible TIFIA project elements to include transit-oriented development.

Finally, this title includes some streamlining provisions, most of which were proposed by the Administration and did not draw much controversy.

Rail/Safety Titles

A couple of weeks before the Senate took up the reauthorization bill on the floor, the Commerce Committee passed the rail and safety titles of the bill by a party line vote. The controversy in the bill revolved around a few provisions: 1) permitting car rental companies to rent cars that are subject to a recall, if they inform the renter; 2) delaying and weakening of the positive train control (PTC) rule; and 3) measurement of port performance leading up to labor contract negotiations to identify any work slowdowns. All three issues were moderated after the bill came to the Senate floor and the Commerce Democrats supported the bill on the floor, as a result. However, the PTC rule is still delayed to 2018.

The Commerce bill included reauthorization of Amtrak and the rail safety program. No contract authority was provided to Amtrak or passenger rail, but this is the first time that rail has been included in a surface transportation bill. The bill authorized funding for Amtrak starting at $1.44 billion in 2016 and growing to $1.9 billion in 2019. The bill also:

1. creates a Rail Service Capital and Operating grant program, funded at $350 million next year and rising to $900 million in FY2019, to support expansion of passenger rail service
2. ensures that the Amtrak Board of Directors is representative of the entire nation's interests by guaranteeing seats for voices representing State-Supported and Long-Distance corridors, as well as the Northeast Corridor; and
3. creates competitive Operating Assistance Grants program to provide some funding to support passenger rail operations for up to 3 services -- 80% in the first year, 60% in the second and 40% in the third.

Further, the bill included a multimodal competitive freight program, called Assistance for Freight Projects, that was similar to the proposal in the Administration's GROW AMERICA Act, though much smaller. Unfortunately, the program was not funded through the HTF and was explicitly written to supplant the TIGER program. Over 150 organizations signed a letter opposing the anti-TIGER language and it was removed. This program is authorized at $200 million per year but is not protected by the trust fund and will require an appropriation each year.

Finally, the safety title includes a provision sponsored by Senators Dean Heller (R-NV), Brian Schatz (D-HI) and Ed Markey (D-MA) to curb bicycle and pedestrian fatalities across the country. The provision directs the Secretary to establish standards that states can use to ensure safe design of their transportation network for both motorized users and pedestrians and directs states that have not already adopted safe design standards to submit a plan to the Secretary outlining how they will begin using the standards.

Transit Title

This portion of the bill was never considered in the Banking Committee. As initially introduced, this title created a great amount of controversy for underfunding transit. While the authorization provided transit with 24 percent of the funding, the new money used to fill the gap in the trust fund was directed almost entirely to the highway program. As a result, the Mass Transit Account was set to end the third year of the bill (FY 2018) with a negative balance of $180 million. This was fixed on the floor to bring the actual funding in line with the authorization level.

There is also a provision encouraging private investment in transit that allows projects with private funding to jump to the front of the New Starts line. Organized labor has opposed this provision because they believe the expedited process could entice cities to privatize their transit operation. And many of the private operators are strongly opposed to allowing workers to organize.

Finally, a provision was added to the transit title creating a $199 million in FY16 program with contract authority to help transit agencies buy the equipment needed to install PTC technology. These funds can be used to pay the credit risk premium to access the Railroad Rehabilitation and Improvement Financing (RRIF). If done with the entire program funds, Senator John Thune (R-SD) has indicated that up to $2 billion of RRIF low interest loan and loan guarantees could be realized.

CONTINUING RESOLUTION LIKELY TO KEEP GOVERNMENT OPEN

House leaders have admitted that they will not be able to complete all 12 individual funding bills before the end of the fiscal year. Speaker Boehner admitted last week that Congress would need to pass a short-term funding bill to avoid a government shutdown this fall because of gridlock on Capitol Hill.

Democrats recently proposed politically fraught amendments to remove the Confederate flag at federal grave sites. This led Speaker Boehner to pull the bill that funds the Interior Department from the House floor and stop movement on other measures. In the Senate, Democrats have blocked all action on spending bills because they are upset that the Republican spending bills don't provide adequate funding levels for the entire government and because the bills provide more money for defense than domestic programs.

Appropriators are still hopeful that an omnibus package could be reached this year, but most believe a continuing resolution is a first step to keep the government funded past September 30. It remains unclear how long of a continuing resolution will be considered. Proposals have ranged from a few months to a full year. The Democrats are likely to call any stop-gap measure a failure, while conservative Republicans are pressing for any spending bills considered to include language barring federal funds going to Planned Parenthood, among other politically toxic provisions.

Highway bill – Finance Division Summary

EXTENSIONS

1. **Extension of Trust Fund Expenditure Authority and Related Taxes.** Extends authority to spend from the Surface Transportation trust fund, the Sportfish Restoration and Boating trust fund, and the Leaking Underground Storage Tank trust fund through October 1, 2021. Extends related tax authorities through October 1, 2023.

2. **General fund transfers.** Transfers savings obtained from the bill's offsets into the Surface Transportation trust fund.

3. **Deposit Motor Vehicle Penalties in the Highway Trust Fund.** The provision would deposit the civil penalties related to motor vehicle safety in the highway trust fund instead of in the Treasury's General Fund. *Offset estimate: $350 million*

TAX COMPLIANCE

1. **Modification of mortgage information reporting requirements.** Current law requires lenders to provide the IRS with each borrower's name, address, and taxpayer identification number, as well as the amount of interest paid in a given year (including discount points) on a mortgage. This provision would require lenders to also provide the origination date of the mortgage, the amount of outstanding principal at the end of a calendar year, and the property's address – all of which would help reduce inaccurate reporting. The provision would apply to returns and statements the due date for which (determined without regard to extensions) is after December 31, 2016, and is estimated to raise $1.806 billion over 10 years.

2. **Require consistency between estate tax value and income tax basis of assets acquired from a decedent.** Many years after inheriting property, beneficiaries can overstate the value of a piece of property at the date of inheritance on their income tax returns and, as a result, understate their income tax liability on profits made when they sell it. This provision would require those estates with positive estate tax liability to provide the IRS the value of a piece of property upon the owner's death. The provision would apply to transfers for which an estate tax return is filed after the date of enactment, and is estimated to raise $1.542 billion over 10 years.

3. **Clarify the 6-year statute of limitations in the case of overstatement of basis.** Current law gives the IRS six years to reassess taxpayers who substantially understate income (by 25

percent or more). The Supreme Court ruled that this statute does not apply in cases where taxpayers misrepresent the “basis” (or original cost) of a piece of property and, as a result, substantially understate their tax liability when they sell it. This provision would make the intent of the law clear and affirm that the six-year rule also applies in cases where any overstatement of basis results in a substantial omission of income. The provision would apply to returns filed after the date of enactment as well as to returns filed on or before the date of enactment if the assessment period is still open with respect to those returns as of the date of enactment, and is estimated to raise $1.206 billion over 10 years.

4. **Change the filing due dates of certain tax and information returns.** These provisions would modify the rules on tax return-filing deadlines for partnerships, S corporations, and C corporations. Such modifications would provide for a better flow of required tax return information between entities and those who invest in them, allowing for improved compliance by taxpayers, improved accuracy of tax and information returns, and a reduced number of amended returns. In general, these provisions would apply to returns for taxable years beginning after December 31, 2015, and are estimated to raise $0.285 billion over 10 years.

5. **Revocation or denial of passport in case of certain unpaid taxes.** This provision would authorize the Federal government to deny the application for a passport when an individual has more than $50,000 (indexed for inflation) of unpaid federal taxes which the IRS is collecting through enforcement action. It would also permit the Federal government to revoke a passport for such individuals. Before revocation, however, the Federal government would be allowed to limit a previously issued passport only for return travel to the United States or to issue a limited passport that only permits return travel to the United States. The provision would be effective on January 1, 2016, and is estimated to raise $0.398 billion over 10 years.

6. **Reform of rules related to qualified tax collection contracts.** These provisions would require the federal government to use private debt collection agencies to help facilitate the collection of taxes owed the government. The provisions incorporate safeguards such as narrowing the class of receivables subject to collection and giving priority to previously approved contractors to protect taxpayer rights and privacy. The provisions would generally be effective upon date of enactment and are estimated to raise $2.384 billion over 10 years.

7. **Allow employers to transfer excess defined-benefit-plan assets to retiree medical accounts and group-term life insurance.** The Highway, Investment, Job Creation, and Economic Growth Act of 2012 (MAP-21) gave employers this option through the end of 2021. This provision would extend the rule through the end of 2025. Offset estimate: $172 million.

FEES & RECEIPTS

1. **Extend deposits of TSA (security service) fees in the general fund**. Current law mandates that certain TSA fees be deposited in the general fund through 2024. This provision merely extends the deposits of TSA fees into the general fund by two years, pulling more funds into the 10-year window. *Offset estimate: $3.5 billion.*

2. **Index customs user fees to inflation**. Customs user fees are collected by the U.S. Customs service to offset inspection costs. The proposal would index the fees to inflation, so the real cost of the fees would remain the same over time, instead of decreasing as inflation diminished the value of the fees. *Offset estimate: $4.0 billion.*

3. **Change the fixed dividend rate paid by the Federal**. The fixed 6.0% interest rate in current law was put in place in the 1930s, in part to assure that the Federal Reserve System gained bank membership. That assurance is no longer necessary. The overly generous 6.0% rate will be reduced to 1.5% for large banks (over $1 billion in consolidated assets) and maintained at 6.0% for banks under that threshold. *Offset estimate: $16.3 billion.*

4. **Provide for drawdown and sale of crude oil from the Strategic Petroleum Reserve (SPR).** The SPR has a 727 million barrel capacity; as of June 26, 2015, it held 693.7 million barrels. This provision, with emergency protection, calls for the Secretary of Energy to draw down and sell 101 million barrels of crude oil from the SPR over the period of fiscal years 2018 through 2025. *Offset estimate: $9.0 billion.*

5. **Extend the expiration date for enterprise guarantee fees**. As compensation for providing a guarantee on repayment of the mortgages underlying mortgage-backed securities, Fannie Mae and Freddie Mac charge mortgage lenders guarantee fees. These fees are set to decline by 10 basis points (a basis point is one hundredth of one percent) at the end of 2021. This provision would extend the current level of fees through 2025. The regulator for Fannie Mae and Freddie Mac recently completed a review of the guarantee fees and found "no compelling economic reason to change the general level of fees" which are continued by this provision. *Offset estimate: $1.9 billion.*

OUTLAYS

1. **Rescind unused TARP funds (funds that have not been committed in contracts) for the Hardest Hit Fund program**. Since its inception, the HHF has been criticized by the Special Inspector General for TARP as being ineffective, without objectives, and poorly administered. House prices have sufficiently recovered, and foreclosure activities have sufficiently abated, so that funds in this would be better put to use for Americans in infrastructure investments. *Offset estimate: $1.7 billion.*

2. **Strike the requirement that the Office of National Resources Revenue (ONRR) pay interest on overpayments**. ONRR, which is part of the Department of the Interior, believes that some lessees overpay deliberately in order to engage in “banking with ONRR” and that the ONRR interest rate is in some cases greater than that offered by other interest earning mechanisms. This provision is part of the President’s FY 2016 budget. *Offset estimate: $300 million.*

3. **Amend the Social Security Act to make certain revisions to provisions limiting payment of benefits to fugitive felons**. Current law allows Social Security benefits to be paid to people with felony warrants. This provision extends the limitations to include those who are subjects of a felony arrest warrant and for whom the state has given notice that they intend to pursue the warrant. The provision also includes a safeguard that allows the Commissioner of Social Security to allow payments to such individuals for “good cause.” *Offset estimate: $2.3 billion.*