

Hurdles Passed, Hurdles Ahead – Highway Legislation Heads for Floor of House & Senate

The last week has seen a great deal of activity on transportation issues in the US Congress and more is coming in the next several weeks – we wanted to give you an update on the actions so far.

Background: the current US Federal highway program is operating under authorizations established by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFTEA-LU), enacted in 2005. This program expired in 2009 and has been preserved through multiple extensions, the most current of which expires March 31, 2012. Since the program was enacted revenues received in the Highway Trust Fund (HTF) to pay for the program have fallen well below spending allowed by the program, and two general treasury “infusions” have been needed to keep the program solvent. If spending was matched to the revenues derived from fuel and other transportation taxes, a 35% reduction in SAFTEA-LU program spending would be needed.

Senate actions: In November 2011 the Senate Environment & Public Works (EPW) Committee released their replacement for SAFTEA-LU in the form of S.1813, the Moving Ahead for Progress in the 21st Century Act (MAP-21). This measure would restructure existing programs and generally maintain SAFTEA-LU funding levels for a further 2 years (2012 & 2013) at a cost of \$109 billion. The Senate package is entirely silent on the topic of toll roads or toll financing though it would substantially increase the TIFIA loan program to \$1 billion per year (in line with IBTTA goals). (Bill language and summary found [here](#))

Jurisdictions for the major elements of a highway bill are split amongst four different Senate committees; EPW, Banking (transit issues), Commerce (freight & safety) and Finance (which has to find the funds needed to pay for the proposed legislation). The EPW provides the main policy framework and the other committees provide the content associated with their oversight.

One of the hardest issues to resolve has been funding and the Senate Finance Committee approved language on Tuesday identifying an additional \$10.5 billion needed to pay for the two-year proposal. The financing bill derives funds from transportation sources as well as some well outside of the transportation sector. The “pay-fors” include a transfer from the Leaking Underground Storage Tank (LUST) Fund, transferring some tariff collections into the HTF, elimination of a tax credit for “black liquor” (a byproduct of paper production), increased collection of certain Medicare taxes, and other lesser revenue raisers. About \$5.6 billion could be in hand by the end of 2013, with a further \$10 billion generated in further “out” years (through 2022).

The Senate will begin debate today (Thursday Feb. 9) on whether to proceed to floor consideration of MAP-21 (cloture), beginning what will likely be a long process with many amendments anticipated. Senate approval of MAP-21 is anticipated – a 2 year package (through FY2013) generally preserving current funding levels with some reorganization of current program structures but little fundamental change from SAFTEA-LU.

House actions: The Transportation and Infrastructure (T&I) Committee released their long-awaited highway bill two weeks ago and this package too is being prepared for floor debate next week. The five-year, \$260 billion American Energy & Infrastructure Jobs Act (H.R. 7), makes major changes in the highway program's structure, notably removing transit programs from the highway trust fund payment mechanism and placing it under general treasury funding. H.R. 7 does address tolling, making construction of new toll roads (including Interstate highways) eligible for inclusion in the federal program like any other highway project. Reconstruction of currently "free" Interstate roadways and conversion to tolled facilities would still be constrained, at best to the 3 "pilot" projects, as is permitted under current law. The House bill touches on toll "interoperability" very lightly – stating that toll facilities should be interoperable within 2 years, but it establishes no oversight or enforcement mechanism to see that this occurs. The House bill would also increase TIFIA loan authority to \$1 billion a year – a level generally considered adequate to meet the demand for such loans. (House language and summary found [here](#))

The House package would be financed through a completely different series of controversial "pay-fors," including revenues from expanded future oil and gas drilling leases in currently restricted locations, restructuring of federal employee pension plans and other miscellaneous elements.

Where we go from here: Historically the Senate EPW and House T&I Committees were very proud to note their measures were typically free of excessive partisan politics but the current political environment has clearly shifted that historical practice. Despite the universal agreement that highway programs are good for employment and the nation's economy, the conflicting House and Senate bills vary tremendously; in duration, in funding levels, in funding methods and in the way the future highway program would be structured. There are embedded polarizing issues like oil and gas development, oil pipeline, alterations to tax laws and huge changes to funding both between urban and rural regions as well as between highways and transit.

At such time as the House and Senate approve their respective packages, as is expected, it is difficult to predict whether a conference committee seeking to forge a compromise between the disparate bills could reach an agreement before the expiration of the current SAFTEA-LU extension (March 31st). It is likely that a further extension of the current program will be the only viable answer to that problem, and such an extension would probably last until after the national elections this fall, when the majorities of the House or Senate might shift to another party, and perhaps even the White House. The potential of such turnovers would likely paralyze any effort to quickly move the highway bill after the elections (unless the current majorities are preserved).

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