The Federal Surface Transportation Program Gets a New Lease on Life

The HIRE Act (Hiring Incentives to Restore Employment Act, H.R. 2847, P.L 111-147), signed by the President on March 18, has placed the federal surface transportation program on a firm footing and taken the pressure off the lawmakers and the White House to come up with a more permanent solution — at least for a while. While efforts to develop a long-term transportation strategy are expected to continue for the remainder of this year, Congress and the White House are likely to take their time enacting a multi-year legislation. This is the near-unanimous judgment of informed congressional observers and Washington insiders whom we consulted over the last several days.

In addition to extending the authorization of the surface transportation program through December 31, 2010, the HIRE Act transfers $19.5 billion from the General Fund into the Highway Trust Fund (to reimburse the Fund for interest payments not received since 1998); restores an earlier $8.7 billion rescission of contract authority; and allows the Highway Trust Fund in the future to collect interest on its deposits. The General Fund transfer, when added to the projected revenue stream from the gas tax, is expected to support highway and transit programs at the levels authorized for Fiscal Year 2009 through the end of Fiscal Year 2012 and into FY 2013 according to the Congressional Budget Office. Our interpretation of CBO's latest projections (Highway Trust Fund Projections, March 19, 2010) suggests that both the Highway Account and the Transit Account of the Trust Fund could remain solvent as long as the second or third quarter of Fiscal Year 2013 (i.e. mid-2013).

Lack of Adequate Long-Term Funding

The main obstacle standing in the way of enacting a multi-year bill continues to be the inability to come up with adequate funding. To close the gap between the projected revenue into the Highway Trust Fund (estimated by CBO to be $234 billion from 2010 through 2015) and the program needs as estimated by Chairman James Oberstar (D-MN) ($450 billion for highways and transit) would require an extra $216 billion over the life of the next authorization (or $145 billion if only to cover outlays, according to the estimates of House Transportation and Infrastructure Committee staff). Adding a proposed $50 billion for the high-speed rail program would raise the total unfunded six-year shortfall to over $200 billion. Where is this money to come from? No one has yet found an answer.

Gas Tax Increase No Longer Considered
The most obvious option — to increase the gas tax— has been taken off the table for the immediate future. The Administration's unwillingness to consider this option was forcefully reaffirmed by Transportation Secretary LaHood at the recent 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.

Supplementing the Trust Fund With General Fund Appropriations

If not a gas tax increase, then how about supplementing HTF revenues with General Fund appropriations? This option has been pursued de facto as a way of keeping the Trust Fund solvent during the past year (with two transfers amounting to $15 billion) and it will be used again to extend the program through December 31 and beyond.

However, there are some serious objections to expanding the use of General Funds to support the surface transportation program over the long term. The objections are threefold: their use (1) undermines the user-pays principle; (2) threatens a potential loss of contract authority, i.e. the ability to enter into multi-year funding commitments for large capital projects in advance of appropriations; and (3) opens the surface transportation program to competition for funds from other government programs. In addition, one could expect Congressional opposition to using General Funds to pay for a multi-year transportation bill. "We cannot afford to continue funding our highways and transit out of the General Fund," said Sen. Kent Conrad (D-SD), Chairman of the Senate Budget Committee. Any move to tap the General Fund for loans to cover the projected shortfall in the Highway Trust Fund would likewise meet with objections, a senior Senate aide told us when questioned about a proposal recently floated by Rep. James Oberstar.

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 of our sources raised this possibility, recalling similar circumstances back in 1982 when the measure to raise the federal fuel tax from 4 to 9-cents per gallon finally cleared Congress in a lame duck session on Dec 23, 1982.

However, the dynamics this year appear different than in 1982. Unlike today, the Reagan White House and Transportation Secretary Drew Lewis were openly supportive of a gas tax increase and actively engaged in helping to build a bipartisan coalition behind it. By contrast, the Obama White House is not likely to reverse itself and champion a gas tax increase later this year.

And so, with no concrete ideas of where to find the extra money, with fewer than 100 legislative days left before congressional adjournment and, most importantly, with adequate funding projected as long as mid-2013, most Washington insiders believe there is little likelihood of enacting a long-term transportation bill during this session of Congress. What is more likely to happen during the rest of this year, according to our sources, is a low-intensity effort to lay a foundation for future legislation. This effort will include a series of hearings by the Senate Environment and Public Works (EPW) Committee under the chairmanship of Sen. Barbara Boxer (D-CA), continued staff-level refinement of the House bill, and the drafting of a set of policy "principles" by the U.S. Department of Transportation. These principles, according to Secretary Ray LaHood who spoke at the IBTTA Legislative Conference on March 22, will eventually become the White House position (we think only after a thorough vetting by OMB) and will serve to guide the Administration's legislative transportation strategy in 2011 and beyond.
Political Imponderables

Compounding the uncertainties surrounding a multi-year bill is the possibility of a major political realignment in Congress next November. Once considered a remote possibility, a 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 (or a still Democratic Congress but with only a thin margin of votes) make major reforms in the current transportation program more or less likely? Would it be less or more averse to a gas tax increase? And how important will the imperative of deficit reduction figure in future congressional decisions about major infrastructure investments?

The answers to these questions will become clearer after the mid-term elections. In the meantime, the state legislatures and DOTs, the construction industry, private investors and the rest of the transportation community will have to suspend their long-term calculations and confront a future still shrouded in uncertainty.

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