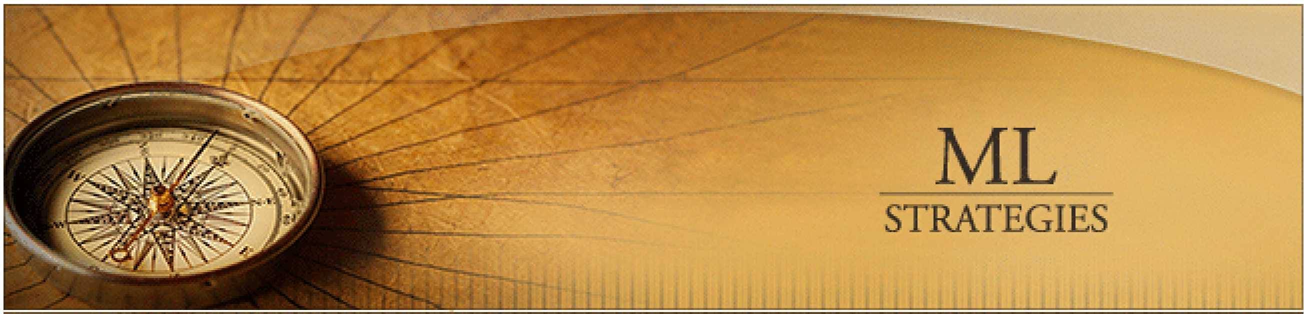

ML Strategies Legislative Update

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Financing: The Main Roadblock to a Transportation Bill

High Stakes for a Short-Term Fix and a Long-Term Solution

While Congress has four months until the current surface transportation authorization, MAP-21, is due to expire, the Highway Trust Fund could become completely insolvent by late August. More dire, some projections forecast less than one month until the Highway Trust dips below the critically low level of $4 billion. If Congress does not act, construction projects could be stopped this summer in the critical period before midterm elections.

Consensus is emerging between Democrats and Republicans that a short-term extension of transportation policy will be needed to keep infrastructure projects on pace, but there is not yet agreement on how to finance either short-term legislation, which would require roughly $18 billion to fund the Highway Trust Fund through the end of FY15, or a longer-term reauthorization bill.

House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) has indicated his Committee is likely to address the approaching Highway Trust Fund insolvency separately from a multi-year policy reauthorization effort. Meanwhile, the Senate Environment and Public Works Committee unanimously reported the MAP-21 Reauthorization Act, a bipartisan, six-year transportation bill with a $100 billion price tag on May 15th, while Chairwoman Barbara Boxer (D-CA) continues to press Commerce, Science, and Transportation Committee Chairman Jay Rockefeller (D-WV) and Banking, Housing, and Urban Affairs Committee Chairman Tim Johnson (D-SD) to markup their titles of the bill.

Identifying transportation pay-fors falls under the jurisdiction of the House Ways and Means Committee and the Senate Finance Committee. On June 4th, Senate Finance Committee Chairman Ron Wyden (D-OR) held a private session for Committee members to consider proposals for the Highway Trust Fund, including infrastructure finance reforms proposed by former Finance Committee Chairman and now U.S. Ambassador to China Max Baucus (D-MT).

Proposed Short-Term Pay-Fors

Postal Reform: On May 30th, House Speaker John Boehner (R-OH), Majority Leader Eric Cantor (R-VA), and Majority Whip Kevin McCarthy (R-CA) sent a memo to the House Republican caucus proposing to eliminate the mandate for full six-day postal delivery in order to place the necessary resources into the Highway Trust Fund to prevent disruption of highway projects. This pay-for is unlikely to be adopted, especially as the memo triggered the addition of more co-sponsors, now totaling more than 220, to a House resolution supporting six-day mail delivery. In addition, Senate Democrats, notably Chairwoman Boxer and Transportation and Infrastructure Subcommittee Chairman Thomas Carper (D-DE), opposed the House proposal.

General Fund Allocations: A more likely solution for a short-term patch would be the authorization of more cash transfers from the Treasury Department's general fund as congressional transportation committees continue work on a longer term bill. This proposal, which Senator Johnny Isakson (R-GA) has said is likely the best approach in a divided, election-year Congress, is not without controversy, especially as its adoption will require reductions in spending on other programs or an increase in taxes to avoid adding to deficits and increasing federal borrowing.

Potential Long-Term Pay-Fors

Increasing the Gas Tax: The Highway Trust Fund currently relies on revenues from the 18.4 cents per gallon federal gas tax. The tax has not been increased, let alone indexed for inflation, since 1993. Bills have been introduced to modernize the purchasing power of the gas tax. For example, Congressman Earl Blumenauer's (D-OR) UPDATE Act would raise the gas tax by 15 cents per gallon over three years, while on May 30th, Senator Chris Murphy (D-CT) held a press conference calling for 6 cent per gallon increases in 2015 and 2016. While these proposals have been applauded by industry stakeholders, congressional leadership lacks the political will to increase the gas tax during an election year.

Broader Tax Reform: Various tax reform proposals have also been suggested as possible pay-fors, but there tends to be disagreement on which reforms should be used to fund transportation. For example, while unlikely to be enacted, the four-year, $302 billion GROW AMERICA Act, drafted by the Department of Transportation (DOT), is funded by supplementing current revenues with $150 billion in one-time transition revenue from pro-growth business tax reform. While congressional leadership has articulated a preference for reserving repatriation on corporate earnings, ending tax breaks for overseas income, and closing the tax loophole on corporate inversion for a post-election comprehensive tax reform effort, other ideas included in House Ways and Means Committee Chairman Dave Camp's (R-MI) Tax Reform Act of 2014 could be used to fund a longer term transportation bill. A wholesale tax has also been floated as a possible replacement for the federal gas tax.

User Fees: Favored by both Chairwoman Boxer and Chairman Shuster, support for a user fee approach, such as increased tolling or a vehicle-miles-traveled (VMT) fee, is growing. While this type of tax has never been implemented at the federal level, mainly due to privacy concerns and the need to refine the logistics for collecting the levy, pilot projects at the state and local level have proved effective. As a result, Congressman Blumenauer has introduced legislation to study the prospects for this type of financing program for transportation nationwide.

Build America Bonds: In an approach championed by Chairman Wyden, there has also been talk of resurrecting and restructuring the successful Build America Bonds (BABs) program. While the program expired at the end of 2010, the American Recovery and Reinvestment Act (ARRA) created BABs as taxable bonds for which the U.S. Treasury Department paid a direct subsidy of 35% of interest costs to the issuer to help state and local governments finance public capital projects at lower borrowing costs. Finance Committee Ranking Member Orrin Hatch (R-UT) and Senator Chuck Grassley (R-IA) have also expressed interest in considering a new BABs program. In addition, Chairman Wyden, along with Senator John Hoeven (R-ND) and Representatives Ed Whitfield (R-KY) and Allison Schwartz (D-PA), has introduced legislation establishing Transportation and Regional Infrastructure Project (TRIP) bonds that would make $50 billion available for infrastructure projects.

Pension Smoothing: Two years ago, Congress agreed to pay for MAP-21 by adding a pension smoothing mechanism as a last minute offset. This proposal, again under consideration to help pay for a transportation bill, would raise the interest rate for pensions, which is abnormally low. Raising the interest rate would generate more revenue to be spent on infrastructure by requiring a greater percentage of funds that employers allocate to pensions to be reported as general income. However, this proposal may not be politically feasible for a transportation bill, as the Senate has already approved an extension of pension smoothing as an offset for restoring unemployment insurance, legislation that the House has shown little interest in considering.

Cost Shifting to the States: As the federal government continues to face budget pressures, some more conservative members of Congress have also advocated for an approach that would shift the responsibility for identifying the revenues to fund local infrastructure projects from the federal government to states and municipalities. For example, Senator Mike Lee (R-UT) and Congressman Tom Graves (R-GA) have introduced companion versions of the Transportation Empowerment Act, which would lower the federal gas tax to 3.7 cents per gallon over five years, while transferring most of the responsibility for highway funding to states.

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