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Transportation Policy Review

A Different Kind of Reauthorization

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In the last few months, both House and Senate have finally produced drafts of their proposed bills to reauthorize the federal surface transportation program. Much of the media commentary has portrayed the two bills as ideological extremes that will be very difficult to meld into a single measure and pass. In my view, this characterization misses key points about both the context for reauthorization and the many similarities in the two bills.

The first point to keep in mind is that this will be the first reauthorization of the federal surface transportation program in the new era of fiscal restraint and retrenchment that will characterize the federal government for the next several decades. The federal budget is on an unsustainable path toward a national debt exceeding 100% of GDP and a possible vicious circle in which interest on that ever-expanding debt becomes one of the major components of the federal budget—i.e., without fundamental change, we are heading toward the fate of Greece.

While the full magnitude of this situation is not reflected in these bills (and especially not in the fantasy-land transportation budget the President proposed this month), that context explains why neither bill provides for a net increase in annual surface transportation spending. And assuming that a final bill is patched together from the components of the House and Senate bills, this will be the first time since the creation of the federal Highway Trust Fund in 1956 that a reauthorization has not provided a large increase in funding.

As for the contention that these bills are polar opposites, consider the following list of similarities (in addition to no net increase in funding):

- Program consolidation—both bills would dramatically reduce the number of separate

programs, providing broad categories, letting states make more choices in how to spend federal funds;
- Optional "enhancements"—both bills would no longer require a set percentage of the major highway program to be spent on things like bike paths, scenic trails, and other "transportation enhancements";
- Environmental streamlining—both make further attempts to reduce the convoluted and time-consuming process of getting large projects through the review process;
- No high-speed rail funding—neither bill provides funding for the Administration's signature HSR program;
- No infrastructure bank—neither would create a new grants and loan entity for transportation projects;
- TIFIA expansion—both would greatly expand TIFIA, a remarkable shift from grants to loans, so as to make limited federal dollars go further.

Alas, as of this writing, both bills also share a common defect of not being "fully paid for," via some combination of dedicated revenue sources (mostly fuel taxes) and offsetting cuts elsewhere in the federal budget.

Those similarities all reflect the federal government's dire fiscal situation. Instead of lamenting that the bills are not significantly larger, transportation advocates should be thankful that transportation has not—so far—been subject to across-the-board cuts in spending, a very real possibility in coming years.

Despite the above similarities, there are some major differences in the bills, as might be expected given the different ideological make-up of the House and Senate. The House approach goes further in refocusing the federal program toward federal interests, targeting most of its highway funding to the National Highway System (the Interstates and other major inter-city highways). The Senate bill would create a new freight grant program, while the House would de-facto permit more funding for freight-related highway upgrades by putting more emphasis on major highways used by trucks.

The two houses started out with different approaches to making up the projected shortfall between spending (at current levels) and highway user tax revenues. Since this disparity increases over time, the longer the reauthorization period, the bigger the hole that needs filling. So the Senate has opted for a two-year bill, requiring it to find only about $12 billion in additional revenues or offsetting cuts elsewhere in the federal budget. The House began with a five-year bill, as strongly preferred by state DOTs and most transportation advocates. But that gave it a much deeper hole to fill.

The initial House approach last summer, consistent with the overall House budget framework from Budget chair Paul Ryan (R, WI) addressed the problem by limiting highway and transit spending to the amount projected to be realized over five years in user-tax revenue. Since that approach led to significant reductions in annual spending compared with the last several years (during which fuel-tax revenues were supplemented by about $35 billion in general fund stimulus monies), the initial House approach came under enormous political pressure.

The House GOP leadership's first attempted fix was to link expanded oil and gas production to the transportation bill. There were three major problems with this. First, the Senate was widely expected to find this unacceptable; second, the amount of new revenue generated in the five-year period of the bill would come nowhere near to filling the hole, and third, dumping enough oil and gas revenue to do so into the Highway Trust Fund would violate the Budget Control Act provision that protects user-tax-supported trust funds from across-the-board federal spending cuts only if user-tax revenue constitutes at least 90% of a trust fund's revenue.

Recognizing the problematic nature of that approach, the House then came up with Plan B. To retain the integrity of the Highway Trust Fund, the second version of the bill spun off its Transit Account as a renamed Alternative Transportation Account, to be funded mostly via $40 billion in general fund money. That would have greatly reduced the shortfall in the Highway Trust Fund itself, to an amount less than 10%, thereby preserving the HTF's nature as a user-tax-supported trust fund exempt from general budget cuts. Taking a longer-term view of the federal budget situation, state DOTs should have welcomed this move. But under intense lobbying pressure from urban transit advocates, neither AASHTO nor the Chamber of Commerce supported Plan B.

As this piece is being written, it appears that the House leadership is scaling back or abandoning Plan B. Speculation is that the bill will be reduced in duration to something like the Senate's two years, reducing the size of the funding gap. Whether the separation of transit from the HTF will be jettisoned remains to be seen.

Larger TIFIA, Limits on PABs

For readers of this newsletter who are interested in tolling and public-private partnerships, the bills offer a mixed bag. Both would greatly expand the critically important TIFIA program, for which demand has greatly exceeded supply in recent years. Neither would increase or eliminate the cap on tax-exempt private activity bonds (PABs), however, which will be a serious constraint for long-term concession projects that need senior debt that is investment grade to accompany their subordinate loan from TIFIA. Both bills also err in expanding the size of a TIFIA loan to as much as 49% of a project's budget. TIFIA is supposed to provide gap financing, not half of a project's budget. And if the current limit of 33% is retained, a $1-billion-per-year TIFIA program can assist considerably more projects, thereby leveraging federal funds to a greater extent.

The major problem with both bills as of this writing is their absence of workable tolling provisions. Ever since the ISTEA reauthorization in 1991, each such bill has reduced the extent of federal obstacles to tolling and pricing. The current Senate bill does not address tolling at all, while the House bill would actually be a step backwards. Its program consolidation would wipe out the existing pilot programs, and its narrow tolling provisions would permit tolling only on new lanes. That would wipe out the current (but thus far unused) authority under the Value Pricing Program to put variable tolls on existing urban Interstate lanes for congestion management.

It would also mean no more tolled projects to reconstruct and modernize aging Interstates. The current three-state pilot program has recently filled its third slot, permitting North Carolina to reconstruct and widen I-95 using toll finance. The other two slots are held by Virginia (I-95) and

Missouri (I-70). Two other states that had applied for slots—Arizona (I-15) and Rhode Island (I-95)are now without that option, as are (for example) the other three states in the I-70 Corridors of the Future program (Illinois, Indiana, and Ohio) and other states in the I-95 Corridor Coalition (such as Florida, Georgia, South Carolina, and Connecticut).

Rescuing the Toll Provisions

Fortunately, a bipartisan amendment to the Senate bill has been proposed by Sens. Carper (D, DE) and Kirk (R, IL) to retain and expand the tolling and pricing pilot programs. For the Interstate Reconstruction toll pilot, the number of slots would be increased from the current three to ten—not enough, but better than the status quo that prevents all of the above states from using toll finance for Interstate reconstruction. Getting this amendment into the bill should be a priority for all advocates of tolling and public-private partnerships.

Given the uncertain state of play in Washington in this presidential election year, it's not clear to me that the House and Senate will be able to resolve their differences and enact a bill this year. If I were a betting man, I would not bet in favor of this happening. Then again, I admit I was 2surprised that the FAA reauthorization bill was finally enacted several weeks ago, after 23 temporary extensions of the old law which expired Sept. 30, 2007. SAFETEA-LU only expired on Sept. 30, 2009, so we may have a few years left to wait. n