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Federal Surface Transportation Reauthorization: A Temporary Detour

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Facing the imminent bankruptcy of the federal Highway Trust Fund (the “HTF”) and the specter of delays and reductions in payments from the HTF to the States, the US Congress last week passed the Highway and Transportation Funding Act of 2014, which extended federal surface transportation programs and funding through May 2015. We summarize below the key elements of the Act.

Last Thursday evening, July 31st, following a seesaw exchange of bills between the House of Representatives and the Senate over the course of last week, US Congressional approval was achieved on a bill that reauthorizes, on a temporary basis, funding of the federal Highway Trust Fund (the “HTF”), as well as disbursements from the HTF to various programs that benefit the States.¹

The passage of the bill, entitled the Highway and Transportation Funding Act of 2014 (the “Act”), temporarily staves off the insolvency of the HTF, which was due to run dry by the end of August, through an extension of funding until May 31, 2015, and avoids delays and reductions in payments from the HTF to the States which were due to take effect as early as August 1st.² It also effectively postpones the ongoing and frequently contentious debate within Congress regarding the future shape of federal surface transportation funding until after this year’s November elections, and possibly until a new Congress is sworn into office in 2015.

A copy of the Act may be found by clicking [here](#).

The principal elements of the Act are as follows:

- *Extension of Federal-Aid Highway Programs.* The Act continues, until May 31, 2015, existing federal highway programs authorized under the most recent reauthorization bill, the Moving Ahead for Progress in the 21st Century Act (“MAP-21”),³ which was enacted in July 2012 and was due to expire on September 30th. Such extension includes, *inter alia*, an extension of the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) program.

- *Extension of Other Programs.* The Act continues certain other programs funded from the HTF until May 31, 2015, including highway safety, transit and motor carrier safety programs.
- *Authorization of Expenditures.* The Act reauthorizes the spending authority of the HTF to fund such transportation and other programs until May 31, 2015. The relevant appropriations are calculated *pro rata* based on 2014 levels at a ratio of 243/365. With respect to TIFIA, for example, based on its 2014 budget authority of \$1 billion, its prorated appropriation through May 2015 would be approximately \$665.8 million.
- *Funding of the HTF.* One of the principal hurdles to the passage of long-term funding legislation is Congressional agreement on the source of federal appropriations. The negotiations on the temporary extension yielded multiple proposals.⁴ Pursuant to the Act, such funding would come from certain direct transfers and budgetary offsets, as follows:
 - Transfer from the General Fund of the US Treasury to the HTF in an amount equal to approximately \$9.8 billion.
 - Transfer from the Leaking Underground Storage Tank Trust Fund to the HTF in an amount equal to \$1 billion.
 - Changes in the Internal Revenue Code to permit single-employer defined benefit pension plans to use higher interest rates when calculating their future liabilities. Using higher interest rates would reduce the minimum contributions that employers are required to make to such plans. According to estimates prepared by the Congressional Budget Office (“CBO”), this would likely have two principal effects: *first*, a reduction in net direct spending by the Pension Benefit Guaranty Corporation of approximately \$1.2 billion over the 2014-2024 period; and *second*, an increase in revenue over the same period of approximately \$5.2 billion, primarily due to the payment of corporate income tax on amounts that would have been deductible had they been contributed by employers to such pension plans.⁵
 - A one-year extension of the expiry date of the US Treasury’s right to collect certain customs user fees from September 30, 2023 to September 30, 2024.⁶ The expected revenue increase from this extension is estimated by the CBO to be approximately \$3.5 billion.⁷

With the passage of the Act, attention will turn to the passage of a long-term transportation bill. A more permanent solution would facilitate the planning of new transportation infrastructure projects by state and local governments by ensuring the predictability of federal funding over multiple budget cycles. Such predictability is in turn important for other stakeholders including potential private entities investing in such infrastructure through public-private partnerships (“P3s”) or otherwise.

The two bills described in our previous client publication, [“Federal Surface Transportation Reauthorization: The Road Ahead.”](#) remain pending before Congress. The MAP-21 Reauthorization Act, which proposes to reauthorize existing programs under MAP-21 at existing levels for an additional six years, was introduced in the Senate by Senators Barbara Boxer (D-Calif.), David Vitter (R-La.), Tom Carper (D-Del.) and John Barrasso (R-Wyo.) on May 12th and was approved by the Senate Environment and Public Works Committee on May 15th.⁸ The GROW AMERICA Act, which is supported by the Obama Administration and would increase funding for highways, bridges, transit and rail systems over four years, was introduced in the House of Representatives by Rep. Eleanor Holmes Norton (D-DC) on June 12th.⁹ The long-term bill ultimately agreed to will likely reflect one of those two approaches.

The timing for resumption of bipartisan discussions regarding such a bill is unclear given the nearly ten-month extension under the Act. One of the amendments proposed by the Senate last week, sponsored by Senators Boxer and Carper along

with Senator Bob Corker (R-Tenn.), would have limited the extension until December 19th so that a long term solution would be developed by the current Congress. But the House rejected this amendment and another that had been passed by the Senate, which, with a month-long Congressional recess beginning August 1st, effectively forced the Senate to pass the Act in its original form.¹⁰ It is expected that President Obama will sign the Act into law despite his advocacy for the passage of the GROW AMERICA Act.¹¹

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¹ The bill passed the Senate on an 81 to 13 vote, which followed the approval by the House of Representatives of the same on July 15th on a vote of 367-55. Ramsey Cox, *Senate sends highway bill to Obama*, THE HILL (July 31, 2014, 9:16 p.m.), <http://thehill.com/blogs/floor-action/senate/214026-senate-sends-highway-bill-to-obama>; Keith Laing, *Highway focus shifts to Senate*, THE HILL (July 16, 2014, 10:36 p.m.), <http://thehill.com/policy/transportation/212416-highway-focus-shifts-to-senate>.

² Keith Laing, *DOT: Infrastructure fund bankruptcy will mean 28 percent cut for states*, THE HILL (July 7, 2014, 12:35 p.m.), <http://thehill.com/policy/transportation/211441-foxx-states-will-face-28-percent-cut-if-road-fund-goes-bankrupt>; U.S. Dep't of Transp., July 1 Letter from Secretary Foxx to State DOT CEOs on DOT's Cash Management Procedures for the Highway Account of the Highway Trust Fund, <http://www.dot.gov/grow-america/highway-account-cmp-letter-to-state-dots>.

³ Moving Ahead for Progress in the 21st Century Act, Pub. L. No. 112-141, 126 Stat. 405-988 (2012).

⁴ See Ramsey Cox, *Senate sends highway bill back to House*, THE HILL (July 29, 2014, 7:17 p.m.), <http://thehill.com/blogs/floor-action/senate/213740-senate-sends-highway-bill-back-to-house>.

⁵ CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, H.R. 5021, HIGHWAY AND TRANSPORTATION FUNDING ACT OF 2014 (July 11, 2014), <http://cbo.gov/sites/default/files/cbofiles/attachments/45522-hr5021a.pdf>.

⁶ The relevant fees are the (i) passenger and conveyance processing fees and (ii) merchandise processing fee, each of which was authorized under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Such amounts are collected by U.S. Customs and Border Protection.

⁷ CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, *supra* note 5.

⁸ For the full bill, see http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=1e3c777c-8d48-49f0-b9b6-2e725470a1bb. For a summary, see http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=f331a434-ee7-41f2-8cc6-5bbc34c49b3d.

⁹ For the full bill, see http://www.dot.gov/sites/dot.gov/files/docs/DOT_surface_reauth-FINAL.pdf. For a section-by-section summary, see <http://www.dot.gov/grow-america/sectional-analysis>.

¹⁰ Keith Laing, *House rejects Senate highway bill*, THE HILL (July 31, 2014, 2:43 p.m.), <http://thehill.com/policy/transportation/213964-house-rejects-senate-transportation-bill>.

¹¹ See Cox, *Senate sends highway bill to Obama*, *supra* note 1.

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