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The Transportation Effect

Worries Grow Over Stimulus Consequences

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By Audrey Dutton

WASHINGTON - State and local governments could get an infusion of federal funds next year to jump-start many of their shovel-ready transportation projects if Democrats and President-elect Barack Obama are able to enact a promised stimulus package soon after Obama takes office, industry stakeholders said in recent interviews.

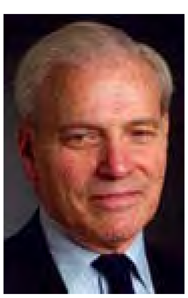
But there is concern that stimulus funding could imperil the speedy passage of a multiyear transportation bill, which could substantially redefine the federal highway program.

The economic recovery legislation could cost $675 billion to $850 billion - even as much as $1 trillion - over two years, based on most estimates by economists and advisers to the incoming administration.

Vice President-elect Joe Biden said last week that the bill will give the private sector about 85% of three million jobs to be created, and the lion's share of that funding is to be used for public purposes such as roads, bridges, water and sewer projects, energy, and aid to state and local governments.

Stimulus proposals introduced this fall by House and Senate leaders would have provided transportation, infrastructure, and energy funding of about $36 billion and $19 billion, respectively, including direct assistance to states. But both proposals failed as Republican leaders argued that economic recovery legislation should offer tax cuts and tax credits, not increased spending.

"Instead of asking taxpayers to pay for a trillion-dollar 'stimulus' program, shouldn't Washington help them cope with these unprecedented economic times by letting them keep more of what they earn and removing barriers to American prosperity?" House Republican leader John Boehner of Ohio asked earlier this month.



Emil Frankel

Think tanks such as the Economic Policy Institute have said project funding and aid to states, not tax cuts, would generate the biggest returns on federal investment.

Nevertheless, when Democrats introduce stimulus legislation after Congress reconvenes next week, Republican opposition could bury the effort altogether. Democrats will need to persuade 60 senators - including up to two Republicans - to get on board with the stimulus proposal, otherwise the package will be blocked by the threat of a filibuster.

Since transportation infrastructure will comprise a hefty chunk of that funding, some in the industry are concerned that the stimulus could thwart a longer-term objective for transportation finance - a multiyear federal transportation bill that is already a contentious issue in Congress.

The transportation bill is expected to overhaul the way infrastructure has been financed for the past five decades. The current law - the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users, or SAFETEA-LU - spells out how federal money is distributed to states and how it can be used for transportation projects, but expires Sept. 30. The law authorized $286.5 billion in federal investment for highways, public transportation, and highway safety programs from fiscal years 2004 through 2009.

Industry insiders say the chances are slim to none that the Senate, House, and White House will agree on a replacement bill by the time SAFETEA-LU expires because of heated disagreements over what it could contain and because the Transportation Department under Obama and his nominee for secretary, Rep. Ray LaHood, R-Ill., probably will not be fully staffed until halfway through the calendar year. Instead, Congress will probably pass at least one but possibly a series of stopgap measures to keep funding authorizations at the current level while they work out an agreement, sources said.

And although the stimulus bill would be a one-time measure, it could encourage lengthened foot-dragging on the part of legislators to pass the reauthorization.

"The wild card affecting any piece of infrastructure legislation - not just transportation but energy, broadband, and even clean- and drinking-water legislation - is what gets done in the stimulus," said Janet Kavinoky, director of transportation infrastructure in the congressional and public affairs division at the U.S. Chamber of Commerce. "One of our major concerns ... is that passing a stimulus that provides an investment in ready-to-go projects will result in Congress feeling like they don't need to address SAFETEA-LU authorization."

While the long-term bill would be a source of funding for highways and transit, it would also be a retooling of federal programs. To postpone or skimp on transportation funding reauthorizations for the next multiyear bill would be "a major mistake" on the part of lawmakers, Kavinoky said.

WILD CARD

Another wild card playing into the next transportation bill could be the makeup of the Obama administration's DOT, various sources said. The nomination of LaHood, a moderate, shows that Obama wants his transportation agenda to get political support from both sides of the aisle, sources said.

But most of all, industry observers and market participants predict a fight over how revenue for transportation projects will be generated and how much the next transportation bill will encourage private investment over public funding..

Gasoline and diesel fuel tax revenues currently are used to fill the coffers of the highway trust fund, but those taxes are viewed as at least somewhat obsolete by lawmakers on both sides of the aisle. The next era of transportation finance could emphasize private investment or user fees to supplement fuel tax revenues.

"One of the wrinkles here that has not occurred in any previous bill is that if [SAFETEA-LU] is extended for six months or a year, the trust fund cannot support the program" while Congress hashes out the long-term bill, said Jack L. Schenendorf, of counsel at Covington & Burling LLP here.

Schenendorf was vice-chair of the National Surface Transportation Policy and Revenue Study Commission that in January recommended a national investment of at least $225 billion annually for 50 years to upgrade and maintain U.S. transportation infrastructure.

If legislators pass an extension next year in lieu of a long-term transportation bill, as is expected, "they would still have to find a way to get more money into the system," Schenendorf said.

That urgency could actually counteract the temptation to hold off on passing a long-term bill because of stimulus funding, he said.

Jim Oberstar

Any long-term transportation bill that is drafted in 2009 should encourage more private investment, while balancing the public interest, he said. The Capital Beltway HOT lanes deal, for instance, represents "a huge revenue stream that's going to be lost" for Virginia.

Under the agreement between the Virginia DOT and private investors Transurban and Fluor Enterprises, the private team will operate, maintain, and collect tolls from the HOT lanes for 75 years after construction. The team also agreed to design and build the project. In June, $589 million of private-activity bonds were sold to help finance the project.

Private-sector investors "ought to make a fair profit, there's no question about that," Schenendorf said. "But unlimited profit? That's the Wall Street mentality that got us into the mortgage fix we're in."

Schenendorf predicts lawmakers will call on state and local governments to augment the dollar amount they spend on infrastructure, with larger federal contributions to maintain current levels of federal-municipal cost sharing. Over the past two decades, the federal share has been about 45% of project funding.

The extent to which the private sector will figure into infrastructure financing depends on the level of investment capital that will be available at the state and local level, said Emil Frankel, director of transportation policy for the Bipartisan Policy Center.

Frankel said two recent projects show the two poles of how such deals can turn out - the $600 million Port of Miami Tunnel public-private partnership that collapsed this month when the Florida DOT said the "primary equity partner could no longer confirm it had the financial ability to close the deal," and the pending $2.5 billion lease of Chicago Midway Airport that officials are counting on for $60 million toward filling a budget gap.

"The question is, which of these two things, if either, are a harbinger of what the future might hold," Frankel said.

The private sector's role will be decided in part by Rep. Jim Oberstar, D-Minn., chairman of the House Transportation and Infrastructure Committee. Oberstar has opposed efforts to increase public-private partnerships that are not accompanied by significant increases in government oversight.

In anticipation of SAFETEA-LU reauthorization, industry lobbyists have spent the past year pitching ideas for the transportation financing overhaul. Their wish lists include several bond-related provisions.

Lobbyists for state DOTs are pushing for help in the stimulus package, arguing that $64 billion in transportation infrastructure funding could create 1.8 million jobs and pay for 5,000 shovel-ready projects.

The American Association of State Highway and Transportation Officials also wants $545 billion of funding for highways, transit, freight, and intercity rail over the next six years, financed by, among other things, mileage fees, increased gasoline and diesel fuel taxes, tax credits, and tax-credit bonds, combined with increased state discretion in tolling and public-private partnerships.

They also warn that the highway trust fund will scrape bottom again by Oct. 1, and another massive general fund transfer may be needed to prevent insolvency and tide over state agencies until Congress can work out the SAFETEA-LU bill. Otherwise, the federal highway program will face a cutback of $20 billion or more for fiscal year 2010, AASHTO said in a recent report.

Janet Kavinoky

Public transportation is jockeying for stimulus cash, too - $8 billion of short-term stimulus funding - as well as $32 billion for long-term transit projects, both of which they hope will include waived requirements for localities to match federal funds.

The American Public Transportation Association wants the next multiyear transportation bill to double federal investment in public transportation, define a new revenue source for payments on bonds used for large-scale highway and transit improvements, and "examine the longer-term viability" of tools like tax-exempt and tax-credit bonds, federal loan guarantees, and tolling.

AIRPORTS

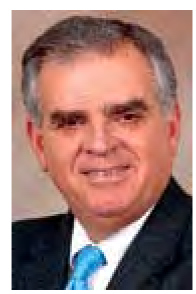
Aviation groups will lobby for repeal of the alternative minimum tax on airport private-activity bonds, arguing that it makes the bonds less attractive to investors. The AMT is designed to prevent the wealthy from taking so many tax breaks that they pay little or no taxes.

The groups are expected to push for the repeal in stimulus legislation and then, if they are unsuccessful, in Federal Aviation Administration legislation.

FAA programs authorized to give airport grants currently are operating under stopgap legislation set to expire at the end of March. In anticipation of a long-term bill, 12 aviation groups sent a letter to House and Senate leaders this month asking for a stimulus package containing at least $1 billion for the airport improvement program. Grants from the AIP are used to back tax-exempt bonds or to supplement other funding sources, such as bond proceeds.

The American Association of Airport Executives has asked Congress in its multiyear FAA reauthorization bill to raise the cap on passenger facility charges that are used in conjunction with bonds from $4.50 to $7, and to increase annual AIP funding by $100 million.

Biden said earlier this month that the stimulus bill would "be real significant investment, whether it's $600 billion or more or $700 billion." He forbade earmarks - targeted funding for pet projects that lawmakers slip into bills - and hinted at what the bill could contain, specifying an upgraded energy grid as part of what the incoming administration wants to spend "a fair amount of money investing in."



Ray LaHood

Previous stimulus bills contained extra cash for water and sewer projects, as well. The House version included $7.5 billion for water- and sewer-related state revolving funds, but that bill died in the Senate.

State revolving funds are used in conjunction with bonds and allow state governments to provide relatively low-cost loans for water and wastewater projects.

The American Public Works Association found in November that more than 3,600 local public works projects costing $15 billion could generate about a half-million jobs. This month, APWA's president Noel Thompson asked congressional leaders and Obama to quickly pass funding for such projects, adding that deteriorating infrastructure faces a funding gap of $1.6 trillion.

The Council of Infrastructure Financing Authorities is pushing for a stimulus with $6.5 billion for clean water projects and $1 billion for drinking water projects, with no requirement for states to match funds.

But some, like Rep. Norman D. Dicks, D-Wash., have questioned whether SRFs are a better investment than direct grants. The cost of taking loans from SRFs makes then prohibitive to rural municipalities, Dicks said earlier this month.