



## DECEMBER 24, 2008

Congress will return to Washington on Tuesday, January 6 to swear-in the new 111th Congress, followed by the January 20th inauguration of President Barack Obama. While Congress often recesses for a few weeks following their swearing-in, this time Congress expects to remain in session furiously working away on a massive economic stimulus bill and potentially an omnibus FY'09 appropriations bill in order to have them ready for Obama to sign on or shortly after Inauguration Day. This is a highly ambitious schedule and one that may be difficult to meet. The Senate is expected to work quickly to hold hearings and confirm Obama's cabinet nominees.

### **Economic Stimulus Bill:**

President-elect Obama continues to state the urgency of quick passage of a large and comprehensive economic stimulus bill with an immediate priority of jobs creation. Congress hopes to draft a bill soon after returning to work on January 6. The potential size of such a bill continues to fluctuate dramatically with some predicting over \$1 trillion in a combination of tax cuts and new federal spending. There remains strong support for infrastructure funding to be a major component of the package, but what that means in practical terms is still difficult to determine. "Infrastructure" is expected to comprise everything from the traditional roads, bridges, transit, rail and airports, to Corps projects, water/wastewater, schools, public buildings, health IT, broadband access, upgrading the power grid, weatherizing buildings, etc. President-elect Obama has strongly emphasized a priority on green technologies, energy efficiency, alternative energy, and new technologies.

The major new development in the past week related to the potential infrastructure piece of the stimulus bill was the release by House T&I Committee Chairman Jim Oberstar (D-MN) of a 41-page outline of funding and program recommendations. The summary is attached to the email transmitting this Update. It is important to note that the economic stimulus bill will ultimately be drafted by the Appropriations Committees with significant input from congressional leadership, particularly House Speaker Pelosi and from the Obama Transition Teams. Therefore, while Chairman Oberstar's recommendations carry serious weight, they do not necessarily represent the funding levels or programmatic changes that will end up in the final bill.

While originally suggesting a \$45B infrastructure stimulus package, the most recent Oberstar proposal to "Rebuild America" recommends a total of \$85B - \$30.25B for highways and bridges, \$12B for transit, \$5B for rail, \$5.25B for aviation, \$14.27B for environmental projects and additional amounts for the Corps, federal buildings, etc. The priority is on "ready to go" projects that create jobs. Page 2 of the summary outlines a number of certifications, reports and accountability requirements that, if the Oberstar recommendations are accepted by Congress, state governors and funding recipients will have to comply with regarding maintenance of effort, geographical distribution of funds and number of jobs created.

Oberstar recommends to those drafting the bill that priority be given to projects that can award bids within 90 days. In addition, the proposal recommends 100% federal funds, use of existing formulas to distribute the funds, including sub-allocation of highway formula funds to metropolitan areas, and compliance with current DBE requirements.



The proposal includes funding for the transit New Start program in addition to the transit formula program. Oberstar recommends providing \$2.5B for New Start projects that have Full Funding Grant Agreements (FFGAs) and Small Start projects that have Project Construction Grant Agreements. If accepted, this increase in funding for FY'09 will produce additional Contingent Commitment Authority (CCA) which will allow FTA to sign additional FFGAs.

Vice President-elect Joe Biden reiterated this week that the Obama Administration does not support earmarking stimulus funds to specific projects.

### **US DOT Nominee and DOT Transition Efforts:**

As previously reported, Rep. Ray LaHood (R-IL), has been nominated by President-elect Obama to serve as Secretary of the US Department of Transportation. LaHood expects to be in DC next week to begin his extensive briefings with the DOT Transition team. LaHood's selection was quite a surprise to the transportation industry since he was not on any of the informal "lists" of rumored candidates. LaHood was formerly the Chief of Staff to then House Minority Leader Bob Michel (R-IL) and then ran in 1994 to replace Michel when he retired. LaHood initially served for a number of years on the House Transportation & Infrastructure Committee, but then moved to the Appropriations Committee in 2001, but did not serve on the DOT Subcommittee. His district covers parts of central Illinois including Peoria and parts of Springfield. He announced last year that he was not running for re-election in 2008.

Supporters hail him as a thoughtful, well liked, moderate member who understands the inner workings and politics of Congress and is comfortable working and voting across party lines which will be very useful when navigating the next surface transportation authorization bill through Congress. He is very close to Rahm Emmanuel, the incoming White House Chief of Staff, which should give him an open door to senior White House decision makers. He is expected to be easily confirmed by the Senate.

Others have raised concerns that once again US DOT gets the sole Republican cabinet official and that LaHood did not sponsor any significant transportation legislation while in the House.

No other nominations have been announced for other US DOT senior political positions or modal administrators and likely will not be until after the inauguration. The hope is that with the early selection and likely quick confirmation of LaHood, other key DOT positions will fall into place quickly and not drag out for months, even as late as the summer, as has occurred in past Administrations.

The DOT Transition team, which includes Mort Downey, Chairman of PB Consult and Jeff Morales, PB senior manager, has wrapped up its initial report to the White House Transition team. The team held numerous stakeholder meetings with key industry groups, DOT senior officials, congressional leaders, labor unions, and state and local elected officials in the process of compiling its report and recommendations. The DOT team is not responsible for personnel decisions.

### **Other News:**

- FTA Executive Director – Matt Welbes, a long time, senior manager at FTA, has been named to serve in the newly created position of Executive Director. In this capacity he will be the senior career officer of the agency and likely serve as the Acting Administrator after the start of the Obama Administration before a new FTA Administrator or Deputy is named.



## PB Washington Update

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- FTA FY'09 Apportionments - FTA published a notice of partial FY'09 Apportionment tables in the December 18 Federal Register. Currently FTA is operating under a Continuing Resolution (CR) at FY'08 funding levels through March 6, 2009. The notice provides partial year funding allocations (approximately 43% of the total year's funding) for the Section 5307 Formula, New Freedom and JARC programs and prior year unobligated Sec 5309 Bus allocations. It also includes partial year allocations for New Start projects with FFGAs. Congress hopes to pass an omnibus appropriations bill for the remainder of the FY'09 fiscal year in early January so that President-elect Obama can sign it shortly after his inauguration. <http://edocket.access.gpo.gov/2008/pdf/E8-29645.pdf>
- FHWA Final Rule on Fair Market Value and Design Build Amendments – On December 19 FHWA published a final rule in the Federal Register that requires “fair market value” for transportation infrastructure lease agreements. The rule impacts concession deals made by states with private firms for long term leasing of existing infrastructure. The rule is quite controversial and House T&I Committee leaders Rep. Jim Oberstar (D-MN) and Peter DeFazio (D-OR) wrote to Secretary Peters raising concerns that the rule would unfairly favor private sector firms, may not adequately protect the public interest and “would unnecessarily limit the procurement options available to the states”. The notice also makes a few changes to existing design build rules to allow states to incorporate ideas from unsuccessful bidders. <http://edocket.access.gpo.gov/2008/pdf/E8-30147.pdf>