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FEDERAL UPDATE

Lawmakers Examine New Revenue Stream for Surface Transportation Programs

House Transportation and Infrastructure Committee chairman James Oberstar (D-MN) suggested this week that surface transportation programs will need additional revenue in order to meet the nation's burgeoning transportation and infrastructure needs. Oberstar's committee is considering a two-year phased switchover from the current gasoline tax to a mileage-based levy, a policy prescription that already has been rejected by the Obama administration, despite the fact that newly-appointed Transportation Secretary Ray LaHood expressed interest in the mileage-based concept. The administration also has rejected an increase in the federal gasoline tax because of the economic recession.

Oberstar said that until a new revenue stream structure for surface transportation programs is agreed upon, he will not place a funding figure on the upcoming highway reauthorization bill. However, the recently-passed budget resolution provides baseline funding of \$325 billion for the six-year authorization bill and \$450 billion has been used as possible target during committee staff discussions. At this point, it is unclear how the switch to a mileage-based tax might affect overall funding for surface transportation programs that benefit historic preservation -- such as Transportation Enhancements (TE).

Under the current highway bill authorization, Transportation Enhancements received \$4.074 billion from 2005 through 2009. TE funding for eligible historic preservation activities include: acquisition of scenic or historic easements and sites; purchase of historic properties or buildings in historic districts and property surrounding historic battlefields; preservation of buildings and facades in historic districts; restoration of historic buildings for transportation-related purposes; access improvements to historic sites; rehabilitation and operation of historic transportation buildings, structures or facilities such as railroad depots, bus stations and lighthouses, as well as rehabilitation of rail trestles, tunnels, bridges and canals; scenic or historic highway programs that include tourist and welcome centers; and, the construction of turnouts and overlooks, visitor centers and viewing areas, designation signs and markers. A complete list of TE eligible activities can be found at http://www.enhancements.org/12_activities.asp.

The pot of money available for transportation-related historic preservation activities under TE programs could be significantly larger in the next transportation authorization bill if lawmakers take the advice of two commissions set up by SAFETEA-LU, the 2005 surface transportation law (PL 109-59). These two commissions recommended a shift to a mileage-based tax but over a 15- to 20-year time frame and recommended significantly higher expenditures for the nation's transportation infrastructure. The federally-mandated National Surface Transportation Policy and Revenue Commission reported in 2007 that an investment of at least \$225 billion annually was

necessary to maintain and improve the nation's infrastructure. A year later the National Surface Transportation Finance Commission stated that at least \$200 billion a year was needed. In addition, both American Association of Highway and Transportation Officials (AASHTO) and the American Public Transportation Association (APTA) released their respective reports on highway funding this week and reinforced the findings of the federal commissions that \$250 billion annually would be needed over the six-year life of the new authorization bill to meet the nation's surface transportation needs.

On the scheduling front, House Majority Leader Steny Hoyer (D-MD) has given chairman Oberstar assurances that there is space on the legislative calendar to bring the highway bill to the floor the first week in June if the committee can get a bill completed that quickly.

Eminent Domain Provisions Create Uncertainty in Siting of National Interstate Transmission Electric Corridors

The Senate Energy and Natural Resources Committee held a markup of a discussion draft on Thursday of Sen. Harry Reid's (D-NV) draft energy bill that would empower the federal government to use eminent domain to supersede state and local authorities in siting new transmission power lines for renewable energy sources.

However, proposals to build transmission lines spanning several states have been held up by siting disputes at the state and local levels. The Energy Policy Act of 2005 (EPACT- PL 109-58) gave the Federal Energy Regulatory Commission (FERC) power to override state and local authorities in siting national electricity corridors, but the 4th U.S. Circuit Court of Appeals ruled in February that the federal government lacked authority to overrule states that reject power line routes. The National Trust was one of the parties challenging the original EPACT corridor designations and the federal claims of eminent domain in the 4th Circuit.

Partly In reaction to the Court of Appeals ruling, Senate Energy and Natural Resources Committee chairman Jeff Bingaman (D-NM) released a revised draft of the renewable energy bill that would give states a year to site transmission lines before the federal government could intervene. However, preservationists remain concerned about environmental streamlining provisions for siting transmission lines in the renewable energy bill and the potential problems they pose for Section 106 and cultural resources review under the National Historic Preservation Act. It is not clear whether Sen. Bingaman's bill will resolve those concerns. At issue is whether a one-year delay by itself will allow states and local communities the opportunity to protect cultural resources, community character and scenic landscapes from potentially obtrusive development and impacts from these transmission corridors.

In the House, Rep. Jay Inslee (D-WA), a member of the House Energy and Commerce Committee, is planning to introduce similar legislation to the Bingaman proposal but would give states an 18-month period to site power lines before the federal government could intervene.

The renewable energy bill is expected to be included in the broader energy legislation that chairman Bingaman hopes to shepherd through the Energy and Natural Resources Committee by Memorial Day.

STATE AND LOCAL UPDATE

Minnesota State Rehab Tax Credit Lands in Omnibus Tax Bill

Minnesota state legislators are currently considering a rehab tax credit to encourage private investment in the state's older communities through rehabilitation of the state's historic buildings. Originally introduced by Senator Larry Pogemiller (DFL-Minneapolis) in the Senate and Representative Paul Marquart (DFL-Dilworth) in the House respectively, the proposed state rehab credit is included in an omnibus tax bill currently under consideration.

Minnesota has an opportunity to become the 31st state in the nation to provide incentives for preservation of historic structures through the use of a state historic preservation tax credit. The Minnesota Legislature is planning to adjourn on *Monday, May 18*, which means the next two weeks are critical to ensuring the tax credit is passed this year. Preservationists have been using the job-creation aspects of historic rehabilitation to great advantage in convincing state legislators to include a rehab credit as part of economic recovery and stimulus initiatives in the state legislature.

Economic
Stimulus and
Recovery
Concerns Help
Catapult State
Rehab Credit into
Omnibus Tax Bill

