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October 2009 Monthly Report for MTC

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Re: Monthly Report for October 2009

Date: November 5, 2009

- **Transportation Authorization Update**
- **FY 2010 Appropriations Update**
- **Senator Boxer Unveils Updated Climate Change Legislation**
- **Address by Deputy Administrator McMillan**
- **U.S. Transportation Secretary Ray LaHood Announces Administration-Wide Effort to Combat Distracted Driving**

Transportation Authorization Update

In October, Congress passed a seven week continuing resolution (CR) that, among other items, extended SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users) through December 18, 2009. There has been no public movement on negotiations between the House and the Senate regarding when Congress will pass a more formal extension of SAFTEA-LU, and there has been no word as to how long that extension will last.

Additionally, there has been a persistent rumor that the 3-month House extension would get Senate floor time, and at that point an amendment would be offered to change the extension by making it a 6-month long extension (through April 2010). It is speculated that language would be added to restore contract authority, which was rescinded at the end of FY 2009.

Our latest intelligence suggested that the extension would be on the Senate floor following action on unemployment benefit legislation; however, with the Senate Committee on Environment & Public Works (EPW) waged in a battle over the climate change mark-up, Senate EPW leaders were unavailable to manage the legislation on the floor. As a result, Senate leadership turned its attention to FY 2010 appropriations. It should be noted that the extension has been rumored to be 'the next bill on the Senate floor' for several months.

Attaching the SAFETEA-LU extension onto the CR has been a convenient way of extending SAFETEA-LU without addressing the ongoing battle between Chairman Oberstar (D-MN) and the White House. Chairman Oberstar wants to tackle a long term transportation bill as soon as possible, while the White House wants to wait until after the 2010 mid-term elections.

The remaining appropriation bills are expected to be completed by December 18, which will mean that no new CRs should be needed. At that point, Congress will have to pass a more formal extension and deal with the issue of how long an extension should last.

One idea that has been floating around is passing a two-year front loaded transportation spending bill financed through general fund revenue. This would settle the need for passing an extension and would act as a jobs bill. Congress is looking for a way to address rising unemployment and many believe that a two-year 'beefed up' extension would serve all parties. Also, there have been rumors floating around that Chairman Oberstar has already bought into this idea and that his staff is putting together a two-year bill that will include many of the reforms included in his draft six-year bill. However, at this point all of this is pure conjecture.

During the month, Commissioners Anne Halsted and Bill Dodd were in D.C., and we had a chance to discuss the federal transportation authorization situation and future activities.

FY 2010 Appropriations Update

Before leaving Washington at the end of October, Congress passed a seven-week CR that will keep the federal government operating until December 18, 2009. Of the twelve FY 2010 appropriation bills, only five have been passed into law (agriculture, energy & water, homeland security, interior & environment, legislative branch). Of the seven remaining bills, only a handful has been cleared by the full Senate. Senator Reid (D-NV) announced a plan to roll the remaining seven appropriation bills into an omnibus bill that he had hoped would be passed before the Thanksgiving recess. In his remarks, Senator Reid acknowledged the difficulty of accomplishing this and recognized that action may be pushed until December.

Senator Boxer Unveils Updated Climate Change Legislation

On October 23, 2009 Senator Barbara Boxer (D-CA) unveiled the 'Chairman's Mark' for S. 1733, the 'Clean Energy Jobs and American Power Act,' more commonly known as the climate change legislation. The Chairman's Mark made several changes to the discussion draft that was released in September — most importantly, the new version included distribution of funding allocations. Over the past month we have been working with Senator Boxer and Senator Carper's (D-DE) staff to increase the percentage of funds that will be dedicated to transportation. We have organized and participated on a number of conference calls and meetings that we believe were responsible for the tripling of the transportation allocation from one percent to 3.2 percent. On October 20, MTC Executive Director, Steve Heminger and Tom Bulger conducted a conference call with Senator Boxer's EPW senior staff about the need to increase cap and trade allowances for transportation.

Senator Boxer's 'Chairman's Mark' has three main components to address surface transportation: transportation planning funding and requirements, a transit formula grant program, and a discretionary grant program to implement greenhouse gas (GHG) emission reductions.

<u>Transportation Planning</u>:

The bill establishes a platform to explicitly address greenhouse gases within existing Federal transportation planning to help guide infrastructure investment decisions. Division A - Section 112 sets into motion the following actions at the federal, state, and local levels:

(1) The Environmental Protection Agency (EPA) — in consultation with the U.S. Department of Transportation (USDOT) — will establish a national goal for transportation-related greenhouse gas emission reductions.
(2) EPA — in consultation with USDOT — will develop models, methodologies and best practices for states and regions to use when developing transportation sector greenhouse gas emissions reduction targets and plans.
(3) USDOT — in consultation with EPA — will lead the technical work to apply the emission modeling, above, within transportation planning processes. This includes adapting transportation planning requirements to work in tandem with the discretionary grant program requirements.
(4) States and large Metropolitan Planning Organizations (MPOs, above 200,000 population) are required to develop their own surface transportation-related GHG emission reduction targets and strategies to reach those targets within two years of final regulations from EPA and DOT. Smaller MPOs can opt-in to the process.
(5) Funding is provided to assist MPOs in their efforts to develop their GHG reduction plans.
(6) State and MPO targets and plans are to be submitted to the DOT Secretary as a part of their regular long-range transportation plans for review as to whether the plan is likely to achieve the locally-set GHG emission target. If the plan is found unlikely to achieve the target, there is no penalty, except that the state or MPO is not eligible for the discretionary funding described below.

- Discretionary grant program: Division A – Section 113 provides planning grants for all MPOs that participate, and a competitive grant program to provide performance-based funding for states and MPOs to incentivize and implement their transportation-related GHG reduction plans. USDOT, in consultation with EPA, will develop criteria, taking into consideration factors listed in the bill, for distributing the grants to states and MPOs to fund their transportation GHG reduction plans. The grants are mode-neutral and the federal share is 80 percent. States and MPOs can sub-grant funds to local governments, air quality agencies, zoning commissions, transit agencies and other public entities.

- Transit Formula Program: Division B – Section 215 authorizes funding for transit project. The funding is eligible, consistent with current transit law, for capital needs and preventative maintenance (as well as operating assistance in areas with population under 200,000). It is distributed under existing Federal Transit Administration formulas:
    a. Eighty percent to urbanized areas through section 5307 of title 49;
    b. Ten percent to areas other than urbanized ones through section 5311 of title 49; and
    c. Ten percent to states via the growing and high density states formula through section 5340 of title 49.

- Funding: Division B – Section 771 provides guaranteed allowances to clean transportation projects. These allowances average 2.4 percent of total allowances, but rise up to three percent of total allowances in some years. According to Division B – Section 215, these allowances are split evenly each year between the discretionary grant program and the transit formula program.

The Senate EPW Committee held a series of hearings on the legislation the last week of October. At the October 29 hearing, the Committee received testimony from the Sacramento Council of Governments, APTA (American Public Transportation Association), and the National Transportation Policy Project. The witnesses all said that the transportation allowances were a good start, but that the next transportation authorization bill will need to provide sufficient funding to allow the transportation sector to reduce GHG emissions. It is clear that this legislation will not be on Congress's agenda until next year, primarily due to the health care debate and opposition to the legislation from Republican Senators, Senator Baucus (D-MT), and other coal-state democratic senators. It is expected that the legislation will be marked-up by the Senate EPW Committee in November. Full Senate action is not expected until early next year.

Address with Deputy Administrator McMillan

On Tuesday, October 13, we attended a briefing by Deputy FTA (Federal Transit Administration) Administrator Therese McMillan at APTA. During her speech, Deputy Administrator McMillan laid out what FTA has been working on over the past several months. In her address, she noted that FTA had been primarily focused on meeting the requirements of obligating 50 percent of the stimulus money by September 1, 2009.

With that deadline now passed, FTA has turned its attention to the future. Mrs. McMillan said that

FTA is working with DOT, HUD (U.S. Department of Housing and Urban Development), and EPA on livability issues which are a primary focus of the Obama Administration.

During the question & answer segment, several questions regarding support for the rail-modification program were brought up. It was apparent that safety and maintenance of the existing transit infrastructure is a top priority for this administration.

U.S. Transportation Secretary Ray LaHood Announces Administration-Wide Effort to Combat Distracted Driving

Following a two-day summit on distracted driving in Washington, D.C., Transportation Secretary Ray LaHood announced a number of immediate actions the department is taking to combat distracted driving, including the department's plan to create three separate rulemakings that would consider:

1. Making permanent restrictions on the use of cell phones and other electronic devices in rail operations.
2. Banning text messaging altogether, and restrict the use of cell phones by truck and interstate bus operators.
3. Disqualifying school bus drivers convicted of texting while driving, from maintaining their commercial driver's licenses.

The Secretary also called on state and local governments to work with USDOT to reduce fatalities and crashes by making distracted driving part of their state highway plans, and by continuing to pass state and local laws against distracted driving in all types of vehicles. While stopping short of requesting Congressional action, Secretary LaHood pledged to work with Congress to ensure that the issue of distracted driving is appropriately addressed.

In October, Senator Rockefeller (D-WV) introduced S. 1938, the 'Distracted Driving Prevention Act of 2009.' This legislation creates a grant program that acts as an incentive for states to pass 'anti-texting' bills. The legislation establishes a grant program whereby states qualify to receive funding if they pass laws that make texting on personal wireless communications devices a primary offense.

The Senate Commerce Committee held hearings on this legislation, as well as similar legislation introduced by Senator Schumer (D-NY), which is more punitive. Senator Schumer's legislation would withhold transportation funding from states that fail to enact strict anti-texting laws.

The House Transportation & Infrastructure Committee held similar hearings. In both hearings, Secretary of Transportation Ray LaHood made note of the Obama Administration's commitment to battle distracted driving.