

July 30, 2014

## Senate Passes Highway Trust Fund Fix – Bill Returns to the House

Last evening, the Senate passed the Highway and Transportation Funding Act of 2014 ([H.R. 5021](#)), legislation meant to extend the nation's transit and surface transportation programs that are funded out of the Highway Trust Fund (HTF). While the Senate approved the bill with a resounding 79 to 18 vote – including the support of every Senator in the New England delegation – it does put the Chamber on a collision course with the House of Representatives over finding a way to pay for maintaining the solvency of the trust fund.

Earlier this month, the House passed [its version](#) of H.R. 5021 by a vote of 367 to 55. To help pay for the provisions of the House bill, some \$7.8 billion would be directed out of the general fund towards the HTF. Further, \$2 billion would be dedicated from the general fund to the mass transit account. The funding to be allocated would be offset through a combination of measures including a direct transfer to the HTF of \$1 billion from the Leaking Underground Storage Trust (LUST) Fund. To offset the transfer from the general fund, \$3.5 billion would come from an extension of “passenger and conveyance procession fees and the merchandise processing fees” (a.k.a., customs fees) through September 30, 2024. The remainder of the general fund transfers would be obtained via “pension funding stabilization” efforts.

The Senate brought H.R. 5021 before the full body yesterday afternoon, but instead of passing the House version “as is,” Senators added some modifications. Chief among these was an amendment put forth by Senate Finance Committee Chairman Ron Wyden (D-OR) and Ranking Member Orrin Hatch (R-UT) to drop the text of the bill as passed by the House, and instead substitute language as previously agreed to by the Finance Committee.

The Wyden-Hatch [amendment](#) would allow for the HTF to remain solvent through the end of May, 2015. In order to help pay for doing so, the amendment would take \$1 billion from the LUST Fund; implement approximately \$3.4 billion in “tax compliance and modernization provisions;” obtain \$2.95 billion from extending customs fees dealing with “merchandise processing” to January of 2024; and attain \$2.7 billion from “pension smoothing” requirements. Senator Hatch [stated](#) that he was “not a fan” of using pension smoothing as a “pay-for,” but noted that to get to a compromise, he would support it. The bill also included a provision to change the alternative fuel tax rate of propane “to a rate based on its energy equivalent of a gallon of gasoline,” which is 13.4 cents per gallon. The amendment was adopted by the full Senate by a vote of 71 to 26.

As part of a previously agreed-upon order of business, the Senate also considered several other amendments pertinent to the bill at hand. One amendment offered by Senator Pat Toomey (R-PA) would change the way in which the bill would limit environmental review and permitting steps on the reconstruction of existing but storm-damaged roads and bridges and transportation facilities. That amendment was rejected, drawing 47 “ayes” and 50 “nays.” Another amendment offered by Senator Mike Lee (R-UT) would have “devolved” to the States most of the responsibility for “taxing and spending for highway programs and mass transit programs.” The shift to the states would occur over five years, and as responsibilities shifted, the federal gas tax would be reduced to 3.7 cents per gallon by 2019. The amendment was rejected as well, by a vote of 28 to 69.

Senators Tom Carper (D-DE), Bob Corker (R-TN) and Barbara Boxer (D-CA) offered another [amendment](#) to have the length of the HTF “fix” shortened from the May 31, 2015 “sunset” as included in both the House bill and the Wyden-Hatch amendment, and instead only extend the length of the bill through December 20<sup>th</sup>. The idea behind such an approach is to force Congress to address a long-term authorization bill this year rather than risk another short-term “patch” next May. Because the length of the bill was shortened, the three lawmakers removed the “pension smoothing” provision as one of the “pay-fors” of the bill. The vote on this amendment was 66 to 31.

House leadership has said that it does not support the Senate bill as passed, mainly because it includes different funding offsets and also lops-off five months from their bill, forcing Congress to deal with a long-term surface transportation bill in the short period of time after the November elections.

Lawmakers have until August 1<sup>st</sup> to come up with a mutually acceptable solution before the federal government has to begin making decisions on cutting back payments to states for transportation projects. It is possible that the House could act on legislation later this evening, which – depending on the vote outcome – could then require further action by the Senate. Congress is scheduled to shutdown for its annual August recess on August 1<sup>st</sup>.

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