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Reed Smith: Show Me The Money: For Water And Transportation Projects, the Question is Always How to Pay.

Two recent important developments in Congress illustrate the opportunities, and limits, in financing infrastructure projects in today's Washington. First, the House of Representatives and the Senate, by overwhelming margins, agreed to a conference report ironing out the differences on H.R. 3080, the Water Resources Reform and Development Act of 2014 ("WRRDA"), which pays for navigation, dredging, and flood protection projects throughout the country. The legislation heads to the President's desk for his expected signature. Second, the Senate Environment and Public Works Committee unanimously approved legislation reauthorizing the nation's surface transportation program S. 2322, the MAP-21 Reauthorization Act. However, the circumstances behind each bill are not the same: the Harbor Maintenance Trust Fund ("HMTF"), which funds water projects, has a surplus of more than \$8 billion. Meanwhile, the Highway Trust Fund ("HTF"), which funds highway and mass transit projects, is almost insolvent. The funding disparities between the two indicate the challenges in providing infrastructure funding in today's Washington.

\$5.4 billion to pay for 34 water projects through Fiscal Year 2019.

According to the Congressional Budget Office, WRRDA authorizes \$5.4 billion for water projects, which includes 34 projects, through Fiscal Year 2019. The key, in this era of no congressional earmarking, is that funds must go to water infrastructure projects that have (1) a completed report by the Army Corps that indicates that the project is in the federal interest, and (2) a completed environmental impact statement (section 1005(a)). As we noted previously, the HMTF is supported entirely by user-fees, yet sees half of its revenue diverted from port projects to support the federal government's activities. Section 2101(b) of WRRDA addresses this by requiring all trust funds to be used for water projects by Fiscal Year 2025, leading to a large supply of funds for water projects.

But what about highways and mass transit?

Compare the relatively easy passage of WRRDA with the reauthorization of the nation's transportation infrastructure program. Bridge, highway and mass transit projects are financed federally by the HTF, which itself is funded primarily by the 18 cent gasoline tax. Unfortunately, the Department of Transportation estimates the HTF will face a shortfall before the end of this fiscal year: gas tax revenue has fallen, requiring transfers from the general fund (i.e., the United States taxpayer), with the latest being a \$9.7 billion transfer shortly after the start of FY 2014. However, the balance has continued to drop. The DOT notes "as of April 25, 2014, the Highway Account cash balance was \$8.7 billion," which will likely require another cash infusion before September 30. The MAP-21 Reauthorization Act would reauthorize surface transportation projects for six years at the baseline level established by the CBO, which is equal to current funding plus inflation. Even that amount is unsustainable, without new funding to the HTF. Nor is it enough to address the nation's infrastructure deficit, as noted by the American Society of Civil Engineers and others. Before the MAP-21 Reauthorization Act can become law, Congress will have decide whether additional transfers from the general fund are required or whether a long-term funding mechanism is possible.

The likelihood of Congress making any decision on raising revenue seems unlikely, given the pending midterm elections. What is more likely is that Congress, failing to pass any legislation on transportation funding, waits until the 114th Congress convenes in 2014 to start anew.

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