Congress ‘running out of time’ to avoid huge bite out of state highway funds

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The rescission is scheduled to take effect in July 2020. | Ric Francis/AP Photo

Congress is staring down a fiscal cliff of its own making that would leave state transportation departments $7.6 billion poorer if lawmakers don’t act soon.

A rescission included in the 2015 surface transportation law requires states to give up a total of $7.6 billion of fiscal 2019 budget authority, which could force states to delay or cancel infrastructure projects.
Every potential solution suggests a difficult lift, even though closing the gap has strong bipartisan support because of the pain the rescission is likely to cause in every state in the nation.

New Hampshire, for instance, is facing a cut that is equivalent to 20 percent of the state’s annual federal highway contribution, about $37.8 million. According to New Hampshire Transportation Commissioner Victoria Sheehan, the rescission would have a “crippling effect” on the state’s ability to implement the 10-year plan painstakingly developed by the state transportation department, the governor and the legislature.

“Ultimately, we’re trying to meet our public’s expectations and deliver the projects that are important to them,” Sheehan told POLITICO. “We can’t make a firm commitment to do that when there is uncertainty in federal funding.”

Wyoming and Delaware, the home states of the senators that lead the Senate Environment and Public Works Committee, which has jurisdiction over highway spending, are both looking at cuts that total more than 30 percent of their states' fiscal 2020 apportionments. Those senators, John Barrasso (R-Wyo.) and Tom Carper (D-Del.) have pleaded with leadership to repeal the rescission.

The American Association of State Highway and Transportation Officials, of which Sheehan is vice president of the board, noted Tuesday that since the $7.6 billion rescission is more than the combined $5.35 billion of unobligated balances the states carry, the cuts may be even deeper than what the law calls for. The other $2 billion will come out of states’ fiscal 2020 contract authority.

AASHTO offered the example of Texas, whose $960 million rescission — 13 percent of the country’s total — outstrips the $679 million it had as of September 30 in unobligated dollars.

“In short, this is rescinding more federal-aid highway contract authority than states have,” said AASHTO Executive Director Jim Tymon. “Once these dollars go away, they will not otherwise be invested in our nation’s transportation system.”

States won’t have the flexibility to determine where the money would come from, either — FHWA will determine that later, based on unobligated balances in various program categories. Sheehan
said that in her state, the projects that move slowest, and therefore have the greatest unobligated balances, tend to be municipally-managed projects like bike trails, sidewalks and air quality initiatives.

That tracks with FHWA’s estimates last year of the program-by-program impact of the rescission — about 19 percent of the rescission would come out of bicycle and pedestrian safety programs and another 18 percent would come out of the Congestion Mitigation and Air Quality improvement program.

The rescission is scheduled to take effect in July 2020, and a fix could theoretically wait — a 2009 rescission was repealed seven months after it took effect — but it’s much more complicated, expensive and cumbersome to undo the rescission once a fiscal 2020 spending bill takes effect. Such a bill is due in under two weeks.

But Congress has already had four years to fix the matter, and so far hasn’t.

“It’s a problem that we knew we would be facing when the FAST Act passed and the rescission was put into place,” said Sean O’Neill, senior vice president of government relations for the Portland Cement Association. “We are for sure running out of time, and ... we are potentially running out of vehicles.”

Many hoped that the current stopgap spending bill could have been that vehicle. Or the full fiscal 2020 spending bill, which has yet to be enacted. But a bipartisan repeal measure, S. 1992 (116), failed to catch a ride on either. Whatever happens next to keep federal transportation programs funded — a full-year appropriations bill or another continuing resolution — could be that vehicle.

But attaching authorizing language to appropriations bills is complicated, and Senate appropriators have made it clear they don’t want to do it. Budgetary scoring is simpler, too, if the repeal happened on an authorizing bill.

That limits options, as very few authorizing bills have been enacted lately. The defense authorization, often a “Christmas tree” for unrelated items, is one possibility, though negotiators have signaled that they’re already having a hard time agreeing on the basics of the bill. One helpful factor: Armed Services Chairman Jim Inhofe (R-Okla.) used to helm the EPW Committee, and his personal interest in transportation could help grease the way.

Another possibility is for the Senate to pass a standalone repeal bill by unanimous consent and hope the House would follow suit. Such a bill would likely pass with huge majorities, but unanimity for a bill that appears to cut revenues — even though the CBO has scored the repeal as deficit-neutral — might be tricky.
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