

DOT Chief Ray LaHood Leaves Agency At Crossroads

By **Liz Hoffman**

Law360, New York (February 04, 2013, 10:34 PM ET) -- U.S. Transportation Secretary Ray LaHood is stepping down, and experts say his replacement will need to be equal parts infrastructure wonk and congressional backslapper to steer the agency through a tough debate about how to pay for America's roads, rails and ports.

Over his four-year tenure, LaHood led the White House's efforts to expand high-speed rail lines and bike lanes, cracked down on distracted driving and oversaw an increase in low-cost loans to big capital projects.

But experts say he failed to advance a serious discussion over fixing the highway trust fund and oversaw a congressional reauthorization process that mostly kicked the can down an increasingly potholed road.

By his own admission, LaHood, a career congressman, wasn't much of a infrastructure buff. He told The New York Times in 2009: "I don't think they picked me because they thought I'd be that great a transportation person."

Instead, his position as a Republican with tight ties to then-White House Chief of Staff Rahm Emanuel won him the job. He became a key liaison between the president and congressional Republicans, helping to smooth over a ban on earmarks — a key funding mechanism for local infrastructure projects — in the House.

"[LaHood] came at the job from a legislative background, and that was certainly an asset," said Marcus Lemon, counsel at McKenna Long & Aldridge LLP and a former chief counsel to the Federal Highway Administration.

But the transportation chief job requires a certain level of wonkishness, says Baruch Feigenbaum, an infrastructure expert at the nonpartisan Reason Foundation. Mary Peters, secretary under George W. Bush, had spent 20 years in transportation departments, first in Arizona and then as chair of the Federal Highway Administration. Norman Mineta, Bush's first-term secretary, was a former executive at Lockheed Martin and President Bill Clinton's point person on aviation reform.

"[LaHood] was very effective from a political point of view, but there is some frustration in the transportation community because he didn't know that much about transportation when he came in, and didn't seem that interested in learning" Feigenbaum said. "The question is, do you want someone skilled in policy or politics? I'd say both."

Short List

The likeliest nominees, industry watchers said, are Deborah Hersman, chair of the National Transportation Safety Board, and former Pennsylvania Gov. Ed Rendell.

Hersman appears to have zoomed to the top of the short list. She has spent eight years at the NTSB, the last three as its chairman. And she's been particularly visible in recent weeks, as she has tended to the safety problems with Boeing Co.'s Dreamliner 787 jets. As a career staffer, she has never run for public office, which makes her less of a political figure. But she is widely respected as a tough and fair administrator, attorneys said.

Rendell is a former mayor and a governor, and co-chairs the Building America's Future Educational Fund, a bipartisan group of elected officials that supports private investment in infrastructure. He is an advocate of private investment in infrastructure, and even floated his own proposal in 2010 to put tolls on Interstate 80 in Pennsylvania.

Other possible choices include three veterans of the House Transportation and Infrastructure Committee: Rep. Nick Rahall, D-W.Va., the current ranking member; Rep. Steve LaTourette, a moderate Ohio Republican congressman who retired in January; and Rep. James Oberstar, a retired Democratic congressman and former chairman of the committee.

Lemon said the president could also look within the DOT, as George W. Bush did, and tap Federal Highway Administrator Victor Mendez. And either Arnold Schwarzenegger, a Republican who co-chairs the BAF Education Fund with Rendell, or Gene Conti, a former DOT undersecretary under Clinton, could emerge as a dark horse.

Los Angeles Mayor Antonio Villaraigosa, known for his efforts to battle LA's car culture with 16,000 miles of bike lanes, had been considered a possibility, but said Monday he does not want the job. Former Texas Sen. Kay Bailey Hutchison told Politico on Friday that she's not interested, either.

Long Agenda

Whoever wins the nomination will face a full plate at the DOT, which is tasked with implementing the two-year highway bill Congress passed in June while gearing up to reauthorize it as soon as 2014.

Looming in the not-too-distant future is a national discussion about how to pay for road construction, attorneys said. The highway trust fund, which is funded by a gasoline tax, is dwindling as fuel-efficient cars cut into the money Americans spend at the pump. Assuming current trends, it will be bankrupt by 2020, according to the National Surface Transportation Infrastructure Financing Commission, a bipartisan group established by Congress in 2005 to study alternative financing mechanisms.

"The gas tax is fatally flawed and dying a quick death," said Nossaman LLP partner Geoffrey Yarema, a member of the financing commission. "It has to be replaced over next eight years, and that will be a big part of the new secretary's job description."

Some momentum is gathering on the Hill for a so-called vehicle miles traveled, or VMT, tax, which would charge drivers based on how far they go. Former U.S. transportation secretaries Mineta and Samuel Skinner have come out in support of it, and Sen. Barbara Boxer, D-Calif., is spearheading the charge from the Senate. The GOP's national platform opposes it, but leaders like Sen. Chuck Grassley, R-Iowa, have acknowledged that the current system is unworkable.

“That’s the elephant in the room,” Lemon said. “It’s not going to be an easy discussion, but there’s a growing consensus that it’s one we need to have.”

The role of the private sector goes hand in hand with proposals about new financing models, said David Narefsky, an infrastructure partner with Mayer Brown LLP in Chicago.

So far, enthusiasm for private investment in public works is patchwork, generally higher in Republican-leaning states than Democratic ones. Governors like Indiana’s Mitch Daniels have moved to privatize state road assets. In Virginia and South Carolina, officials have suggested adding new tolls to existing interstates, which is not allowed under current federal law, with narrow exceptions.

Yarema said the new DOT secretary should consider widening those exceptions to give innovative state officials some room to run.

“If local officials are brave enough to come out in support of tolling, the federal government needs to meet them halfway,” Yarema said.

LaHood’s successor will also face industry pressure to streamline funds available under the Transportation Infrastructure Finance and Innovation Act. TIFIA, which provides low-cost loans to infrastructure projects, was expanded eightfold by Congress last year, from \$122 million per year to about \$1 billion — a level that could support about \$10 billion in new projects.

But it has been slow to ramp up, and applicants are being told to expect less than the maximum 49 percent available under the program, Yarema said. TIFIA also switched from a merit-based application process to a “first-come, first-served” one, with some growing pains, experts said.

“The administration needs to say loudly that it will do everything to maximize usage of TIFIA,” he said.

A host of other issues will face LaHood’s successor.

High-speed rail, a pet project for LaHood and the Obama White House, is floundering in California. Amtrak’s federal subsidies are up for reauthorization. East Coast ports are scrambling to dredge their harbors to accommodate bigger ships in advance of a deepening of the Panama Canal — and squabbling with the Army Corps of Engineers, which oversees harbor maintenance funding.

“To his credit, Secretary LaHood was very open to new ideas, and he should be commended for thinking outside the box,” Lemon said. “Those ideas are now moving toward implementation, and that’s where it gets really tough.”

--Editing by Kat Laskowski and Richard McVay.