

THE LEGISLATIVE SERVICES GROUP'S

Transportation Weekly

MONITORING AND ANALYZING DEVELOPMENTS IN FEDERAL TRANSPORTATION AND PUBLIC WORKS POLICY

Volume 10, Issue 11

Tuesday, February 17, 2009

Legislative Schedules
Week of February 16, 2009

The House and Senate are not in session this week due to the President's Day District Work Period.

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President To Sign Stimulus Bill Today

\$790.1 Billion Bill Provides \$48.1 Billion to USDOT; \$10.6 Billion for Water Infrastructure Projects; \$1.5 Billion for DHS Transportation Programs

President Obama is expected to sign into law the \$790.1 billion economic stimulus bill at 2:40 p.m. EST today in Denver, Colorado.

The House passed the bill (H.R. 1) on February 13 by a vote of 246 to 183 (with one member voting "present"), and the Senate followed suit later that evening, passing the bill by a vote of 60 to 38.

When the President signs the bill, it should become Public Law 111-5.

The date of enactment (February 17) is of importance because there are numerous deadlines pertaining to funds provided by the bill that are based on the date of enactment.

The formula funds for highways and mass transit, for example, must be apportioned to states and localities within 21 days of enactment — in other words, by Tuesday, March 10.

States then have 120 days from the apportionment date to obligate the first half of their highway funding and one year from the apportionment date to obligate the remaining funds.

A schedule of all of the transportation "use it or lose it" dates appears on page 12 of this issue.

The votes last Friday were an anticlimax of sorts, capping a week of furious negotiations between House and Senate



Over \$790 billion in economic stimulus, in the absence of any new revenues, basically amounts to the government printing that much extra money.

Democratic leaders, three moderate Republican Senators, and a White House which weighed in with a fairly detailed spending plan at the eleventh hour.

With significant differences between the House

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Omnibus Appropriations For FY09 Due Next Week

Now that the \$790 billion economic stimulus bill has cleared Congress, the House and Senate must finish enacting roughly \$408 billion in regular appropriations for fiscal year 2009.

When the 110th Congress adjourned last year, it left nine of the twelve regular appropriations bills for 2009

incomplete. (Just Defense, Homeland Security, and Military Construction/VA made it into law).

Over December and January, the House and Senate Appropriations Committees negotiated an omnibus package containing the other nine bills, which has sat locked away in a box somewhere as all atten-

tion turned to the stimulus bill.

Now, as President Obama prepares to unveil his fiscal year 2010 budget request next Tuesday, Congress must close out 2009. The House and Senate face a deadline of March 6, the date on which the present continuing resolution (CR) providing stopgap funding

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Senate Stimulus

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and Senate versions of the bill, the negotiators had a lot to work through, and it is a certainty that no bill or combination of bills costing \$790.1 billion have ever been ironed out in so short a period of time.

(*Ed. Note:* The difference between the \$790.1 billion total, above, and the \$787.2 billion shown in other news outlets and the table at right is that the \$787.2 billion total is the net 10.5-year deficit impact of the bill as estimated by the Congressional Budget Office. That number does not include \$2.9 billion appropriated by the final bill that, according to CBO, will not be spent until FY 2020 or afterwards. This \$2.9 billion includes \$65 million of the high-speed and intercity passenger rail funding. If you believe that the \$8 billion rail appropriation is really \$8 billion, then the final bill is really \$790.1 billion, not \$787.2 billion.)

Narrative. The dealmaking accelerated on Tuesday, February 10. The Senate passed its long-awaited version of H.R. 1 at about 12:45 p.m. and under a previous agreement, the Senate automatically requested a conference with the House and named conferees.

As soon as the House came into session for legislative business that day, at 2 p.m., the House moved to agree to a conference. By 4:30 p.m., the House had named conferees and voted to instruct them to let a final conference agreement sit out in public for 48 hours before they signed a conference report (instructions that everyone in the chamber knew the conferees would almost certainly ignore).

From this point onwards — the official naming of both sets of conferees at 4:30 p.m. on Tuesday — a feverish 54 hours of work by legislators and staff commenced.

It was at around this point that the staffs of the Appropriations Committees were instructed to work out

10.5-Year Net Deficit Impact of Stimulus Bill (H.R. 1) (Billions of Dollars)

	Total Cost	Tax cuts (Net)	Outlays (Approp.)	Outlays (Direct)
House bill	819.5	182.3 22%	358.8 44%	278.5 34%
Senate bill	838.1	292.5 35%	286.8 34%	258.8 31%
Conference	787.2	211.9 27%	308.3 39%	267.0 34%

all bill language issues (all of the provisos, funding conditions, deadlines, and general provisions) in Division A of the bill on their own, if possible, while the larger issues of funding levels for agencies and accounts would be worked out in the negotiations between the chairmen, the leadership, the White House, and Senators Collins, Snowe and Specter.

A sleepless evening ensued for the staff (working through the lower-tier issues, working upwards) and some members (trying to settle on a big picture framework that would get 60 votes in the Senate, plus giving guidance on lower-priority issues that percolated up from the staff level to the member level).

At some point during the long sleepless evening/night, a ten-page document came over from the White House based on the negotiations between White House chief of staff Rahm Emanuel, the White House budget office, the leadership and senior appropriators, and the three moderate Senate Republicans.

The White House document had a somewhat detailed list of agencies and accounts, with dollar totals (rounded off at the ten million dollar level).

Some of the numbers in the White House document forced the appropriators to make tough decisions. For example, the White House indicated that the total combined spending level it would accept for highways and the new discretion-

ary surface transportation grants for the Secretary of Transportation was \$29.0 billion. This forced the compromise between the House (which had \$30.0 billion for highways and no discretionary grants) and the Senate (which had \$27.0 billion in highways and \$5.5 billion in discretionary grants). In order to meet the White House target, they split the baby, resulting in \$27.5 billion for highways and \$1.5 billion for discretionary grants.

The White House paper capped total appropriations for the Federal Transit Administration at \$8.4 billion, forcing a consolidation of different appropriations accounts under that overall number.

And the document simply said “Corps of Engineers — 4.6”, leaving the specific differences between the House and Senate bills and the seven different appropriations accounts that fund the Corps water program up to the appropriators.

Some of the items in the White House list were not present in either the House or Senate version but made it in as appropriators deferred to White House wishes. For example, the document said “DOT/Amtrak Rail Security — 0.45” even though funding for Amtrak security is handled through the Department of Homeland Security through an existing grant program, not through DOT. DOT got the money in the final bill.

Some errors in the White House document were so egregious that

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Senate Stimulus

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they had to be corrected — for example, the document suggested that TSA aviation security was still the province of DOT, not DHS.

And one number in the White House plan in particular was so unusual that it had to be reduced. The document as sent down from the White House said “DOT/High Speed Rail/Passenger Rail Grants to States — 10.00”.

The funding for high-speed rail (said by Emanuel to be a top personal priority of President Obama in the bill) was only funded at \$2 billion in the Senate version of the bill and received no funding at all in the House bill.

The conferees decided to knock down the White House’s \$10 billion rail request to a more reasonable but still stupendously high \$8 billion in the final conference report.

After working through the night on Tuesday night, the conferees had a framework by Wednesday morning and were then reduced to trying to knock out a handful of the most sensitive issues (school construction money being foremost among these)

in time for a planned 3 p.m. meeting of House and Senate conferees to “bless the deal.”

The 3 p.m. Wednesday conference got delayed to 5:30 p.m. that day after a preemptive public announcement of a deal by Senate Majority Leader Reid at 2:30 p.m. left House Democratic leaders miffed over school construction.

After the conferees held their brief, opening-statements-only public conference meeting required by House rules, the staff resumed working on drafting the legislative language of the conference agreement. Many of the staff pulled a second consecutive all-nighter.

Thursday morning at 9 a.m., the appropriations staffs met by subcommittee to “read out” the (hopefully) final text of their portions of the bill to ensure that all of the dollar amounts and legislative language written into the bill corresponded with the deals struck by the staff and their principals.

The leadership hoped that the conference report could be formally

Appropriations, by Subcommittee (BA, in billions)

	House	Senate	Final
Agriculture	27.0	21.1	26.5
Commerce-Justice-Science	14.2	17.9	15.9
Defense	4.9	3.7	4.6
Energy and Water	48.9	52.8	50.8
Financial Services	8.8	7.0	6.9
Homeland Security	1.1	4.7	2.8
Interior and Environment	14.8	11.1	11.0
Labor-HHS-Education	171.4	105.8	126.2
Legislative Branch	0.0	0.0	0.0
Military Construction-VA	7.0	7.4	4.3
State - Foreign Operations	0.5	0.6	0.6
Transportation-HUD	62.5	57.1	61.8
Total, Appropriations	361.0	289.3	311.2

filed in the House and sent to GPO for printing by 3 p.m. on Thursday, but that kept slipping until the conference report was finally filed at 10:25 p.m. on Thursday (it was House Report 111-16).

This allowed the Appropriations staffs to go home and sleep. (The staff of the Government Printing Office, of course, had to stay up all night printing the Thursday *Congressional Record* in which the text of the conference report appeared.)

In the interim, the House Rules Committee met at 10:30 p.m. to issue a rule waiving the Budget Act and other rules against the conference report. The House convened

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U.S. Department of Transportation

Admin. Account	House Passed	Senate Amend.	Conference
OST Competitive surface transportation grants	\$ -	\$ 5,500,000,000	\$ 1,500,000,000
FAA Facilities and equipment	\$ -	\$ 200,000,000	\$ 200,000,000
FAA Airport improvement grants	\$ 3,000,000,000	\$ 1,100,000,000	\$ 1,100,000,000
FHWA Highways and bridges	\$ 30,000,000,000	\$ 27,060,000,000	\$ 27,500,000,000
FRA High-speed and intercity passenger rail grants	\$ 300,000,000	\$ 2,250,000,000	\$ 8,000,000,000
Intercity passenger rail (normal speed)	\$ 300,000,000	\$ 250,000,000	not specified
High-speed rail development	\$ -	\$ 2,000,000,000	not specified
FRA Grants to Amtrak	\$ 800,000,000	\$ 850,000,000	\$ 1,300,000,000
Amtrak capital and debt service	\$ 800,000,000	\$ 850,000,000	\$ 850,000,000
Amtrak security upgrades	\$ -	\$ -	\$ 450,000,000
FTA Transit formula grants	\$ 7,500,000,000	\$ 8,400,000,000	\$ 6,900,000,000
Formula grants: Urbanized area formula	\$ 6,750,000,000	\$ 5,822,000,000	\$ 5,440,000,000
Formula grants: Nonurbanized area formula	\$ 750,000,000	\$ 820,000,000	\$ 680,000,000
Formula grants: Dense/fast growth formula	\$ -	\$ 1,558,000,000	\$ 680,000,000
Discretionary grants for energy efficiency	\$ -	\$ 200,000,000	\$ 100,000,000
FTA Transit fixed guideway modernization grants	\$ 2,000,000,000	\$ -	\$ 750,000,000
FTA Transit new starts	\$ 2,500,000,000	\$ -	\$ 750,000,000
MARAD Assistance to small shipyards	\$ -	\$ 100,000,000	\$ 100,000,000
OIG Office of Inspector General	\$ 20,000,000	\$ 7,750,000	\$ 20,000,000
Total, USDOT	\$ 46,120,000,000	\$ 45,467,750,000	\$ 48,120,000,000

Senate Stimulus

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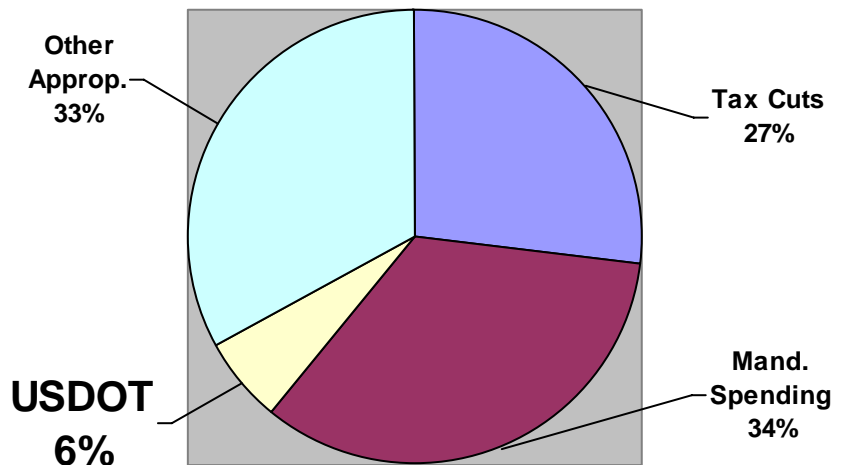
at 9 a.m. on Friday and promptly began consideration of the conference report. After debate and some procedural votes, the House passed the conference report, as expected, at 2:24 p.m. on Friday, allowing House members to leave town for the President's Day recess.

While the timing of the House vote hinged on how fast the House could get things done, the timing of the Senate vote depended on a variety of things:

- The need to muster no less than 60 votes to waive the Budget Act's prohibition against the deficit increases caused by the bill (the vote to pass the Senate version of the bill on Tuesday was 61 to 37, with all 58 Democrats present and voting "yes");
- The growing certainty that no more than three Republicans would vote for the conference report;
- The absence of Sen. Ted Kennedy (D-MA), who voted for the bill on Tuesday, due to illness;
- The need for Sen. Joe Lieberman (ID-CT) to be home by sundown for the Sabbath; and
- The wake for Sen. Sherrod Brown's (D-OH) late mother Friday afternoon in Ohio.

In order to satisfy all of these concerns, Reid started the final vote at 5:30 p.m. on Friday, allowing Lieberman and others to vote quickly and then run home, then kept the vote open for more than five hours,

HOW TO DIVIDE UP \$787 BILLION...



until Brown could arrive from Ohio via military jet and cast the 60th and final vote at 10:45 p.m.

Summary. The transportation and infrastructure provisions of the final stimulus bill are, for the most part, funding increases for existing programs about which much is already known.

There are two glaring exceptions — the \$8 billion for high-speed and intercity passenger rail grants, and the \$1.5 billion for discretionary surface transportation grants to be given out by the Secretary of Transportation.

Discretionary grants. First, the discretionary grants. These were a top priority of Sen. Patty Murray (D-WA), the chairman of the Senate's Transportation-HUD Appropriations Subcommittee and principal

author of the transportation parts of the Senate bill.

The new program, funded at \$5.5 billion in the Senate version of the bill and \$1.5 billion in the final version, is multimodal — the Secretary can select projects for highways, bridges, mass transit, passenger or freight rail, and port infrastructure, or some combination thereof, at a federal cost share of 100 percent.

The program is also geared towards larger projects — there is a minimum grant size of \$20 million (though that is easily waivable by the Secretary) and a maximum grant size of \$300 million, together with a limitation on the total funding going to any one state being no more than 20 percent of the total appropriation (also \$300 million).

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Congressional Budget Office Estimate of Spendout Rate of Transportation Spending in Stimulus (H.R. 1) Conference Report

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	10.5-Year
Highways												
Budget Authority	27,500	-	-	-	-	-	-	-	-	-	-	27,500
Outlays	2,750	6,875	5,500	4,125	3,025	2,750	1,925	550	-	-	-	27,500
Spendout rate	10.0%	25.0%	20.0%	15.0%	11.0%	10.0%	7.0%	2.0%	0.0%	0.0%	0.0%	100.0%
Other DOT												
Budget Authority	20,620	-	-	-	-	-	-	-	-	-	-	20,620
Outlays	2,232	2,511	3,285	2,910	3,027	2,672	1,987	1,051	400	320	160	20,555
Spendout rate	10.8%	12.2%	15.9%	14.1%	14.7%	13.0%	9.6%	5.1%	1.9%	1.6%	0.8%	99.7%
Total, DOT												
Budget Authority	48,120	-	-	-	-	-	-	-	-	-	-	48,120
Outlays	4,982	9,386	8,785	7,035	6,052	5,422	3,912	1,601	400	320	160	48,055
Spendout rate	10.4%	19.5%	18.3%	14.6%	12.6%	11.3%	8.1%	3.3%	0.8%	0.7%	0.3%	99.9%

Senate Stimulus

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(Ed. Note: We are taking bets on how large a fraction of the \$300 million ceiling will go to Murray's Alaska Way Viaduct megaproject in Seattle.)

In order to leverage larger amounts of funding, the Secretary may use up to \$200 million of the \$1.5 billion for credit assistance as under the TIFIA innovative finance program (subtitle VI of title 23 U.S.C.). This being a new program, the money will be slow to spend out because the rules of the game need to be created from scratch. The bill gives the Secretary 90 days from enactment to publish criteria for how the selection process will be conducted. The bill directs the Secretary to make geographically diverse selections and to give preference to projects that can be completed within three years of the bill's enactment.

All applications for aid must be submitted to DOT within 180 days of enactment, and the Secretary must award all the funding to recipients within one year of enactment. Recipients then have until September 30, 2011 to legally obligate the funds or the money lapses.

This represents a significant change in the attitude of Congress. Two years ago, when the endgame of the FY 2007 appropriations process led to that fiscal year being completely funded by a continuing resolution that contained no Congressional earmarks, DOT found itself with close to a billion dollars in unexpectedly discretionary money. The Department funneled all that money into its Urban Partnership Agreements and bundled the money to just five cities, creating a firestorm of criticism on Capitol Hill from legislators who preferred to see that money split up hundreds of different ways. Now that Obama is President and Ray LaHood is Secretary, Congress is apparently willing to forgive and forget on this issue.

High-speed rail. With regards to the \$8 billion in high-speed and intercity passenger rail funding, it is impossible to overstate how big a sea change this represents. The twin tables at the bottom of this page put the \$8 billion in perspective.

The table at left shows that \$8 billion is seventeen times as much money as Congress has provided for these programs over the past ten fiscal years. The table at right shows how \$8 billion is an almost six thousand percent increase over the amount of money expected to be

appropriated for these programs in the regular FY 2009 budget in the omnibus appropriations bill that will be unveiled and considered by Congress next week.

As if this were not enough, word now comes down from the White House that in addition to the \$8 billion in up-front money, the President will request an additional \$1 billion per year in 2010 and beyond in his regular budget request due next Tuesday.

The \$8 billion appropriation goes to fund several new programs established or expanded in last year's Amtrak reauthorization bill. Specifically, funds are appropriated for:

- The high-speed rail corridor program under sec. 501 of Public Law 110-432 (technically, the bill does not clarify which sec. 501 in the law gets the money — the sec. 501 in Division B of the law is high-speed rail, but the sec. 501 in Division A of the law is NTSB assistance to families of rail crash victims — we'll just assume they meant the high-speed rail until they can get the citation corrected);
- Intercity passenger rail capital projects under paragraphs (2)(A) and (2)(B) of 49 U.S.C. 24401, as added by sec. 301 of Division B of P.L. 110-432; and

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\$8 BILLION FOR RAIL: TWO WAYS OF LOOKING AT IT...

	High-Speed	Intercity Pass.	Magnetic Levitation	Total
FY 1999	20,494	-	15,000	35,494
FY 2000	27,097	-	20,000	47,097
FY 2001	25,045	-	25,000	50,045
FY 2002	32,300	-	-	32,300
FY 2003	30,252	-	-	30,252
FY 2004	37,179	-	-	37,179
FY 2005	19,943	-	-	19,943
FY 2006	-	-	-	-
FY 2007	-	-	-	-
FY 2008	-	30,000	45,000	75,000
FY 2009	-	90,000	45,000	135,000
Total, Regular	192,310	120,000	150,000	462,310
Stimulus Bill				8,000,000
Multiplier:				17 times greater

	Billions	Boost
FY 2009 Airport Grants	3.5	
Stimulus for Airport Grants	1.1	+31%
FY 2009 Highway Obligations	41.9	
Stimulus for Highways	27.5	+66%
FY 2009 Mass Transit Obligations	10.3	
Stimulus for Mass Transit	8.4	+82%
FY 2009 Amtrak Subsidies	1.5	
Stimulus for Amtrak Subsidies	1.3	+87%
FY 2009 Intercity & Hi-Speed Rail	0.135	
Stimulus for IPR & Hi-Speed	8.000	+5926%

Senate Stimulus

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- Congestion reduction grants under 49 U.S.C. 24105(b), as added by sec. 302 of Division B of P.L. 110-432.

Last year's rail law was thought to be exceedingly ambitious, yet the authorization ceilings set by the law for the three programs mentioned above only added up to \$3.7 billion over five years — less than half of the new one-time stimulus appropriation for the programs.

Because of the newness of these programs, the deadlines for DOT to make use of the money are quite a ways off. Assuming the bill is signed into law today, by April 18, the Secretary must submit to Congress a "strategic plan" for how he intends to handle the program. By June 17, FRA must publish interim regulations governing the program, which must contain separate application procedures for each of the three types of grant listed above.

The stimulus bill waives the requirement in existing law that all projects be on a state rail plan. It is important to note that the bill gives no deadline for FRA to make project awards, and none of the \$8

billion even has to be legally obligated (much less actually spent) before September 30, 2012.

The federal share of all projects is 100 percent, and of course, the Davis-Bacon Act and the Buy America provisions found in 49 U.S.C. 24405 (as enacted by sec. 301 of Division B of P.L. 110-432) apply to the \$8 billion.

Highways. With regard to the \$27.5 billion in highway and bridge formula funding in the bill, there's not much new to tell. The Senate bill wanted to apportion the money via the STP formula, while the House bill used the obligation limitation formula (which gives more of a benefit to states with equity bonus sinecures). The conference report splits the baby and apportions half of the money via STP and half using the House formula.

Functionally, however, both halves are identical. Any project that is STP-eligible (the broadest funding category, found in 23 U.S.C. 133(b)) is eligible for a share of the \$27.5 billion. But so are "passenger and freight rail transportation and port infrastructure projects."

30 percent of each state's total (\$8 billion national total) must be sub-allocated within the state on the basis of population, and three per-

cent must be set aside for transportation enhancements (bike paths, beautification, etc.)

After much dispute, the final "use it or lose it" deadlines for the highway funding are 120 days for the first half of the money (the same as in the original House committee bill) and 1 year for the remainder. The 30 percent sub-allocated money is not subject to the 120-day rule.

Transit. The \$8.4 billion cap insisted on by the White House led to a sharp reduction in the new start and fixed guideway modernization funds appropriated by the House — from \$2.5 billion each to \$750 million each. \$6.9 billion goes to transit capital formula grants.

The final bill does not contain the general provision from the Senate bill that would have raised the "contingent commitment" funding ceiling for new starts found in the SAFETEA-LU law. The Senate sought the change in order to accommodate the two New York-New Jersey tunnel megaprojects in the works. However, by simply appropriating more money for new starts, the bill has the effect of increasing the contingent commitment cap (but not by as much as the Senate wanted.)

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U.S. Department of Homeland Security

Admin.	Account	House Passed	Senate Amend.	Conference
DHS	Under Sec. for Management (new HQ)	\$ -	\$ 198,000,000	\$ 200,000,000
DHS	Office of Inspector General	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
CBP	Salaries and expenses (sea port EDS)	\$ 100,000,000	\$ 198,000,000	\$ 160,000,000
CBP	Border security fencing	\$ -	\$ 200,000,000	\$ 100,000,000
CBP	Construction (land ports of entry)	\$ 150,000,000	\$ 800,000,000	\$ 420,000,000
ICE	Automation modernization	\$ -	\$ 27,800,000	\$ 20,000,000
TSA	Aviation security (EDS/checkpoints)	\$ 500,000,000	\$ 1,000,000,000	\$ 1,000,000,000
USCG	Acquisition, construction & improvements	\$ -	\$ 450,000,000	\$ 98,000,000
USCG	Alteration of bridges	\$ 150,000,000	\$ 240,400,000	\$ 142,000,000
FEMA	Management and administration	\$ -	\$ 6,000,000	\$ -
FEMA	State and local programs	\$ -	\$ 950,000,000	\$ 300,000,000
	<i>S&LP: Transit and rail security grants</i>	\$ -	\$ 100,000,000	\$ 150,000,000
	<i>S&LP: Port security grants</i>	\$ -	\$ 100,000,000	\$ 150,000,000
	<i>S&LP: Emergency operations centers</i>	\$ -	\$ 250,000,000	\$ -
	<i>S&LP: Critical infrastructure grants</i>	\$ -	\$ 500,000,000	\$ -
FEMA	Firefighter assistance grants	\$ -	\$ 500,000,000	\$ 210,000,000
FEMA	Emergency food and shelter	\$ 200,000,000	\$ 100,000,000	\$ 100,000,000
FLETC	Acquisition, construction & improvements	\$ -	\$ 15,000,000	\$ -
Total, USDHS		\$ 1,102,000,000	\$ 4,690,200,000	\$ 2,755,000,000

Senate Stimulus

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There is also a \$150 million appropriation in the DHS title for additional transit security and railroad security assistance grants.

Amtrak. The final bill appropriates \$1.3 billion for Amtrak. \$850 million is for capital, as under the Senate bill. The total amount of the \$850 million that can be used for projects on the Northeast Corridor is 60 percent (\$510 million).

The other \$450 million was the surprise appropriation for "capital security grants" normally funded by the Department of Homeland Security.

Aviation. The final bill appropriates an extra \$1.1 billion for airport improvement grants (discretionary, not formula) through the FAA at an explicit 100 percent federal share (the House bill was vague on the federal share). Half must be awarded by FAA within 120 days of enactment and the remainder must be awarded within one year of enactment.

The bill appropriates \$200 million for FAA air traffic control system upgrades and procurement.

The bill appropriates an extra \$1 billion for the Transportation Security Administration's ongoing program to procure and install explosive detection systems (EDS) at airports, with priority given to installations with completed design plans.

Water — navigation and flood control. The final bill appropriates \$4.6 billion for the water resources programs of the U.S. Army Corps of Engineers, in line with the Senate total (see table, below).

Maritime. The bill appropriates \$142 million for the Coast Guard's alteration of bridges program established by Sen. Harry Truman and \$98 million for procurement (but no money for new vessels, only repairing old ones). The bill appropriates \$100 million for the Maritime Administration's program to aid small shipyards (subject to use-it-or-lose-it requirements).

Security-wise, the bill appropriates an additional \$150 million for DHS port security grants and also appropriates \$100 million for non-intrusive detection systems at U.S. ports.

Water — wastewater and drinking water. The final bill appropriates \$6 billion to the Environmental Pro-

tection Agency to capitalize state revolving funds for water treatment plants — \$4 billion for wastewater plants and \$2 billion for drinking water plants.

Taxes. The final bill contains the Build America bonds, the modification of the AMT exemption for tax-exempt bonds, the increase in transit benefits for commuters, and the one-year delay in the three percent withholding requirement. It also contains a John Kerry (D-MA) provision to allow rail projects on the Northeast Corridor north of NYC to issue high-speed rail private facility bonds even though they can't sustain speeds of over 100 mph..

The following six pages contain extra information on the transportation funding in the final stimulus bill. Pages 8-9 explain the distribution of highway formula funding to states; pages 10-11 explain the distribution of mass transit formula funding to transit agencies and states; page 12 lays out all the "use it or lose it" deadlines for transportation funding; page 12 also explains the state "maintenance of effort" provisions relating to these funds; and page 13 explains the transportation-related tax provisions in the conference report.

U.S. Army Corps of Engineers (Civil Works)

Admin. Account	House Passed	Senate Amend.	Conference
USACE Investigations	\$ -	\$ 25,000,000	\$ 25,000,000
USACE Construction	\$ 2,000,000,000	\$ 2,000,000,000	\$ 2,000,000,000
USACE Mississippi River and tributaries	\$ 250,000,000	\$ 500,000,000	\$ 375,000,000
USACE Operation and maintenance	\$ 2,225,000,000	\$ 1,900,000,000	\$ 2,075,000,000
USACE Regulatory program	\$ 25,000,000	\$ 25,000,000	\$ 25,000,000
USACE Formerly utilized sites (cleanup)	\$ -	\$ 100,000,000	\$ 100,000,000
USACE Flood control and coastal emergencies	\$ -	\$ 50,000,000	\$ -
Total, USACE (Civil)	\$ 4,500,000,000	\$ 4,600,000,000	\$ 4,600,000,000

Environmental Protection Agency

Admin. Account	House Passed	Senate Amend.	Conference
EPA Hazardous substance Superfund	\$ 800,000,000	\$ 600,000,000	\$ 600,000,000
EPA LUST trust fund	\$ 200,000,000	\$ 200,000,000	\$ 200,000,000
EPA State and tribal assistance grants	\$ 8,400,000,000	\$ 6,400,000,000	\$ 6,400,000,000
STAG: Clean Water State Revolving Funds	\$ 6,000,000,000	\$ 4,000,000,000	\$ 4,000,000,000
STAG: Drinking Water State Revolving Funds	\$ 2,000,000,000	\$ 2,000,000,000	\$ 2,000,000,000
STAG: Brownfields remediation grants	\$ 100,000,000	\$ 100,000,000	\$ 100,000,000
STAG: Diesel emission reduction grants	\$ 300,000,000	\$ 300,000,000	\$ 300,000,000
EPA Office of the Inspector General	\$ -	\$ -	\$ 20,000,000
Total, EPA	\$ 9,400,000,000	\$ 7,200,000,000	\$ 7,220,000,000

Highway Spending in the Final Stimulus Conference Report

TOTAL: \$27.50 BILLION

General fund appropriation for "restoration, repair, construction and other activities eligible under [23 U.S.C. 133(b)] and for passenger and freight rail transportation and port infrastructure projects eligible for assistance under [23 U.S.C. 601(a)(8)]"; to remain available for obligation until September 30, 2010. All funds have a 100 percent federal share and require no state or local matching funds.

SUBTRACT: \$840 MILLION

\$550 million for roads on federal lands and Indian reservations
 \$20 million for on-the-job training under 23 U.S.C. 140(b)
 \$20 million for DBE bonding assistance under 23 U.S.C. 332(e)
 \$40 million for FHWA administrative expenses
 \$60 million for ferry boats and terminal facilities
 \$150 million for highways in Puerto Rico and other territories

REMAINING: \$26.66 BILLION

To be apportioned to states within 21 days of enactment — Half in the same percentages as the distribution of formula obligation limitation to states in fiscal year 2008, half in the same percentages as the apportionment of FY 2009 surface transportation program (STP) funding. Each state must then split its combined apportionment three ways as follows:

67 PERCENT (\$17.86 Billion)

May be used at state DOT discretion for any eligible project under the conditions set out above. Half must be obligated within 120 days of apportionment or it will be redistributed to other states; the other half must be obligated within one year of apportionment or it will be redistributed to other

30 PERCENT (\$8.00 Billion)

Must be suballocated to individual areas within a state by population under 23 U.S.C. 133(d) and placed under MPO control. All funds must be obligated within one year of apportionment or all unobligated funds will be withdrawn and redistributed to other states.

3 PERCENT (\$800 Million)

Is set aside for transportation enhancements under section 133(d)(2) of title 23 U.S.C. (without the reference to FY 2005 funding levels). Half must be obligated within 120 days of apportionment or it will be redistributed to other states; the other half must be obligated within one year of apportionment or it will be redistributed to other states.

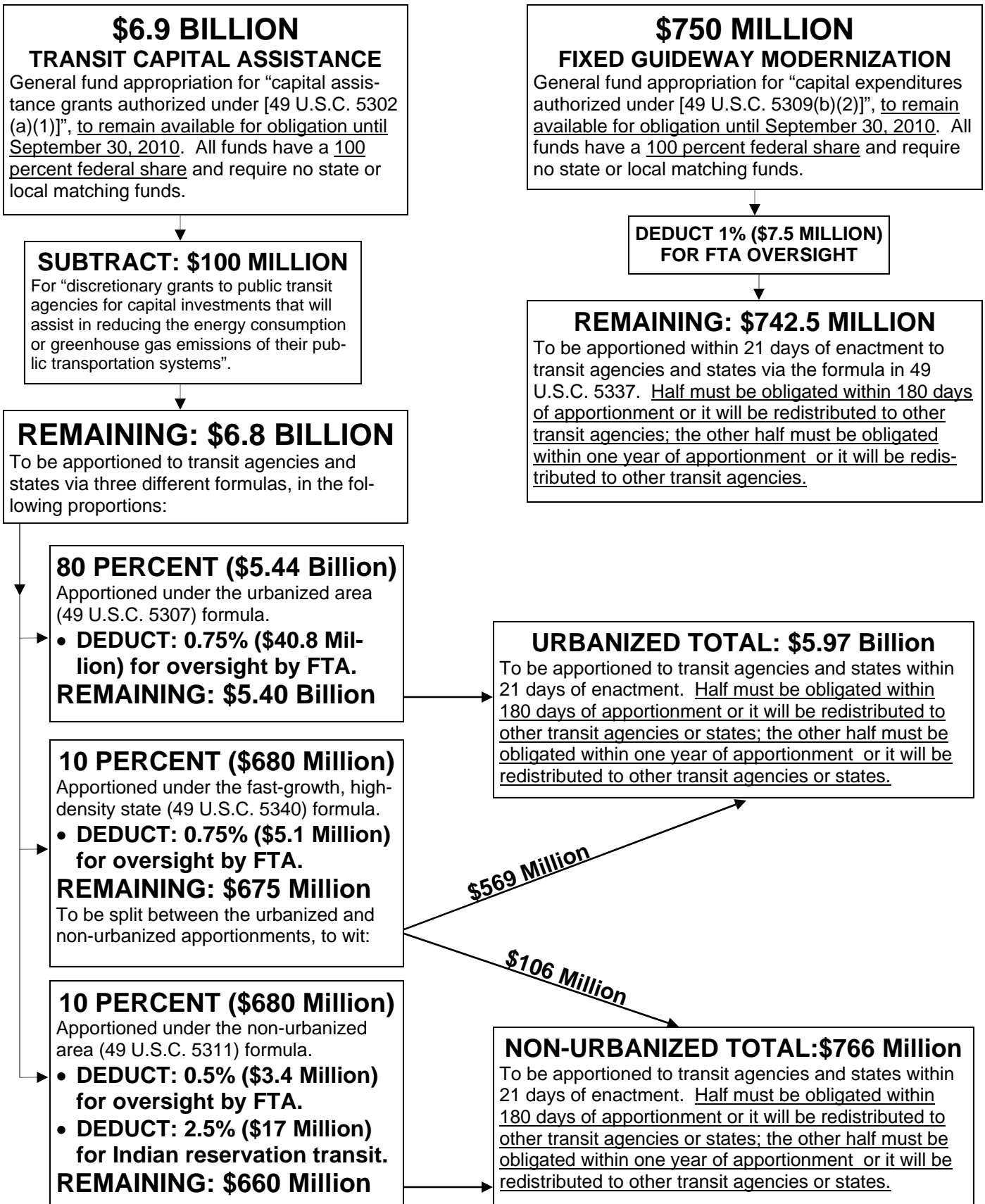
HIGHWAY FORMULA FUNDING IN THE FINAL STIMULUS CONFERENCE REPORT

(Dollar amounts in thousands of dollars)

	House	Senate	Final	Breakdown of Final		
				At State Discretion	Sub-Alloc. By Pop.	Transp. Enhancem.
Total highway appropriation	30,000,000	27,060,000	27,500,000			
Set-aside for Indian reservation roads:	300,000	320,000	310,000			
Set-aside for National park roads:	250,000	100,000	170,000			
Set-aside for forest highways:	-	70,000	60,000			
Set-aside for refuge roads:	-	10,000	10,000			
Set-aside for ferry boats:	-	60,000	60,000			
Set-aside for FHWA admin./other:	100,000	12,000	80,000			
Set-aside for Puerto Rico/territories:*	154,207	132,440	150,000			
Remainder, to be apportioned:	29,195,793	26,355,560	26,660,000			
ALABAMA	559,666	510,389	513,692	344,174	154,108	15,411
ALASKA	238,322	132,440	175,461	117,559	52,638	5,264
ARIZONA	586,554	502,431	521,958	349,712	156,588	15,659
ARKANSAS	370,303	360,744	351,544	235,535	105,463	10,546
CALIFORNIA	2,796,972	2,554,368	2,569,568	1,721,611	770,870	77,087
COLORADO	412,851	425,788	403,924	270,629	121,177	12,118
CONNECTICUT	391,354	243,836	302,054	202,376	90,616	9,062
DELAWARE	120,854	132,440	121,829	81,625	36,549	3,655
DIST. OF COL.	124,532	132,440	123,508	82,750	37,052	3,705
FLORIDA	1,461,783	1,342,640	1,346,735	902,312	404,021	40,402
GEORGIA	1,045,903	897,639	931,586	624,162	279,476	27,948
HAWAII	129,435	132,440	125,746	84,250	37,724	3,772
IDAHO	216,573	164,198	181,935	121,896	54,580	5,458
ILLINOIS	1,001,676	945,433	935,593	626,847	280,678	28,068
INDIANA	746,339	627,201	657,968	440,838	197,390	19,739
IOWA	353,045	389,443	358,162	239,969	107,449	10,745
KANSAS	317,232	401,224	347,817	233,038	104,345	10,435
KENTUCKY	457,310	419,755	421,095	282,134	126,328	12,633
LOUISIANA	470,649	425,063	429,859	288,006	128,958	12,896
MAINE	138,665	133,323	130,752	87,604	39,226	3,923
MARYLAND	478,655	419,971	431,035	288,793	129,310	12,931
MASSACHUSETTS	506,364	408,468	437,865	293,370	131,360	13,136
MICHIGAN	875,167	884,624	847,205	567,627	254,161	25,416
MINNESOTA	477,633	561,776	502,284	336,530	150,685	15,069
MISSISSIPPI	353,025	382,311	354,564	237,558	106,369	10,637
MISSOURI	688,320	638,286	637,122	426,872	191,137	19,114
MONTANA	277,453	168,286	211,793	141,902	63,538	6,354
NEBRASKA	230,261	257,910	235,589	157,845	70,677	7,068
NEVADA	217,736	201,570	201,352	134,906	60,406	6,041
NEW HAMPSHIRE	137,526	132,440	129,441	86,725	38,832	3,883
NEW JERSEY	777,809	586,516	651,774	436,689	195,532	19,553
NEW MEXICO	281,159	245,711	252,644	169,272	75,793	7,579
NEW YORK	1,354,887	992,306	1,120,685	750,859	336,205	33,621
NORTH CAROLINA	802,259	729,907	735,527	492,803	220,658	22,066
NORTH DAKOTA	194,498	160,775	170,126	113,985	51,038	5,104
OHIO	1,036,087	914,599	935,677	626,904	280,703	28,070
OKLAHOMA	464,228	499,512	464,655	311,319	139,397	13,940
OREGON	349,352	344,745	333,902	223,715	100,171	10,017
PENNSYLVANIA	1,254,267	897,061	1,026,429	687,707	307,929	30,793
RHODE ISLAND	154,292	132,440	137,096	91,854	41,129	4,113
SOUTH CAROLINA	479,859	482,315	463,081	310,265	138,924	13,892
SOUTH DAKOTA	198,689	182,487	183,027	122,628	54,908	5,491
TENNESSEE	613,114	578,765	572,701	383,710	171,810	17,181
TEXAS	2,420,703	2,263,163	2,250,015	1,507,510	675,005	67,500
UTAH	221,325	222,407	213,546	143,076	64,064	6,406
VERMONT	129,533	132,440	125,791	84,280	37,737	3,774
VIRGINIA	745,537	699,909	694,461	465,289	208,338	20,834
WASHINGTON	529,547	495,070	492,242	329,802	147,673	14,767
WEST VIRGINIA	243,473	197,039	210,852	141,271	63,256	6,326
WISCONSIN	563,779	537,075	529,112	354,505	158,734	15,873
WYOMING	199,237	132,440	157,616	105,603	47,285	4,728
TOTAL	29,195,793	26,355,560	26,660,000	17,862,200	7,998,000	799,800

Source: Federal Highway Administration.

Transit Formula Funding in the Final Stimulus Conference Report



COMPARISON OF TRANSIT FORMULA FUNDING APPORTIONMENTS BY STATE IN THE STIMULUS BILLS - INCLUDES FIXED GUIDEWAY MODERNIZATION FORMULA

State	HOUSE	SENATE	FINAL	BREAKDOWN OF FINAL		
	Total	Total	Total	5307 Urban Formula	5311 Rural Formula	5337 Fixed Guideway
Alabama	\$ 48,924,912	\$ 58,472,258	\$ 46,459,047	\$ 26,609,271	\$ 19,849,776	\$ -
Alaska	\$ 75,298,335	\$ 46,927,830	\$ 41,632,703	\$ 32,548,813	\$ 9,083,890	\$ -
Arizona	\$ 117,257,046	\$ 119,154,367	\$ 100,561,948	\$ 85,739,224	\$ 14,182,654	\$ 640,070
Arkansas	\$ 29,478,938	\$ 36,151,414	\$ 28,409,450	\$ 13,270,300	\$ 15,139,150	\$ -
California	\$ 1,482,870,793	\$ 1,134,529,952	\$ 1,068,448,693	\$ 968,313,638	\$ 33,963,166	\$ 66,171,889
Colorado	\$ 130,014,342	\$ 119,184,233	\$ 103,469,063	\$ 90,223,469	\$ 12,492,195	\$ 753,399
Connecticut	\$ 138,565,313	\$ 159,047,369	\$ 137,526,347	\$ 101,456,371	\$ 4,039,580	\$ 32,030,396
Delaware	\$ 14,171,814	\$ 26,646,485	\$ 17,643,474	\$ 15,756,724	\$ 1,886,750	\$ -
District of Columbia	\$ 250,265,395	\$ 119,676,972	\$ 124,914,899	\$ 111,026,519	\$ -	\$ 13,888,380
Florida	\$ 393,651,589	\$ 363,330,402	\$ 316,196,713	\$ 290,452,913	\$ 20,333,034	\$ 5,410,766
Georgia	\$ 199,528,124	\$ 163,611,810	\$ 143,561,526	\$ 110,530,997	\$ 25,649,675	\$ 7,380,854
Hawaii	\$ 54,799,446	\$ 49,036,198	\$ 43,837,375	\$ 40,649,147	\$ 2,933,435	\$ 254,793
Idaho	\$ 19,478,168	\$ 23,039,273	\$ 18,398,968	\$ 9,656,459	\$ 8,742,509	\$ -
Illinois	\$ 632,808,492	\$ 419,811,962	\$ 467,537,681	\$ 350,264,769	\$ 21,184,115	\$ 96,088,797
Indiana	\$ 99,230,991	\$ 95,259,616	\$ 84,285,780	\$ 58,111,106	\$ 20,316,134	\$ 5,858,540
Iowa	\$ 39,402,623	\$ 44,946,161	\$ 36,483,617	\$ 21,327,211	\$ 15,156,406	\$ -
Kansas	\$ 32,589,995	\$ 38,426,249	\$ 30,727,408	\$ 16,670,714	\$ 14,056,694	\$ -
Kentucky	\$ 54,272,675	\$ 62,034,266	\$ 50,295,172	\$ 31,094,153	\$ 19,201,019	\$ -
Louisiana	\$ 75,123,524	\$ 75,535,071	\$ 65,734,213	\$ 48,035,163	\$ 15,273,707	\$ 2,425,343
Maine	\$ 13,697,115	\$ 16,934,758	\$ 13,266,106	\$ 5,156,663	\$ 8,109,443	\$ -
Maryland	\$ 191,904,570	\$ 235,116,000	\$ 179,262,087	\$ 156,571,149	\$ 7,425,244	\$ 15,265,694
Massachusetts	\$ 354,368,155	\$ 377,047,180	\$ 319,718,084	\$ 262,135,813	\$ 5,219,346	\$ 52,362,925
Michigan	\$ 152,177,785	\$ 161,078,254	\$ 134,956,466	\$ 109,036,212	\$ 25,787,129	\$ 133,125
Minnesota	\$ 121,334,997	\$ 108,567,098	\$ 94,093,115	\$ 73,211,954	\$ 19,029,588	\$ 1,851,573
Mississippi	\$ 25,553,818	\$ 33,222,523	\$ 25,466,306	\$ 8,213,740	\$ 17,252,566	\$ -
Missouri	\$ 105,093,825	\$ 100,591,729	\$ 85,133,543	\$ 63,145,813	\$ 20,698,281	\$ 1,289,449
Montana	\$ 16,538,581	\$ 19,480,727	\$ 15,611,710	\$ 4,332,320	\$ 11,279,390	\$ -
Nebraska	\$ 25,269,031	\$ 28,617,220	\$ 23,309,592	\$ 13,498,538	\$ 9,811,054	\$ -
Nevada	\$ 56,345,293	\$ 58,201,936	\$ 49,463,771	\$ 42,113,524	\$ 7,350,247	\$ -
New Hampshire	\$ 13,905,674	\$ 16,532,538	\$ 13,164,584	\$ 7,947,286	\$ 5,217,298	\$ -
New Jersey	\$ 567,349,550	\$ 618,634,331	\$ 524,231,441	\$ 442,557,259	\$ 4,838,468	\$ 76,835,714
New Mexico	\$ 30,083,250	\$ 34,058,996	\$ 27,749,995	\$ 15,494,393	\$ 12,255,602	\$ -
New York	\$ 1,608,679,884	\$ 1,170,691,208	\$ 1,222,252,991	\$ 941,184,946	\$ 26,250,240	\$ 254,817,805
North Carolina	\$ 111,337,156	\$ 127,998,285	\$ 103,304,242	\$ 70,248,738	\$ 33,055,504	\$ -
North Dakota	\$ 12,021,686	\$ 13,381,519	\$ 10,997,090	\$ 5,040,827	\$ 5,956,263	\$ -
Ohio	\$ 212,636,405	\$ 198,198,952	\$ 179,808,408	\$ 137,198,395	\$ 29,837,234	\$ 12,772,779
Oklahoma	\$ 41,555,420	\$ 48,975,085	\$ 39,163,565	\$ 22,240,250	\$ 16,923,315	\$ -
Oregon	\$ 100,515,882	\$ 87,316,428	\$ 75,716,939	\$ 59,964,053	\$ 14,627,158	\$ 1,125,728
Pennsylvania	\$ 440,996,661	\$ 303,386,470	\$ 343,703,209	\$ 233,190,181	\$ 30,209,184	\$ 80,303,844
Rhode Island	\$ 20,288,958	\$ 48,155,466	\$ 29,552,290	\$ 28,623,375	\$ 864,972	\$ 63,943
South Carolina	\$ 42,736,684	\$ 52,409,272	\$ 41,154,218	\$ 24,536,491	\$ 16,617,727	\$ -
South Dakota	\$ 11,945,886	\$ 14,112,976	\$ 11,289,101	\$ 3,916,276	\$ 7,372,825	\$ -
Tennessee	\$ 79,072,257	\$ 88,439,797	\$ 72,016,364	\$ 50,819,566	\$ 21,168,758	\$ 28,040
Texas	\$ 450,535,139	\$ 441,417,894	\$ 374,524,702	\$ 321,327,693	\$ 50,587,402	\$ 2,609,607
Utah	\$ 71,578,317	\$ 67,521,453	\$ 58,084,648	\$ 50,831,205	\$ 7,253,443	\$ -
Vermont	\$ 5,744,298	\$ 7,365,876	\$ 5,680,572	\$ 1,753,649	\$ 3,926,923	\$ -
Virginia	\$ 158,402,066	\$ 133,357,168	\$ 116,105,505	\$ 93,340,956	\$ 18,555,163	\$ 4,209,386
Washington	\$ 257,156,514	\$ 196,486,192	\$ 179,046,604	\$ 158,049,855	\$ 14,297,473	\$ 6,699,276
West Virginia	\$ 21,084,834	\$ 23,241,797	\$ 18,675,475	\$ 8,314,897	\$ 10,051,239	\$ 309,339
Wisconsin	\$ 92,715,140	\$ 97,461,649	\$ 81,640,826	\$ 61,267,499	\$ 20,130,095	\$ 243,232
Wyoming	\$ 9,867,351	\$ 11,586,353	\$ 9,300,398	\$ 2,321,064	\$ 6,979,334	\$ -
American Samoa	\$ 374,273	\$ 411,174	\$ 341,099	\$ -	\$ 341,099	\$ -
Guam	\$ 1,011,643	\$ 1,111,388	\$ 921,976	\$ -	\$ 921,976	\$ -
Northern Marianas	\$ 1,375,086	\$ 1,207,808	\$ 1,114,292	\$ 1,061,782	\$ 52,510	\$ -
Puerto Rico	\$ 88,545,963	\$ 73,885,450	\$ 68,970,497	\$ 66,184,604	\$ 2,110,579	\$ 675,314
Virgin Islands	\$ 1,593,338	\$ 1,384,162	\$ 1,284,112	\$ 1,284,112	\$ -	\$ -
Indian Reservations	\$ 22,500,000	\$ 24,591,000	\$ 17,000,000	\$ -	\$ 17,000,000	\$ -
FTA Oversight	\$ 74,375,000	\$ 3,000,000	\$ 56,800,000	\$ 45,097,119	\$ 4,202,881	\$ 7,500,000
Discretionary Grants	\$ -	\$ 200,000,000	\$ 100,000,000	\$ -	\$ -	\$ -
Total	\$ 9,500,000,000	\$ 8,400,000,000	\$ 7,650,000,000	\$ 6,012,949,158	\$ 787,050,842	\$ 750,000,000

Source: Federal Transit Administration. After setting aside the \$100 million for discretionary energy grants, the remaining \$6.8 billion in formula capital grants in the conference report is split on an 80%-10%-10% between the urbanized area, non-urbanized area, and fast-growing/high-density formula programs, in that order. By statute, the \$680 million in fast-growing/high-density (49 U.S.C. 5340) apportionments are then added to the state apportionments through the urbanized area (additional \$573 million) and non-urbanized area (additional \$107 million) programs.

“Use It Or Lose It” Deadlines For Transportation Stimulus Funding

DEADLINES FOR TRANSPORTATION FUNDING APPORTIONED TO STATES/LOCALITIES

	Amount Apportioned To States/ Localities:	First 50% Must be Obligated Or Else Redistributed:	Remainder Must be Obligated Or Else Redistributed:	All Funding Expires If Not Obligated By:
Highways and bridges (state DOT discretionary)	\$18.66 billion	120 days*	1 year*	9/30/2010
Highways and bridges (sub-allocated to MPOs)	\$8.00 billion	No 1st redistrib.	1 year*	9/30/2010
Mass transit formula grants (incl. FGM)	\$7.48 billion	180 days*	1 year*	9/30/2010

*All deadlines with asterisk are in terms of days after funds are apportioned, which must be within 21 days of the bill's enactment.

DEADLINES FOR USDOT DISCRETIONARY GRANT FUNDING IN THE STIMULUS BILL

	Total Program Amount:	50% of all Funds Must Be Awarded To Grantees By:	All Funds Must Be Awarded To Grantees By:	All Funding Expires If Not Obligated By:
Discretionary surface transportation grants	\$1.50 billion	No deadline	1 year*	9/30/2011
Airport improvement grants	\$1.10 billion	120 days*	1 year*	9/30/2010
High-speed rail and intercity passenger rail	\$8.00 billion	No deadline	No deadline	9/30/2012
Mass transit new starts	\$750 million	No deadline	No deadline	9/30/2010
Aid to small shipyards	\$100 million	No deadline	120 days	9/30/2010

*Deadlines are from the date of enactment of the stimulus bill, as written in the text of the stimulus bill.

**120-day deadline for MARAD funds is found in 46 U.S.C. 54101.

“Maintenance of Effort” Requirements For Transportation Stimulus Funding

What appropriations do these requirements apply to? The \$27.5 billion in highway and bridge money; the \$9.4 billion in total funding for mass transit; the \$8 billion for high-speed and intercity passenger rail; the \$1.3 billion for Amtrak; the \$1.1 billion for Airport Improvement Program grants; the \$100 million for aid to small shipyards; and the \$1.5 billion for the new discretionary grant program in the Office of the Secretary.

What is the initial certification requirement? “Not less than 30 days after the date of enactment of this Act, for each amount that is distributed to a State or agency thereof from an appropriation in this Act for [the programs listed above], the Governor of the State shall certify to the Secretary of Transportation that the state will maintain its efforts with regard to State funding for the types of projects that are funded by the appropriation. As part of this certification, the Governor shall submit to the Secretary of Transportation a statement identifying the amount of funds the State planned to expend from State sources as of the date of enactment of this Act during the period beginning on the date of enactment of this Act through September 30, 2010, for the types of projects that are funded by the appropriation.”

What further reports are required? Sec. 1201(c) of the stimulus bill requires periodic reports 90 days after enactment, 180 days after enactment, 1 year after enactment, 2 years after enactment, and 3 years after enactment. The detailed requirements for these periodic reports are set forth in sec. 1201(c) of the bill.

What happens if a state winds up spending less money than the Governor certified they would? “If a State is unable to maintain the level of effort certified pursuant to subsection (a), the State will be prohibited by the Secretary of Transportation from receiving additional limitation pursuant to the redistribution of the limitation on obligations for Federal-aid highway and highway safety construction programs that occurs after August 1 for fiscal year 2011.” By way of perspective, in the August 2008 highway redistribution, all 50 states plus DC split up \$1.16 billion between them. California got the most, at \$107 million. Delaware got the least, at \$971,492. So even if highway obligations get a fair increase in FY 2011 above FY 2008 and the redistribution is proportionately larger, the amount of money a state would forfeit from failing to maintain effort is probably far, far less than the state is going to receive under the stimulus bill.

Transportation-Related Tax Provisions In the Final Stimulus Bill

- **“Build America” Bonds.** Sec. 1531 of the final bill permits an issuer to elect to have an otherwise tax-exempt bond treated as a “taxable governmental bond.” A “taxable governmental bond” is any obligation (other than a private activity bond) if the interest on such obligation would be (but for this provision) excludable from gross income under section 103 of the Internal Revenue Code and the issuer makes an irrevocable election to have the provision apply. In determining if an obligation would be tax-exempt under section 103, the credit (or the payment discussed below for qualified bonds) is not treated as a Federal guarantee. Further, the yield on a taxable governmental bond is determined without regard to the credit. A taxable governmental bond does not include any bond if the issue price has more than a *de minimis* amount of premium over the stated principal amount of the bond.

The holder of a taxable governmental bond will accrue a tax credit in the amount of 35 percent of the interest paid on the interest payment dates of the bond during the calendar year. The interest payment date is any date on which the holder of record of the taxable governmental bond is entitled to a payment of interest under such bond. The sum of the accrued credits is allowed against regular and alternative minimum tax. Unused credit may be carried forward to succeeding taxable years. The credit, as well as the interest paid by the issuer, is included in gross income and the credit may be stripped under rules similar to those provided in section 54A of the Internal Revenue Code regarding qualified tax credit bonds; Rules similar to those that apply for S corporations, partnerships and regulated investment companies with respect to qualified tax credit bonds also apply to the credit.

Unlike the tax credit for bonds issued under section 54A, the credit rate would not be calculated by the Secretary, but rather would be set by law at 35 percent. The actual credit that a taxpayer may claim is determined by multiplying the interest payment that the taxpayer receives from the issuer (i.e., the bond coupon payment) by 35 percent.

A “qualified bond” is any taxable governmental bond issued as part of an issue if 100 percent of the available project proceeds of such issue are to be used for capital expenditures. The bond must be issued after the date of enactment of the provision and before January 1, 2011. The issuer must make an irrevocable election to have the special rule for qualified bonds apply. Under the special rule for qualified bonds, in lieu of the tax credit to the holder, the issuer is allowed a credit equal to 35 percent of each interest payment made under such bond. *Estimated 10-year cost to the taxpayer: \$4.348 billion.*

- **Modification of AMT exemption for tax-exempt bonds.** Sec. 1503 of the final bill provides that tax-exempt interest on private activity bonds issued in 2009 and 2010 is not an item of tax preference for purposes of the alternative minimum tax and interest on tax exempt bonds issued in 2009 and 2010 is not included in the corporate adjustment based on current earnings. For these purposes, a refunding bond is treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

The conference agreement also provides that tax-exempt interest on private activity bonds issued in 2009 and 2010 to currently refund a private activity bond issued after December 31, 2003, and before January 1, 2009, is not an item of tax preference for purposes of the alternative minimum tax. Also tax-exempt interest on bonds issued in 2009 and 2010 to currently refund a bond issued after December 31, 2003, and before January 1, 2009, is not included in the corporate adjustment based on current earnings. *Estimated 10-year cost to the taxpayer: \$555 million.*

- **Delay implementation of 3% withholding for federal contractors.** Section 1511 of the final bill delays the implementation of the three percent withholding requirement currently required to take effect after December 31, 2010 that would force withholding at a three-percent rate on certain payments to persons providing property or services made by the Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies). The withholding requirement will apply regardless of whether the government entity making such payment is the recipient of the property or services. Section 1511 delays the implementation of this requirement by one year, to apply to payments after December 31, 2011. *Estimated 10-year cost to the taxpayer: \$291 million.*
- **Increase tax-free fringe benefit for employer-provided transit.** Section 1151 of the final bill increases the monthly exclusion for employer-provided transit and vanpool benefits to the same level as the exclusion for employer-provided parking (in 2009, the level is \$230 per month). Effective date.-The provision is effective for months beginning on or after date of enactment. The proposal does not apply to tax years beginning after December 31, 2010. *Estimated 10-year cost to the taxpayer: \$192 million.*
- **Allow lower-speed rail projects to issue tax-preferred high-speed rail bonds.** Section 1504 of the final bill amends sec. 142(i) of the Internal Revenue Code to lower the sustainable speed necessary for a high-speed rail project to be able to issue private facility bonds. Under present law, such a project must be “reasonably expected to operate at speeds in excess of 150 miles per hour between scheduled stops”. The final bill changes this to “be capable of attaining a maximum speed in excess of 150 miles per hour”. This will benefit places where the track is too curved for trainsets to maintain speeds over 150 mph, such as the Northeast Corridor between New York City and Boston. *Estimated 10-year cost to the taxpayer: \$288 million.*

Omnibus Approps...

CONTINUED FROM FRONT PAGE

for the agencies and programs supported by these nine appropriations bills expires.

(Ed. Note: It is an incredible pain in the hindquarters for the finalization of the appropriations bills to stretch beyond the submission of the new budget, because it renders the new budget documents much less useful — the budget can't contain prior year totals for comparison since the prior year totals haven't been enacted yet. So you have to carry around copies of the budget and the omnibus wherever you go.)

From the perspective of Congressional leaders wanting to get an omnibus bill enacted by March 6, the problem, in a word, is "Senate."

Any bill or joint resolution brought up in the Senate under regular order is both debatable (which means filibusterable) and amendable.

Based on the combined amount of time the Senate normally spends debating and amending these nine appropriations bills on the floor during initial consideration, full debate on the omnibus could take a month.

President Obama and the Democratic leadership do not want to spend a month rehashing last year, so they need to find a way to get the bill through the Senate with a minimum of amendment.

The last time a new Congress convened and was stuck with a large unfinished number of appropriations bills was 2003. The House sent over a blank "placeholder" joint resolution (H. J. Res. 2, 108th Congress). The Senate then took up that joint resolution and the chairman of Appropriations offered an amendment in the nature of a substitute that was the text of an omni-

Appropriations Subcommittee Allocations, FY 2009

(Billions of Dollars, Non-Emergency Budget Authority)

	<u>House</u>	<u>Senate</u>	<u>Final</u>
Agriculture	20,623	20,435	?????
Commerce-Justice-Science	56,858	57,900	?????
Energy and Water	33,265	33,258	?????
Financial Services	21,900	22,870	?????
Interior-Environment	27,867	27,750	?????
Labor-HHS-Education	152,643	151,139	?????
Legislative Branch	4,404	4,400	?????
State-Foreign Operations	36,620	36,620	?????
Transportation-HUD	54,997	53,325	?????
Total, Omnibus	409,177	407,697	?????

Source: Congressional Budget Office

bus appropriations bill. The Senate then spent from January 15-23, 2003 furiously amending the substitute. The House and Senate then went to conference on the resolution for two weeks and produced an un-amendable conference report by February 13.

However, in that case the House had previously debated and voted on most of the appropriations bills. This time, the House did not. And it is uncertain whether the will-power exists within the House Democratic Caucus to let the Senate have its full say on funding levels while the House just defers to its leaders or simply accepts the Senate work product.

Another option is for the House to go ahead and pass the pre-negotiated omnibus next week and for Sen. Reid to wait until as close as possible to March 6 to bring up the bill, hoping to force Republicans into either accepting the Democratic spending plan or else shutting down the federal government through a filibuster.

Procedural options are limited because this is a new Congress and there are no relevant bills that have already passed one chamber sitting around to use as legislative vehicles for an omnibus.

The omnibus may be easier to pass than the stimulus bill, however, because the omnibus bill is expected to contain 4,000 or so earmarked projects, requested by legislators of both parties in both chambers, and earmarks always seem to bring in the extra bipartisanship necessary to pass an ugly but necessary bill.

GAO: SAFETEA-LU "Megaprojects" Spend Slowly

On February 6, the U.S. Government Accountability Office issued a report analyzing the Projects of National and Regional Significance and National Corridor Infrastructure Improvement programs established by the 2005 SAFETEA-LU law.

Both programs were originally drafted as competitive programs to be assigned large dollar amounts by DOT based on merit, but the final SAFETEA-LU conference report wound up earmarking 100 percent of both programs based largely on Congressional seniority.

Because of this, GAO found that relatively little of the funding provided so far has actually been obligated. Of \$2.7 billion made available for the earmarks as of September 30, 2008, only \$922 million, or 34.4 percent, has actually been obligated.

Some of the bigger earmarks are actually farther along because the earmark total is a larger percentage of the total project cost. For some earmarks that were not on any kind of state transportation plan, like the \$50 million for renovation of Minneapolis's Union Station, or where the earmark was a minute share of the total cost, no local agency has yet requested any money from FHWA.

A link to the text of the GAO report can be found on the following page.

Status of Funds Under the Projects of National and Regional Significance and National Corridor Infrastructure Improvement programs, as of Sept. 30, 2008. (Millions of dollars)

	<u>Total Authorized</u>	<u>Made Available</u>	<u>Actually Obligated</u>	<u>Obs as % of Avail.</u>
PNRS	1,424	1,279	423	33.1%
NCIIP	1,558	1,400	499	35.6%
Total	2,982	2,679	922	34.4%

NEW AND NOTABLE ON THE INTERNET

Economic Stimulus Legislation

Links to the text of the conference report on H.R. 1, as printed in the Congressional Record, are here:

<http://www.conferencereport.gpoaccess.gov/>

The Congressional Budget Office's cost estimate of the final conference report on the stimulus bill is here:

<http://www.cbo.gov/ftpdocs/99xx/doc9989/hr1conference.pdf>

The Joint Committee on Taxation's final estimate of the revenue changes made by the bill are here:

<http://www.house.gov/jct/x-19-09.pdf>

A table showing estimated sub-allocations of highway money to large urbanized areas by the bill is here:

<http://transportation.house.gov/Media/File/Full%20Committee/Stimulus/2ConfReportonHR1HighwayandBridgeInvestmentbyStateandLargeUrbanizedArea.pdf>

And for those who are visually inclined, the White House has put together a slideshow of behind-the-scenes photos of the making of the stimulus package:

<http://www.whitehouse.gov/blog/09/02/16/The-story-of-the-economic-recovery-package-photos/>

USDOT Inspector General Audit

The USDOT IG audit of the indirect cost claims of design and engineering firms receiving federal-aid highway dollars is here:

http://www.oig.dot.gov/StreamFile?file=/data/pdfdocs/Overhead_FINAL_2-5-09_508.pdf

U.S. Government Accountability Office

The new GAO report on the status of the Projects of Regional and National Significance program, the National Corridor Infrastructure Improvement program, and the Coordinated Border Infrastructure program can be found here:

<http://www.gao.gov/new.items/d09219.pdf>

A new GAO report on the Federal Air Marshals service is here:

<http://www.gao.gov/new.items/d09273.pdf>

A new GAO report on the status of the TSA Transportation Security Inspector program is here:

<http://www.gao.gov/new.items/d09123r.pdf>

STATUS OF TRANSPORTATION-RELATED NOMINATIONS

Agency	Nominee	Position	Senate Committee	Latest Action
Department of Transportation	Ray LaHood	Secretary	Commerce, Science and Transportation	Sworn into office 1/23/09

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P. O. Box 661
Front Royal, VA 22630

Email: mail@transportationweekly.com



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THIS WEEK IN COMMITTEE

Congress is taking a recess this week for President's Day, so there are no hearings scheduled this week, except for:

Friday, February 20, 2009 — House Transportation and Infrastructure Committee — Subcommittee on Highways and Transit — subcommittee field hearing on freight transportation challenges in Southern California — 10:00 a.m., *L.A. County MTA Main Board Room, 3rd Floor, One Gateway Plaza, Los Angeles, CA.*

NEXT WEEK IN COMMITTEE

Tuesday, February 24, 2009 — House Transportation and Infrastructure — Subcommittee on Aviation — subcommittee hearing on the US Airways #1549 incident — 10:00 a.m., *2167 Rayburn.*

UPCOMING CALENDAR

Tuesday, February 24, 2009 — President Obama addresses a joint session of Congress and submits his FY 2010 budget framework.

Thursday, February 26, 2009 — The National Commission on Surface Transportation Infrastructure Financing releases its final report.

Friday, March 6, 2009 — Current continuing appropriations resolution expires.

Tuesday, March 31, 2009 — Current extension of federal aviation taxes and spending authority expires.

Wednesday, September 30, 2009 — Expiration of fiscal year 2009 and expiration of spending authority for surface transportation programs under the SAFETEA-LU law.

STATUS OF MAJOR TRANSPORTATION BILLS — 111th CONGRESS

BILL	HOUSE ACTION	SENATE ACTION	RESOLUTION
FY 2009 Omnibus Appropriations Act	House floor action tentatively scheduled for week of 2/23/09		
Economic Stimulus Appropriations & Tax Cuts	H.R. 1 passed House 1/28/09 by a vote of 244-188	H.R. 1 scheduled for passage vote in Senate on 2/10/09	Conf. Report (H. Rept. 111-16) cleared for President 2/13/09
FY 2010 Congressional budget resolution			
FY 2010 Transportation-HUD Appropriations			
FY 2010 Energy and Water Appropriations			
FY 2010 Homeland Security Appropriations			
Federal Aviation Admin. Reauthorization Bill	H.R. 915 introduced in House 2/9/09		
Surface Transportation Reauthorization Bill			
Water Resources Development Act			
FY 2010 Coast Guard Authorization			