THE LEGISLATIVE SERVICES GROUP'S

Transportation Weekly

MONITORING AND ANALYZING DEVELOPMENTS IN FEDERAL TRANSPORTATION AND PUBLIC WORKS POLICY

Volume 10, Issue 14 Wednesday, March 11, 2009

House Panel OKs 3-Year FAA Reauthorization

Last Year's Battles on Air Traffic Controller Contract, FedEx Unionization, Foreign Repair Stations To Reappear When Bill Moves Through the House

The House Transportation and Infrastructure Committee has approved a Federal Aviation Administration reauthorization bill that would authorize almost $53.9 billion in spending over three fiscal years (2010 through 2012).

(*Ed. Note:* The bill also authorizes funds for FY 2009, but since Congress has already completed action on all regular FY 2009 appropriations, and since the authorization bill won't be signed into law anytime soon, it seems silly to count the all-but-meaningless FY 2009 authorizations.)

The panel approved the bill (H.R. 915) by voice vote on March 5 despite the continuing concerns of Republicans over issues that plagued the legislation in the last Congress.

(H.R. 915 is almost exclusively based on last year's bill (H.R. 2881, 110th Congress) as it was passed by the House. But that legislation died in the Senate, so the new Congress is trying again.)

H.R. 915 has no fixed appointment with the full House — the bill cannot move to the House floor until the Ways and Means Committee has either reported or informally approved its part of the legislation, which will extend the Airport and Airway Trust Fund and the aviation excise taxes that support the fund.

The House Transportation and Infrastructure Committee has OK'd a FAA authorization bill covering fiscal years 2009-2012. However, the legislation is not "on time" since FY 2009 is nearly half over yet no authorization law is in place.

The Trust Fund and those taxes are scheduled to expire on March 31. House T&I chairman James Oberstar (D-MN) said last week that he has agreed to a Senate proposal to extend the taxes

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Senate Panel Approves Railroad Antitrust Legislation

The Senate Judiciary Committee last week approved legislation designed to give the U.S. Department of Justice antitrust oversight over the railroad industry and requiring Justice to sign off on any future mergers of railroads that have potential antitrust implications.

By a 14-0 vote, the panel approved S. 146, the Railroad Antitrust Enforcement Act of 2009. Five Senators voted "present".

The legislation would remove the railroad industry's longtime exemption from Judiciary antitrust clearance (a legacy from the early days of the Interstate Commerce Commission, when railroads were the only U.S. industry under any sort of regulation at all). At present, railroad mergers are only subject to the approval of the ICC's successor, the Surface Transportation Board.

Sen. Herb Kohl (D-WI), the sponsor of the bill, said that "Our bill will ensure that railroads play by the same rules as all businesses in our economy and give those in-

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Legislative Schedules
Week of March 9, 2009

House

Wednesday — meets at 10 a.m. — seven measures under suspension of the rules, plus on rolled suspension vote.

Thursday — meets at 10 a.m. — H.R. 1262, Water Quality Investment Act.

Friday — no votes.

Senate

The Senate convened at 11 a.m. today for morning business. The day's program is the nomination of David Ogden to be Deputy Attorney General, and any other items cleared for action.

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and the Trust Fund through the end of fiscal year 2009 on September 30.

Since each FAA extension is a tax-raising measure, extensions must originate in the House. It is hoped that the House can move a "clean" (i.e. free of policy changes) extension under suspension of the rules by next week in hopes that the Senate can clear the legislation by unanimous consent before March 31.

The legislation is long overdue — the last multi-year reauthorization bill (Public Law 108-176) expired on September 30, 2007. Funding for fiscal year 2008 went from start to finish on a series of short-term extensions, and if the six-month extension of which Oberstar spoke is enacted, that will mean that FY 2009 will have gone from start to finish under short-term extensions as well.

The lack of an authorization bill has had its most noticeable real-world effect in the annual obligation levels for the Airport Improvement Program — frozen at $3.515 billion in FY 2006, FY 2007, FY 2008, and now again in FY 2009.

The new/old House bill proposes to increase AIP funding by fourteen percent in FY 2010, to an even $4.000 billion.

This will prove the initial transportation-related test of the Congressional budget process this year. When the House Budget Committee produces its spending blueprint for FY 2010 (which is scheduled for March 25), the plan will contain an allocation of mandatory budget authority to the Transportation and Infrastructure Committee for 2010.

That allocation will include the "baseline" contract authority already on the books (for expiring or expired programs, like airports, highways and transit, that number is last year's level plus inflation) plus some amount labeled "reauthorization".

We won't know the T&I baseline amount until the Congressional Budget Office releases its final FY 2010 spending baseline, which CBO hopes to have done by March 20.

The "reauthorization" line in the budget allocation will represent how much additional contract authority the T&I Committee can put towards airports, highways, transit, and safety in 2009 without breaching its allocation in violation of the Budget Act.

Last year, the airport program was the only contract authority program that was due for reauthorization, so the Budget Committee was able to meet the T&I panel's full request — the (non-RABA) "reauthorization" line in the allocation for 2009 was $495 million, which was the difference between the AIP baseline and the AIP total in last year's House FAA bill.

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FUNDING AUTHORIZATIONS UNDER H.R. 915, FAA REAUTHORIZATION ACT OF 2009 *AS REPORTED*

(Excludes FY 2009 authorizations, as Congress has already completed action on all FY 2009 regular appropriations)

Sec.	Program	Source	FY 2010	FY 2011	FY 2012	Total
101	Airport improvement grants	AATF	$ 4,000,000,000	$ 4,100,000,000	$ 4,200,000,000	**$ 12,300,000,000**
	Set-aside: airport cooperative research		$ 15,000,000	$ 15,000,000	$ 15,000,000	*$ 45,000,000*
	Set-aside: airports technology research		$ 19,348,000	$ 19,348,000	$ 19,348,000	*$ 58,044,000*
102	Facilities & equipment	AATF	$ 3,259,000,000	$ 3,553,000,000	$ 3,506,000,000	**$ 10,318,000,000**
	Set-aside: runway incursion reduction		*$ 12,000,000*	*$ 12,000,000*	*$ 12,000,000*	*$ 36,000,000*
	Set-aside: runway status lights		*$ 125,000,000*	*$ 100,000,000*	*$ 50,000,000*	*$ 275,000,000*
	Set-aside: NextGen systems development		*$ 102,900,000*	*$ 104,000,000*	*$ 105,300,000*	*$ 312,200,000*
	Set-aside: NextGen demonstration programs		*$ 30,000,000*	*$ 30,000,000*	*$ 30,000,000*	*$ 90,000,000*
	Set-aside: Center for Advanced Aviation Systems		*$ 79,000,000*	*$ 79,000,000*	*$ 80,800,000*	*$ 238,800,000*
	Set-aside: additional programs		*$ 22,500,000*	*$ 22,500,000*	*$ 22,500,000*	*$ 67,500,000*
103(a)	Operations	GF & AATF	$ 9,531,272,000	$ 9,936,259,000	$ 10,350,155,000	**$ 29,817,686,000**
103(c)	BTS airline data analysis	AATF	$ 6,000,000	$ 6,000,000	$ 6,000,000	**$ 18,000,000**
104	Research, engineering & development	AATF	$ 214,587,000	$ 225,993,000	$ 244,860,000	**$ 685,440,000**
219	Airspace redesign	GF	$ 20,000,000	$ 20,000,000	$ 20,000,000	**$ 60,000,000**
404	Essential air service subsidies (discretionary)	AATF	$ 73,000,000	$ 73,000,000	$ 73,000,000	**$ 219,000,000**
606	Safety critical staffing	GF	$ 45,000,000	$ 138,000,000	$ 235,000,000	**$ 418,000,000**
909	Research grants for undergraduate students	GF	$ 5,000,000	$ 5,000,000	$ 5,000,000	**$ 15,000,000**
910	Aviation gasoline R&D program	GF	$ 750,000	$ 750,000	$ 750,000	**$ 2,250,000**
912	Review of safety-related research	GF	$ 700,000	$ 700,000	$ 700,000	**$ 2,100,000**
	Total funding authorizations, H.R. 915		**$ 17,155,309,000**	**$ 18,058,702,000**	**$ 18,641,465,000**	**$ 53,855,476,000**
	Mandatory budget authority:		**$ 4,000,000,000**	**$ 4,100,000,000**	**$ 4,200,000,000**	**$ 12,300,000,000**
	Subject to annual appropriation:		**$ 13,155,309,000**	**$ 13,958,702,000**	**$ 14,441,465,000**	**$ 41,555,476,000**

House FAA Markup

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This year, aviation must compete with highways and transit for the reauthorization CA allocation, and it is not certain whether Budget can meet the request. (In its views and estimates on the FY 2010 budget, the T&I Committee was careful not to ask publicly for a specific dollar amount for its allocation.) Interested parties should watch the March 17 House Budget Committee hearing on highway and transit funding needs to see how this shakes out.)

House Transportation and Infrastructure chairman James Oberstar (D-MN) hailed his panel's passage of H.R. 915, saying that "Modernizing our air transportation system is a national priority. The historic funding levels authorized will accelerate the implementation of air traffic control modernization and the Next Generation Air Transportation System. Ensuring our airports have the appropriate tools to increase capacity and improving the quality of air service received by Essential Air Service program communities are also priorities addressed by this bill."

Oberstar's ranking Republican member, John Mica (R-FL), was not as enthusiastic, saying that despite a provision in the bill relating to the use of pesticides on airliners, some "bugs" remain the bill. Mica listed five areas of concern from last year's bill that carry over into H.R. 915:

- The "NATCA provision" (sec. 601) which forces the ongoing dispute between the FAA and its air traffic controllers union into binding "baseball-style" arbitration in the event the impasse continues;
- The "FedEx provision" (sec. 806) which would undo a change made in 1996 which undid a change made in 1995 that may or may not have been accidental — the end effect of sec. 806 is that it would make it much much easier for the Teamsters (or another union) to organize Federal Express's delivery drivers;
- Language (sec. 303) requiring biannual FAA inspections of foreign repair stations (some claim that the European Union will retaliate for this provision in a way that harms U.S. aircraft repair facilities);
- A provision (sec. 406) which requires the notification of passengers if insecticides have been used on their aircraft within the 60-day period before their flight; and
- A provision (sec. 307) requiring the FAA to establish its own OSHA-style occupational safety and health standards for flight attendants.

In addition, Mica added a fifth area of concern: language not in the original bill but added by Oberstar in a "managers' amendment" in committee that would restrict the ability of the Department of Transportation to grant antitrust immunity to airlines that enter into codesharing agreements.

This provision (sec. 424 in the reported bill) requires a the U.S. Government Accountability Office to conduct a study of DOT practices in approving airline codeshare alliances and the antitrust exemptions granted by DOT for such alliances. The study is due within one year of enactment, and the study must contain GAO recommendations for possible changes to the existing DOT antitrust policies. DOT is required to issue a written determination within one year of the study's completion as to whether or not DOT will change policy to accept the GAO recommendations. This provision also sunsets antitrust all existing or future exemptions at three years after the date of enactment unless renewed by DOT, which would allow the Obama Administration an eventual chance for administrative repeal of any Bush-era codesharing antitrust exemptions that they don't like..

Oberstar said that the threat of EU retaliation against U.S. repair stations was "speculation" drummed up by a handful of EU parliament members with no real authority over the situation (for those who keep track of such things, at this point in the markup, Oberstar started speaking in French). Oberstar also said that the FAA's financial scenarios for the eventual cost of the NATCA proposed contract (if imposed by an arbitrator) are "dead wrong and that CBO's much-lower-but-still-substantial cost estimate was "speculation".

And Rep. Jerry Costello (D-IL), the chairman of the Aviation Subcommittee, said that he has a huge number of Greater Chicago airport workers as his constituents and that he would not have included the foreign repair station language in the bill if he thought it would even remotely place their jobs in jeopardy.

Other significant provisions of H.R. 915 include:

- Changes in the oversight of the Next Generation Air Transportation System, including the elevation of the Joint Planning and Development Office's Director to

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Amendments Offered to H.R. 915 in House Full Committee Markup:

- **Oberstar (D-MN)** manager's amendment transferring programs from the RE&D account to the AIP and F&E accounts; amending the AIR21 FAA budget "guarantee" to reduce dependence on trust fund receipt estimates; and adding a series of sections to the bill (listed on the following page of this issue) — *agreed to by voice vote.*
- **Capuano (D-MA)** amendment requiring every large hub airport to publish and operate a toll-free hotline for airport noise complaints — *offered and withdrawn.*
- **Altmire (D-PA)** amendment clarifying the jurisdiction over intrastate helicopter medical services — *offered and withdrawn.*

House FAA Markup

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the same status as the FAA Associate Administrator

- An increase in the level of passenger facility charges (PFCs) that airports are allowed to charge enplaning passengers, from the current $4.50 per head to $7.00 per head.
- Additional safety oversight provisions stemming from recent scandals, including the creation of an independent Aviation Safety Whistleblower Investigation Office, a two-year cooling-off period for FAA inspectors leaving FAA during which time the inspectors cannot work for the airlines they once oversaw, and monthly reviews of the oversight database to ensure that corrective actions are being taken.
- Additional funding for runway incursion reduction and the installation of runway status lights.
- The continued phase-out of Stage II aircraft in favor of quieter Stage III aircraft, with additional research funding to make sure that engines can be made both quieter and less polluting and for ground flow management pilot programs to reduce idling times at airports.
- An increase in annual subsidies for essential air service to underserved communities (the Obama Administration's 2010 budget also requested an increase in the discretionary appropriation for EAS).
- A requirement that airlines to submit to the FAA contingency plans for how they will deal with passengers faced with excessive in-airplane delays — allowing them to deplane after a certain number of hours, and providing food, water, ventilation and restroom facilities to passengers stuck on the tarmac for an excessive amount of time.
- Alteration of the AIR21 budget guarantees for FAA capital funding (which cause the creation of "pop-up" contract authority if the Appropriations Committees don't fund FAA capital programs at a level of at least 95 percent of estimated Airport and Airway Trust Fund receipts — the bill would lower this level from 95 percent to 90 percent to reflect recent volatility and inaccuracy in Treasury estimates of future Trust Fund receipts.

Sections Added to H.R. 915 in Committee by the Oberstar Managers' Amendment

Sec. 113 amends 49 U.S.C. 40117(d) to require that PFC applications include written assurances that all contracts and subcontracts for management, studies, services, preliminary engineering, design, engineering, mapping and surveying be awarded pursuant to title 40 U.S.C. or an equivalent qualifications-based requirement.

Sec. 132 requires airport master plans to minimize the generation of solid waste and maximize recycling.

Sec. 137 requires FAA to issue regulations within 180 days of enactment to adjust the personal net worth cap used to determine economically disadvantaged businesses eligible for DBE set-asides (the cap was last set at $750,000 in 1989).

Sec. 144 amends 49 U.S.C. 47137 to tailor the airport security pilot program currently authorized by that section more to a nonprofit consortium, altering the matching share, and increasing the annual budget from $5 million per year to $8.5 million per year.

Sec. 151 requires FAA to encourage airport sponsors and state and local officials to consider customer convenience, airport ground access, and access to airport facilities in airport master plans.

Sec. 336 requires FAA to modify the Voluntary Disclosure Reporting Program established by FAA in September 2006 to require inspectors to verify that airlines implement comprehensive solutions to violations and confirm that the violation has not been previously discovered by another inspector or self-disclosed by the carrier. It requires supervisory review of all disclosures and requires a GAO study of the Voluntary Disclosure Reporting Program to be submitted to Congress within one year of enactment.

Sec. 421 requires a GAO study within 180 days of enactment of delays in checked baggage delivery, with recommendations for minimum standards to compensate a passenger for unreasonably delayed baggage.

Sec. 424 requires a GAO study of DOT practices in approving airline codeshare alliances and the antitrust exemptions granted by DOT for such alliances. The study is due within one year of enactment, and the study must contain GAO recommendations for possible changes to the antitrust policies. DOT is required to issue a written determination within one year of the study's completion as to whether or not DOT will change policy to accept the GAO recommendations. This provision also sunsets antitrust all existing or future exemptions at three years after the date of enactment unless renewed by DOT.

Sec. 514 requires a GAO study of whether FAA and the Massachusetts Port Authority are complying with an environmental record of decision.

Sec. 824 requires a FAA study on wind turbine lighting.

Sec. 825 requires a FAA study of limiting access to the flight decks of all-cargo aircraft.

Rail Antitrust Bill

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jured by anti-competitive conduct strong remedies under antitrust law. Over the past several years, railroad shippers of vital commodities have faced spiking rail rates. Rail customers are forced to pass these price increases are passed along into the price of their products, and ultimately, to consumers. Our bill will enact a simple and straightforward remedy – eliminate the outmoded antitrust exemptions."

Meanwhile, the head of the Association of American Railroads countered that "We face two disparate schemes that spell nothing but confusion for the railroads and those charged with enforcing the regulations. Congress should be promoting policies that help jumpstart the economy and regain consumer confidence, not overburden an industry that stands ready to get America back on track. Overlapping regulatory schemes could derail the industry's ability to meet the nation's increased need for environmentally sound freight transportation."

The bill is summarized at right. The heart of the bill is sections 2 through 4, which give the Justice Department the authority to sue for injunctive relief, require Justice approval of mergers, and allow courts, not the STB, to assert jurisdiction in antitrust lawsuits against railroads.

Kohl introduced a similar bill in the last Congress, which was reported by the Judiciary Committee (by a voice vote), but the Senate never took action on the bill.

Last Congress's companion bill in the House, offered by Rep. Tammy Baldwin (D-WI), was approved by the House Judiciary Committee but was never brought up in the House. This year, Baldwin has introduced H.R. 233, which is currently pending in the Judiciary Committee. (Baldwin does not appear to have gone on a significant search for cosponsors yet, as the bill currently shows only six cosponsors.)

Federal antitrust laws are under the sole jurisdiction of the Judiciary Committee, but the references in S. 146 to title 49 of the United States Code and to the Surface Transportation Board are under the jurisdiction of the Senate Commerce, Science and Transportation Committee, which now gets to act on the bill.

Sources indicate that new Commerce chairman Jay Rockefeller (D-WV) may slow-walk the bill for the time being in hopes of brokering an agreement between the railroads and the Judiciary Committee.

The House Judiciary Committee has not announced any timetable for the eventual consideration of H.R. 233.

(E*d. Note:* See an amusing article in the March 6, 2009 *Washington Post* by Al Kamen entitled "He Who Has Not Hit 'Send' May Cast the First Stone" detailing some of the lobbying that led up to the Senate Judiciary Committee's vote.)

VOTE TO APPROVE S. 146

Yeas - 14

(11 Democrats)

Cardin	Durbin	Feingold
Feinstein	Kaufman	Klobuchar
Kohl	Leahy	Schumer
Whitehouse	Wyden	

(3 Republicans)

Grassley	Hatch	Kyl

"Present" - 5

Coburn	Cornyn	Graham
Sessions	Specter	

S. 146, Railroad Antitrust Enforcement Act of 2009

As Reported by Senate Judiciary Committee

Sec. 1. Short title. Dubs the bill the "Railroad Antitrust Enforcement Act of 2009."

Sec. 2. Injunctions against railroad common carriers. Amends sec. 16 of the Clayton Act to grant the United States exclusive authority to bring suit for injunctive relief against a common carrier that is not a rail common carrier subject to the jurisdiction of the Surface Transportation Board (STB).

Sec. 3. Mergers and acquisitions of railroads. Revises provisions prohibiting anticompetitive transactions except for those approved by specified federal agencies (DOT, Federal Power Commission, STB, SEC, USMC, USDA) acting under certain statutes to eliminate the exemption for certain STB approved transactions.

Sec. 4. Limitation of primary jurisdiction. Provides that, in any civil action against a rail common carrier, the U.S. district court shall not be required to defer to the primary jurisdiction of the STB.

Sec. 5. Federal Trade Commission enforcement. Empowers the Federal Trade Commission (FTC) to regulate, and engage in antitrust enforcement regarding, collective rate agreements and certain transactions, including railroad mergers and acquisitions.

Sec. 6. Expansion of treble damages to rail common carriers. Permits treble damages against railroad common carriers in antitrust suits to parties injured by antitrust violations without regard to whether such railroads have filed rates or whether a complaint challenging rates has been filed.

Sec. 7. Termination of exemptions in title 49. Amends title 49 U.S.C. to terminate the exemptions from antitrust laws for collective ratemaking agreements. Requires the STB, when reviewing a proposed agreement, to take into account its impact upon shippers, consumers, and affected communities.

Sec. 8. Effective date. Revises STB authority to provide that a rail carrier, corporation, or a person participating in an approved transaction is not exempt from specified antitrust laws. Makes such provision inapplicable to any transaction relating to the pooling of railroad cars approved by the STB or its predecessor agency.

Senate Approves Omnibus FY 2009 Appropriations Bill

Yesterday, the United States Senate passed H.R. 1105, a $410 billion omnibus appropriations bill funding all non-military, non-security departments and agencies of the U.S. government for the remainder of fiscal year 2009. The bill's final passage came by voice, an anticlimax immediately following a vote by which cloture was invoked, 62 to 35 (a minimum of 60 votes being necessary to invoke cloture).

Since the Senate passed the bill without making any changes in the version of the bill that passed the House on February 25, the Senate's action clears H.R. 1105 for President Obama's signature. The President is expected to sign the bill into law before midnight tonight because the current continuing resolution funding the government expires at midnight.

The omnibus legislation includes a gross total of $71.5 billion in combined budgetary resources at the U.S. Department of Transportation. This includes an obligation limitation of $40.7 billon on the federal-aid highway program, $15.5 billion for the FAA, and $10.2 billion for mass transit.

Enactment of H.R. 1105 will finally put the FY 2009 appropriations process to rest — and none too soon. Analysts at the Office of Management and Budget and the Congressional Budget Office have been anxiously awaiting the wrap-up of FY 2009 so that they can prepare their final baselines for FY 2010 and beyond (you can't say what x plus inflation is until you know what x is).

CBO hopes to have its baseline completed by March 20, while OMB should be able to integrate the omnibus numbers into its formal budget presentation in April.

Getting a bill of this scope through the Senate without any amendments is no mean feat. In order to get the necessary number of Republicans on board for the cloture vote, Senate Majority Leader Harry Reid (D-NV) had to allow a certain number of amendments to be offered to the bill. (Reid, of course, had his Democratic majority in near-lockstep to defeat any amendments.)

The amendment that came the closest to passing was a Sessions (R-AL) amendment to provide a six-year extension of a voluntary online employment eligibility verification program, which was tabled by a 50 to 47 vote. Also, a Vitter (R-LA) amendment to repeal the law that provides annual cost of living pay raises to members of Congress failed by a 52 to 45 vote.

House T&I Approves Water SRF Legislation

The House of Representatives is scheduled to consider legislation this week reauthorizing and expanding the state revolving funds used to finance water pollution control plants.

On March 5, the House Transportation and Infrastructure Committee approved H.R. 1262, the Water Quality Investment Act of 2009. This measure is scheduled to be considered by the House Rules Committee at 3:30 p.m. today, when Rules will consider what amendments will be allowed to be offered to the bill on the House floor.

H.R. 1262 is a combination of five different bills that passed the House or the T&I Committee in the last Congress but died. The principal one, title I of the bill, is the water quality provision which authorizes $13.8 billion in appropriations over five years for the "SRFs" under the Clean Water Act.

In order to receive funding, states must: (1) comply with federal accounting standards; (2) require loan applicants to evaluate innovative and alternative processes, materials, techniques, and technologies for carrying out water infrastructure projects and to select projects that may result in greater environmental benefits; (3) require loan applicants to consider the costs and effectiveness of other design, management, and financing approaches for carrying out the project; (4) use at least 15% of their annual capitalization grants to assist municipalities serving fewer than 10,000 individuals; and (5) require the Davis-Bacon prevailing wage rates to be paid to workers involved in the construction of treatment works.

Other titles in H.R. 1262 include provisions relating to alternative point source pollution, sewer overflow control grants, sewer overflow notification, and the Great Lakes Legacy Restoration Act.

Spending authorized by the bill in those other areas includes $250 million in grants over five years for alternative water source projects and authorizes $1.8 billion over five years in grants to municipalities and states to control sewer overflows. It amends the Clean Water Act to provide a national standard for public notification of overflows, and increases the authorization of appropriations to $150 million for each of the fiscal years 2010 through 2014.

In exchange for Rep. Connie Mack (R-FL) withdrawing an amendment in committee striking bill's Davis-Bacon expansion, Oberstar (D-MN) promised Mack that he would go to the Rules Committee and ask that Mack's amendment be made in order. (There is a strong pro-Davis-Bacon majority in the House, making Mack's amendment DOA.)

Obama Nominates Two To Senior USDOT Positions

President Obama has made two nominations for senior positions at the U.S. Department of Transportation. When the nominations are transmitted to Congress, they will be considered by the Commerce, Science and Transportation Committee.

The President nominated Roy Kienitz to be Under Secretary of Transportation for Policy, the number-three position at USDOT. Kienitz is currently the Deputy Chief of Staff for Governor Ed Rendell. Prior to his time in Pennsylvania, Kienitz served as Secretary of the Maryland Department of Planning where he implemented smart growth policies. Kienitz has also served as the Executive Director to the Surface Transportation Policy Project. Kienitz's prior experience also includes working for Former Senator Daniel Patrick Moynihan (D-NY) as Chief of Staff and on the staff of the U.S. Senate Environment & Public Works Committee during the 1991 ISTEA surface transportation legislation. Originally from California, Kienitz earned his bachelor's degree in Aquatic Biology from the University of California in 1983.

The President nominated Dana Gresham to be Assistant Secretary of Transportation for Governmental Affairs. Gresham served as the Chief of Staff for Rep. Artur Davis (D-AL) from 2003 to November 2008. He was the lead staffer for Representative Davis' participation with the Congressional Black Caucus and helped guide overall legislative and political direction for the New Democrat Coalition. Gresham was the primary policy and political advisor to Congressman Davis on the Ways and Means Committee in the House of Representatives. Before that he worked as the legislative director for Representative Bud Cramer (D-AL) where he worked with the Blue Dog Coalition and staffed Representative Cramer on the Transportation and Infrastructure Committee. Gresham has over 14 years of experience working on Capitol Hill and earned his bachelor's degree in Foreign Service from Georgetown University in 1994.

The crucial post of Deputy Secretary of Transportation is still open. The job was offered to, and accepted by, former FHWA and FAA head Jane Garvey. But the Obama Administration's post-Daschle, post-Geithner vetting process dragged on, and the White House wanted Garvey to liquidate a high percentage of her stock portfolio (with major losses) and recuse herself from dealings with former clients, so she recently withdrew from consideration for the post.

Former House T&I Aide Indicted By Abramoff Grand Jury

The former policy director for the House Transportation and Infrastructure Committee under chairman Don Young (R-AK) was indicted last Friday by a federal grant jury in Washington DC on three felony counts: conspiracy, accepting illegal gratuities, and making false statements on his financial disclosure forms.

If found guilty on all charges, Fraser Verrusio faces a theoretical maximum of twelve years in prison (though any prison term would likely be a good bit shorter.)

Verrusio was the policy director of the T&I Committee during the development and passage of the 2005 SAFETEA-LU surface transportation authorization law. His indictment stems from the investigation into lobbyist Jack Abramoff generally and of Todd Boulanger, a lobbyist who worked for Abramoff.

Boulanger and another lobbyist, James Hirni, have pleaded guilty to charges relating to their work for United Equipment Rental on SAFETEA-LU. Court papers say that Boulanger and Hirni provided "things of value" to Verrusio and to Trevor Blackann, a former aide to Sen. Kit Bond (R-MO), in exchange for their help on amendments to the bill that became SAFETEA-LU to encourage the rental of heavy construction equipment.

In particular, Verrusio and Blackann took an all-expenses-paid trip to game #1 of the 2003 World Series on the lobbyists' dime. Blackann plead guilty to failing to report the trip as a gift on his income taxes, and Verrusio is charged with failing to report the trip as a gift on his financial disclosure form.

A person familiar with the development of SAFETEA-LU says that the amendment in question was added in the 2003 Senate Environment and Public Works markup of S. 1072 (108th Congress) (see sec. 1406 of the bill as reported). Since Bond was one of the four draftsmen of the introduced bill, he could not offer the amendment himself, so the late Sen. Craig Thomas (R-WY) offered the amendment at (the source said) Blackann's behest. Verrusio was supposed to shepherd the amendment through the House, but consideration of the bill stretched over two years and the amendment fell by the wayside.

Judging by the nature of the charges against Verrusio, it does not appear that he has been cooperating with federal authorities. Everyone who has accepted a plea deal in the course of this investigation to date has been charged with a single count of wrongdoing based on a criminal information filing (not an indictment by a grant jury), to which the person then plead guilty. The one lobbyist to openly reject a plea bargain and go to trial, Kevin Ring, was indicted on multiple felony counts by a grand jury, as was Verrusio.

Financing Commission Recommendations: The Short Term

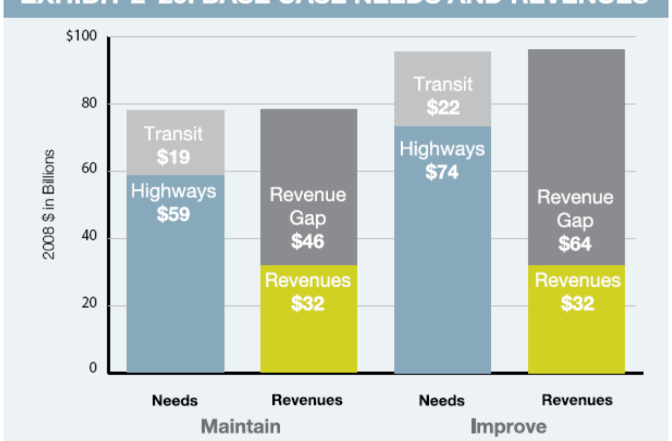
The National Surface Transportation Infrastructure Financing Commission recently released its final report. This is the first in a three-part series of articles examining the report's recommendations. This article examines the short-term revenue problems facing surface transportation and the Commission's proposed solutions. Part two will look at the long-term revenue options other than a VMT-based mileage fee, and part three will examine how the Commission's proposed long-term solution — a VMT-based fee replacing the fuel tax — would work.

The taxes that support the federal Highway Trust Fund — primarily the excise tax on gasoline and diesel fuel — brought in a net $31.3 billion into the Highway Account of the Trust Fund in fiscal year 2008, which ended almost six months ago.

Also in fiscal year 2008, total expenditures flowing out of the Highway Account totaled $37.4 billion.

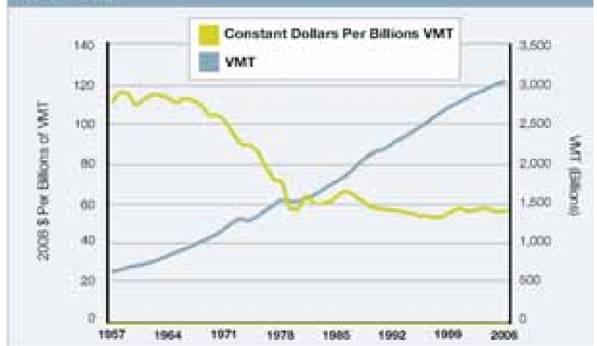
Those two figures tell you all you need to know about the dismal state of the federal-aid highway program. When added together, they reveal a Highway Account operating deficit of $6.1 billion. The Congressional Budget Office's most recent projection predicts a deficit of $6.8 billion in the current fiscal year and an $8.8 billion deficit in FY 2010.

EXHIBIT 2–25: BASE CASE NEEDS AND REVENUES



This state of affairs necessitated an $8.0 billion bailout of the Highway Trust Fund by the general fund of the Treasury in September 2008, and experts say another bailout will be required this year, possibly before Congress takes its five-week August recess.

EXHIBIT 2-2: VMT-ADJUSTED HIGHWAY SPENDING, 1957-2006



As Congress prepares to reauthorize the surface transportation programs that the Trust Fund pays for, they must find a way to balance this situation. A blue-ribbon panel, the National Surface Transportation Infrastructure Financing commission, issued its final report two weeks ago and provided some recommendations.

The most obvious solution that springs to mind is to cut spending. But political impossibility aside, there is a widespread consensus that federal spending on surface transportation infrastructure is far below where it needs to be if the current system is to simply be maintained, much less improved.

The graph (above right) taken from the Commission's final report shows how federal spending on highways, in inflation-adjusted dollars per vehicle mile-traveled, is now half of what it was in the late 1950s.

And using widely accepted data from the Department of Transportation in its biannual Conditions and Performance report, the chart at left shows the "base case" used by the Commission to analyze the spending needs for surface transportation and the revenues needed to achieve that goal.

The base case analyzes spending needs from the 2009-2035 period and uses a more conservative cost-benefit analysis than does the C&P report (projects in the "cost to improve" category must have a cost-benefit ratio of at least 1.2, not 1.0 as in the C&P report, leading to a price tag to improve the system about 10 percent lower than C&P). The dollars are in terms of constant 2008 dollars, inflation-adjusted to 2035.

The base case says that total annual capital investment (from all sources) needed just to maintain current conditions and performance is estimated to average $131 bill on for highways and $42 billion for transit, in 2008 dollars. This translates into annual federal highway and transit spending requirements of $59 billion and $19 billion, respectively, for a total of $78 billion.

The resulting annual federal investment gap for highways and transit is $46 billion. In addition, the total average annual spending needed to go further and improve the system under the base case scenario is $165 billion for highways and $49 billion for transit. The associated annual federal funding requirement is $96 billion for highways and transit combined, leaving an annual federal revenue shortfall of $64 billion.

In the short run, all this translates to is that cutting federal spending on surface transportation is not a viable options. But given that the Trust Fund is far short of the reve-

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nues needed to keep spending going at current levels (much less close the gap), where can the money be found?

The Commission took a rigorous statistical look at potential revenue sources, and weighted each one with a combination of evaluation factors:

Criteria	Weight
Revenue Stream Considerations:	
Revenue potential	0.14
Sustainability	0.08
Flexibility	0.05
Justification for dedication	0.05
Economic Considerations:	
Promotion of efficient investment	0.07
Promotion of efficient use	0.14
Enables charges for side effects	0.04
Implement./Admin. Considerations:	
Public acceptance/political viability	0.09
Appropriateness for federal use	0.07
Ease/cost of implement./admin.	0.07
Ease/cost of compliance	0.05
Equity Considerations	
User/beneficiary equity	0.10
Equity across income groups	0.04
Geographic equity	0.04
Total	**1.00**

For each revenue option, the Commission assigned a score of 1 (poor) through 5 (excellent) and then multiplied that number by the weighting factor.

REVENUE OPTIONS EXAMINED BY THE FINANCING COMMISSION

(5.000 is the unattainable perfect score)

Revenue Option	Score	Revenue Option	Score
Existing Revenue Sources:		*Broad-Based Taxes/GF*	
Motor Fuels Tax	3.575	General Sales Tax	2.200
Truck/Trailer Sales Taxes	3.365	Dedicated Income Tax	2.940
Truck Tire Taxes	3.240	General Fund Allocations	3.015
Heavy Vehicle Use Tax	3.490	*Freight-Related Options:*	
Vehicle-Related Options:		Container Fees	3.300
Vehicle Registrations Fee	3.320	Freight Sales Tax	3.140
Driver's License Surcharge	2.985	Harbor Maintenance Tax	3.090
Vehicle Sales Tax	3.110	Customs Duties	3.540
Auto-Related Sales Tax	2.925	Freight Ton-Based Tax	2.810
Automobile Tire Tax	3.640	Freight Ton-Mile Tax	2.950
Bicycle Tire Tax	2.960	*Tolling and Pricing Options:*	
Motor Fuel-Related Options		Facility-Based Tolling/Pricing	3.800
Carbon Tax/Cap-and-Trade	3.575	Cordon Pricing	2.600
Imported Oil Tariff	3.270	VMT Mechanism	4.140
Sales Tax on Motor Fuels	3.250		

The precise factor-by-factor weighting for each possible revenue option can be found in chapter 3 of the Commission's final report. However, the totals for every revenue option are shown in the table in the box at top right of this page. And the box at the bottom of the page shows how the Commission grouped the various revenue options and ratings into four categories: strong, moderate, weak, and not applicable/seriously flawed.

Only three options examined by the Commission get higher overall scores than the existing motor fuels taxes: a VMT fee, facility-based tolling and pricing, and an automobile tire tax. Of those three, a VMT fee is, technologically, at least 15 years away from startup; tolling and pricing are local, not federal options, which cannot be used to support federal appropriations; and there are sharp limits to how much money can be raised by a tax on automobile tires (the Commission estimates that each $3.60 in taxes per tire would raise $1 billion, but there are potentially huge safety problems that would arise if people keep driving on worn-out tires because high taxes discourage them from buying new tires).

A carbon tax or emissions cap-and-trade system gets the same overall score as the existing motor fuels taxes, but the system is so complicated that the earliest possible revenues from cap-and-trade are several years off at best.

So in the short term, an increase in the motor fuels taxes appears to be the highest-rated and most practical option.

Being a fixed-rate unit tax in terms of cents per gallon helps the gas tax be closer to a user fee but hurts it in terms of its buying power as inflation steadily erodes the dollar. (If the gas tax were, say, a 10 percent sales tax, the Trust Fund would be flush when gas prices are high and broke when gas prices

EXHIBIT 3–8: REVENUE OPTION EVALUATION SUMMARY*

Strong	Moderate	Weak	Not Applicable/ Seriously Flawed**
Federal Options			
• Vehicle miles traveled fee • Automobile tire tax • Motor fuel tax • Carbon tax/cap and trade • Customs duties • Truck/trailer sales tax • Vehicle registration fee • Heavy Vehicle Use Tax • Container fee • Tariff on imported oil • Sales tax on motor fuels • Truck tire tax	• Freight waybill tax • Vehicle sales tax • Harbor maintenance tax • General fund transfer	• Freight ton-mile tax • Driver's license surcharge • Bicycle tire tax • Dedicated income tax • Auto-related sales tax • Freight ton-based tax • General sales tax	• Vehicle inspection and traffic citation surcharge • Vehicle personal property tax • Windfall profits tax • Petroleum franchise tax • Minerals severance tax • Federal tax on local transit fares • Federal tax on local parking fees
State and Local Options Benefiting from Federal Action			
• Facility level tolling and pricing	• Proceeds of asset sales, leases, and concessions	• Cordon area pricing • Passenger facility charges	• Development and impact fees • Tourism-related taxes • Tobacco, alcohol, and gambling taxes

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were low. And the amount paid by a motorist would have very little to do with how much they drove and very much to do with whatever was on OPEC's mind at the time.)

This table shows how few times the fuel tax rates have been adjusted since 1956 in nominal cents per gallon and shows how the buying power of the tax, in terms of cents of "real" 2008 dollars, peaked in 1993 and has not been adjusted since:

FEDERAL FUEL TAX RATES
Nom. = Nominal Cents Per Gallon
Real = 2008 Cents per Gallon

	Gasoline		Diesel	
	Nom.	**Real**	**Nom.**	**Real**
1956	3	23.7	3	23.7
1959	4	29.6	4	29.6
1983	9	19.4	9	19.4
1984	9	18.6	15	31.1
1987	9.1	17.2	15.1	28.6
1990	14.1	23.2	20.1	33.1
1993	18.4	27.4	24.4	36.3
Now	18.4	18.4	24.4	24.4

If the tax rate is not increased, current baseline projections show a very slow annual increase in tax receipts in nominal dollars and a sharper fall-off in the buying power of the tax receipts due to inflation. The chart at the bottom right of the page shows the Commissions' analysis of the next 25 years worth of fuel taxes at the current 18.4 cpg level for gasoline and the 24.4 cpg level for diesel.

The relatively flat nominal line is due to two anticipated future factors: slower annual growth in vehicle-miles traveled (VMT), and increasing fuel economy in the automobile and truck fleets. The Commission's report notes that:

> The Federal Highway Administration (FHWA) estimates that vehicle miles traveled (VMT) will maintain an average annual growth rate of 1.5–2.0 percent over the long term as economic expansion and population growth continue to generate demand for highway travel. At the same time, however, the most recent U.S. Energy Information Agency estimates predict that the average fuel efficiency for all light-duty vehicles on the road will grow from 20.4 MPG today to 28.9 MPG by 2030, an increase of 42 percent, while that for freight trucks will grow from 6.0 MPG to 6.9 MPG, an increase of 15 percent. The combined effect of these anticipated trends is that at current tax rates, total nominal tax revenues will continue to grow, although at a slower rate than inflation. (Thus the purchasing power of the generated revenues will actually decline and will decline even further as a share of VMT.) The growth that does occur will largely be due to steady nominal growth in diesel tax proceeds. Nominal gasoline tax revenues will only experience moderate growth over the next 25 years and are actually expected to dip for a period until the growth in travel (due in large part simply to population growth) offsets the effect of fuel efficiency improvements on total gas consumption.

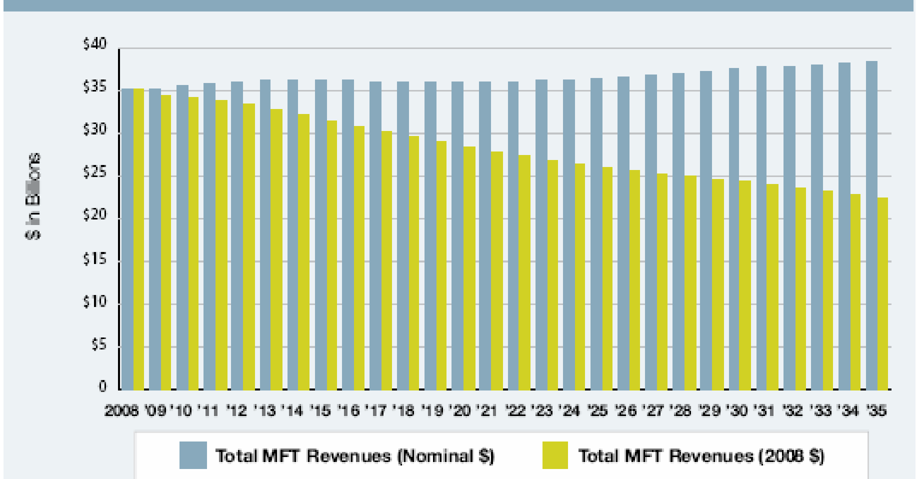
Within the current user-pays concept, the Commission found that the only alternative was an immediate and significant increase in the gasoline and diesel taxes. The panel recommended that the federal gasoline excise tax be increased immediately by 10.0 cents per gallon and that the diesel tax be increased by 15.0 cents per gallon, and that thereafter, those tax rates be indexed for inflation to prevent further erosion of the buying power of the Trust Fund dollar.

The report said that:

> Far from a panacea and covering only a portion of the actual need, the recommended adjustments (to these existing HTF sources would enable the current level of federal program funding commitments to be continued. They also approximate the amounts required to recapture the purchasing power lost to inflation since 1993, the last time federal motor fuel taxes were increased. The net new funds raised will play a critical role in helping to meet the very real near-term funding challenge and also help fund critical transition strategies…
>
> The Commission recognizes that the increases recommended here are not easy to achieve, especially in the context of the current economic recession, and that larger increases would be even more difficult. The Commission, however, views the increases as urgent and critical to begin to stem the degradation of the Highway Trust Fund. Together, these increases would translate into nearly $20 billion per year more than is collected today and would allow the federal government to fund its current commitments. Using the Base Case capital investment scenario presented in Chapter 2, this additional revenue would help close about 43 percent of the federal "cost to maintain" funding gap and about 31 percent of the federal "cost to improve" funding gap for the combined highway and transit system. Addressing the remaining annual funding gap at the federal level would require either more substantial increases or other revenue streams or both.

For its part, however, the Obama Administration has already publicly ruled out any increase in the gasoline tax "during a recession" which should rule it out during 2009 and at least the first quarter of 2010.

EXHIBIT 4-5: TOTAL MOTOR FUEL TAX REVENUES 2008-35 NOMINAL VS. 2008 DOLLARS



NEW AND NOTABLE ON THE INTERNET

Economic Stimulus Legislation—Implementation

The FTA has apportioned its $8.4 billion in transit spending under the stimulus bill. The notice and tables are in the *Federal Register*, here:
http://www.dot.gov/recovery/docs/E9-4745.pdf

And the Excel spreadsheet versions of the FTA apportionment tables can be found here:
http://www.fta.dot.gov/funding/apportionments/grants_financing_9295.html

The Federal Aviation Administration has posted a website detailing its stimulus funding plans:
http://www.faa.gov/recovery/

And the guidance document for Airport Improvement Program stimulus funding is here:
http://www.faa.gov/airports_airtraffic/airports/aip/media/FY09_aip_arra_guidance.pdf

The Maritime Administration notice on availability of stimulus funding for small shipyards is here:
http://www.dot.gov/recovery/docs/marad.pdf

Federal Aviation Administration Reauthorization Legislation

The text of the Oberstar managers amendment to the bill (HR 915) agreed to in committee is here:
http://transportation.house.gov/Media/file/Full%20Committee/20090305/OBERST_HR_915.pdf

Water Quality Investment Act of 2009

The text of H.R. 1262 as reported by the Transportation and Infrastructure Committee is here:
http://www.rules.house.gov/111/LegText/111_hr1262_txt.pdf

The list of possible amendments to H.R. 1262 filed with the House Rules Committee is here:
http://rules.house.gov/amendment_details.aspx?NewsID=4173

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
Department of Transportation	Roy Keinitz	Under Secretary for Policy	Commerce, Science and Transportation	Nomination announced 2/27/09
Department of Transportation	Dana Gresham	Assistant Secretary for Governmental Affairs	Commerce, Science and Transportation	Nomination transmitted 3/10/09

Transportation Weekly is a publication of:

THE LEGISLATIVE SERVICES GROUP

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Transportation Weekly is published every week the Congress is in session and sporadically when Congress is not in session.

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THIS WEEK IN COMMITTEE

Tuesday, March 10, 2009 — House Appropriations — Subcommittee on Transportation-HUD — subcommittee hearing on DOT management challenges (OIG and GAO testimony) — *10:00 a.m., 2358-A Rayburn.*

House Transportation and Infrastructure — Subcommittee on Economic Development, Public Buildings, and Emergency Management — subcommittee hearing on Economic Development Administration reauthorization — *10:00 a.m., 2167 Rayburn.*

Wednesday, March 11, 2009 — House Transportation and Infrastructure — Subcommittee on Coast Guard and Maritime Transportation — subcommittee hearing on Coast Guard drug and migrant interdiction — *10:00 a.m., 2167 Rayburn.*

Thursday, March 12, 2009 — House Appropriations — Subcommittee on Homeland Security — subcommittee hearing on rail and transit security — *10:00 a.m., 2362-A Rayburn.*

House Appropriations — Subcommittee on Transportation-HUD — subcommittee hearing on rural transportation needs — *10:00 a.m., 2358-A Rayburn.*

Senate Banking, Housing, and Urban Affairs — full committee hearing to examine transit's role in sustainable transportation solutions — *10:00 a.m., SD-538 Dirksen.*

UPCOMING CALENDAR

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	H.R. 1105 passed House 2/25/09 by a vote of 245-178	H.R. 1105 passed Senate 3/10/09 by voice vote	
Economic Stimulus Appropriations & Tax Cuts	H.R. 1 conference report passed House 2/13/09 by 246-183-1	H.R. 1 conference report passed Senate 2/13/09 by a vote of 60-38	Public Law 111-5 2/17/09
FY 2010 Congressional budget resolution	Budget resolution scheduled for committee markup on 3/25/09		
FY 2010 Transportation-HUD Appropriations			
FY 2010 Energy and Water Appropriations			
FY 2010 Homeland Security Appropriations			
Federal Aviation Admin. Reauthorization Bill	H.R. 915 ordered reported 3/5/09 by House T&I Committee		
Surface Transportation Reauthorization Bill			
Water Resources Development Act			
FY 2010 Coast Guard Authorization			