TRANSPORTATION WEEKLY

BUDGET UPDATE

FRIDAY, MARCH 27, 2009 – 11:30 A.M.

Both the House and Senate are expected to consider their versions of the annual budget resolution for fiscal year 2010 on the chamber floors next week. The House Budget Committee ordered a draft resolution approved on Wednesday night and the Senate Budget Committee approved its version yesterday evening.

The Senate panel still has not released the detailed functional category numbers for its plan, so analysis is not yet possible. However, the text of the legislative language of the chairman's mark offered by chairman Kent Conrad (D-ND) is available for comparison to the House mark offered by chairman John Spratt (D-SC).

Neither the House resolution nor the Senate resolution accepts the Obama Administration's proposed scorekeeping change regarding contract authority and obligation limitations.

Both resolutions authorize a "deficit-neutral reserve fund" for the future surface transportation reauthorization bill which allow the Budget Committees to increase the spending allocations to the transportation committees for the surface transportation bill if the bill also contains tax increases to pay for the extra spending.

However, the phrasing of the House and Senate reserve fund clauses are significantly different. The Senate resolution would prohibit a bill that puts spending on a "glide path" to deficit, as the SAFETEA-LU bill did, while the House resolution contains a potentially large loophole that could allow significant additional spending in the highway bill without any kind of "pay-for".

The language of both reserve fund clauses is contained at the end of this email. However, here are the high points.

1. Both the House and Senate clauses require some sort of test to require that any extra spending in the highway bill beyond the baseline amounts included in the budget resolutions is paid for. The House resolution bases its test on Highway Trust Fund solvency, allowing extra spending "if such measure establishes or maintains a solvent Highway Trust Fund over the period of fiscal years 2009 through 2015. 'Solvency' is defined as a positive cash balance." The Senate resolution, however, ignores Trust Fund solvency and focuses actual cash flow – the reauthorization bill's extra budget authority from the Trust Fund must be "offset by an increase in receipts to the Highway Trust Fund". The difference is that the House

test counts any dollars remaining in the Trust Fund as of October 1, 2009 (or whenever the start date of the highway bill turns out to be) to be counted towards the solvency test, while the Senate resolution does not.

2. Both the House and Senate clauses prevent transfers from the general fund to the Highway Trust Fund from being used to pay for new Trust Fund spending in the reauthorization bill, or in any other legislation providing new budget authority, unless the transfer is offset – the House clause says that money can be transferred to the Trust Fund from any federal fund "as long as the transfer of Federal funds is fully offset" while the Senate clause says that transfers from the general fund must be "offset by a similar increase in receipts".

3. The House and Senate clauses differ in one other key aspect – the House clause allows the reauthorization bill to increase the federal deficit, while the Senate clause requires that the reauthorization bill not increase the aggregate federal deficit over either the five-year 2010-2014 window or over the ten-year 2010-2019 window. The ten-year window is crucial, as the reauthorization bill is only expected to last for six fiscal years. The 2005 SAFETEA-LU law back-ended its spending and "spent down" expected Trust Fund balances by the end of the bill to the point that outlays greatly exceeded projected Trust Fund receipts in every year after the bill 's expiration (assuming normal baseline scoring rules for expiring programs). The new Senate clause would appear to prohibit that and would require baseline outlays in the four years after the expiration of the reauthorization bill not to exceed aggregate projected Trust Fund revenues.

The loophole mentioned above is at the intersection of distinctions #1 and #2. Both the House and Senate clauses require budget offsets for any general fund transfers to the Highway Trust Fund *in legislation providing new budget authority*. This includes the reauthorization bill, of course. But most highway experts expect that the Trust Fund will require a second bailout by the general fund before a reauthorization bill can be enacted – perhaps by June or July 2009.

If such legislation follows the form of the September 2008 Trust Fund bailout law, the bill will not contain any new budget authority, merely an "intra-governmental transfer" of funds from the general fund to the Trust Fund and therefore will not require an offset under either the House or Senate reserve fund clauses.

This has no implications for the highway bill for purposes of the Senate clause because the Senate clause ignores opening Trust Fund balances at the start of the reauthorization bill for its solvency test and for its deficit neutrality test. But the House resolution's reserve clause is based on

Highway Trust Fund solvency, which by definition includes any balances transferred to the Trust Fund between now and the start date of the reauthorization bill.

This means that every dollar provided by this summer's coming Trust Fund bailout that is not spent out by the start of the reauthorization bill (presumably October 1, 2009) is one dollar that the highway bill can spend *without raising offsetting revenues*.

This could take two different forms. The innocent form would be that when you are considering a bill in July, there is no way to know precisely how much money will be needed to get you through September 30, so you include extra money as a safety margin. Any unspent safety margin funds would be allowed to be spent in the highway bill without a revenue increase. So it would be in the best interests of the authorizing committees to make that safety margin as large as possible.

Then there is the not-so-innocent form. *Under the House budget resolution, there is no procedural reason why Congress could not simply transfer $25 billion (or $50 billion, or $100 billion, or more) from the general fund to the Trust Fund this summer, with no offsetting revenue increase, and then spend those billions in the subsequent reauthorization bill*.

Much more coverage of the budget resolution will be available in next Wednesday's regular issue of *Transportation Weekly*. The text of the House and Senate highway bill reserve clauses follows.

HOUSE LANGUAGE

SEC. 313. RESERVE FUND FOR THE SURFACE TRANSPORTATION REAUTHORIZATION.

The chairman of the Committee on the Budget may revise the allocations, aggregates, and other appropriate levels in this resolution for any bill, joint resolution, amendment, or conference report that reauthorizes surface transportation programs or that authorizes other transportation-related spending by providing new contract authority by the amounts provided in such measure if such measure establishes or maintains a solvent Highway Trust Fund over the period of fiscal years 2009 through 2015. ''Solvency'' is defined as a positive cash balance. Such measure may include a transfer into the Highway Trust Fund from other Federal funds, as long as the transfer of Federal funds is fully offset.

SENATE LANGUAGE

SEC. 205. DEFICIT-NEUTRAL RESERVE FUND FOR INVESTMENTS IN AMERICA'S INFRASTRUCTURE.

(b) SURFACE TRANSPORTATION.—The Chairman of the Senate Committee on the Budget may revise the allocations of a committee or committees, aggregates, and other appropriate levels and limits in this resolution for one or more bills, joint resolutions, amendments, motions, or conference reports that provide new budget authority for surface transportation programs to the extent such new budget authority is offset by an increase in receipts to the Highway Trust Fund (excluding transfers from the general fund of the Treasury into the Highway Trust Fund not offset by a similar increase in receipts), provided further that such legislation would not increase the deficit over either the period of the total of fiscal years 2009 through 2014 or the period of the total of fiscal years 2009 through 2019.