

# THE LEGISLATIVE SERVICES GROUP'S

# *Transportation Weekly*

MONITORING AND ANALYZING DEVELOPMENTS IN FEDERAL TRANSPORTATION AND PUBLIC WORKS POLICY

Volume 10, Issue 19

Thursday, April 23, 2009

## *Legislative Schedules* *Week of April 20, 2009*

### House

**Tuesday** — meets at 2 p.m. for legislative business — nine measures under suspension of the rules.

**Wednesday** — meets at 10 a.m. — thirteen measures under suspension of the rules.

**Thursday** — meets at 10 a.m. — H.R. 1145, national water R&D.

### Senate

The Senate convened today at 9:30 a.m. and resumed consideration of S. 386, fraud enforcement and recovery.

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## White House Announces High-Speed Rail Plan

### First Project Applications Due in August; Grants to Be Announced By October

President Obama last week unveiled his Administration's guiding principles for intercity passenger rail development.

"My high-speed rail proposal will lead to innovations that change the way we travel in America. We must start developing clean, energy-efficient transportation that will define our regions for centuries to come," said Obama. "A major new high-speed rail line will generate many thousands of construction jobs over several years, as well as permanent jobs for rail employees and increased economic activity in the destinations these trains serve. High-speed rail is long-overdue, and this



President Obama, Vice President Biden and Transportation Secretary LaHood at the announcement of the Obama Administration's intercity passenger rail plan on April 16.

plan lets American travelers know that they are not doomed to a future of long lines at the airports or jammed cars on the highways."

While the plan contains much that is not new, it also gives new details about how the Administration will dole out the \$8 billion in intercity pas-

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## LaHood Warns States Against Stimulus Diversion

U.S. Transportation Secretary Ray LaHood sent a letter to state governors and transportation officials earlier this week warning them against diverting federal economic stimulus funds saved through lower-than-expected project costs away from transportation projects towards other parts of the state's budget.

In his April 20 letter, LaHood noted that "...contractor bids to build and repair our transportation networks are coming in substantially below State expectations. Across the country, bids are 10-20 percent less than the engineers' estimates."

But LaHood goes on to warn states that "President Obama's pol-

icy is that all savings will be reinvested in eligible transportation projects, and only in those projects. This was also the clear intent of Congress when it approved the Recovery Act.

"Therefore, whenever federally-assisted Recovery Act transportation dollars are awarded, or constructed, at less than the

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# High-Speed Rail Plan

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senger rail funding provided by the economic stimulus law and an additional \$1 billion per year requested in the regular budget starting in fiscal 2010.

Beginning with the old: the plan includes a nice new map (shown below) of the same old high-speed rail corridors designated by DOT as far back as 1992. This saves FRA the incredible hassle of designating new corridors themselves now that there is real money at stake. (*Ed. Note:* It was easy to designate a corridor when it was the equivalent of a pat on the back—now, there’s skin in the game.)

The plan, course, opens with the traditional arguments in favor of intercity passenger rail (impacts on the environment and traffic congestion relief being foremost among them).

The Administration plan includes the obligatory chart (Figure 4) showing how federal spending on highways and aviation has dwarfed federal spending on intercity rail

since World War II. (Something seems odd about that chart, though—it seems to indicate that FY 2008 federal highway spending is \$57 or \$58 billion, when the actual highway number was closer to \$43 billion. Even if you count FMCSA and NHTSA, you can’t approach \$57 billion unless you also include mass transit spending — in which case we’re not talking about funding for “intercity” transportation anymore.)

Critics of intercity passenger rail spending point out that the reason for the high federal spending on highways and aviation is that the users of these systems pay taxes on gasoline, diesel fuel, airline tickets and pay a variety of other aviation fees, all of which are then used to pay for those programs, whereas users of intercity passenger rail pay no similar taxes on rail travel.

(*Ed. Note:* In this case, it’s about the paradigm under which you are operating. If you follow the paradigm being pushed by the stakeholder communities and the Congressional authorizing committees, then the excise taxes that support the highway and aviation trust

funds are not taxes at all but instead are user fees. *Spending user fees on the programs that the users have paid for is not a subsidy* — so under this paradigm, federal *subsidies* for Amtrak have been greater than federal *subsidies* for highways in most years. But if you subscribe to the paradigm pushed by the environmental, anti-sprawl and truth-in-budgeting interests, then a tax is a tax is a tax, and the highway and aviation excise taxes are no different than the excise tax on whiskey or the income tax itself — every tax dollar is fungible with every other tax dollar. In which case every federal dollar spent on highways and aviation really is a subsidy, no matter whether it came from a trust fund or from the general fund. So if you ever catch a pro-highway legislator or activist talk about federal “subsidies” for highways being far higher than federal “subsidies” for rail, they are talking at cross purposes with themselves.)

The plan then gets down to specifics. One of the big problems involved with discussing the issue is the lack of consensus on what exactly constitutes “high-speed” rail.

To clear things up, the new plan contains the following definitions:

- **HRS-Express.** “Frequent, express service between major population centers 200-600 miles apart, with few intermediate stops. Top speeds of at least 150 mph on completely grade-separated, dedicated rights-of-way...” In other words, European-style high-speed rail which does not exist anywhere in the U.S. at this time.
- **HSR-Regional.** “Relatively frequent service between major and moderate population centers 100-500 miles apart, with some intermediate stops. Top speeds of 110-150 mph, grade-separated, with some dedicated and some shared track.” The only existing service meeting this definition is the Acela.
- **Emerging HSR.** “Developing corridors of 100-150 miles, with strong potential for future HSR Regional and/or Express service.

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# High-Speed Rail Plan

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Top speeds of 90-110 mph on primarily shared track.” This category is the one where \$8 billion could be spread around widely and still produce noticeable new service.

- **Conventional Rail.** “Traditional intercity passenger rail services of more than 100 miles with as little as one to as many as 7-12 daily frequencies; may or may not have strong potential for future high-speed rail service. Top speeds of up to 79 mph to as high as 90 mph on shared track.”

The \$8 billion will be divided amongst three “tracks” described in full at the bottom of the following page. They are stand-alone projects, corridor funding, and planning. (Key point — they have not yet announced how much money will go to each track, and they may well have not decided that yet.) Funding will then be further divided into multiple rounds of applications and awards. The first round of applications will be due

sometime this summer. Subsequent rounds of funding from the \$8 billion in stimulus funding will be combined with future regular appropriations.

Prerequisites for funding include:

- **Completed planning and project development work** (though planning can be sought separately in track 3 for future projects).
- **Stakeholder agreement** — applicants must reach written agreements between the states involved, the host railroads, the service operators, and other stakeholders.
- **Financial plan** — detailed financial operating forecasts must be provided, along with project capital costs and the identification of all non-federal funding sources.
- **Management plans** — applicants will need to demonstrate that they have the capability to effectively manage corridor programs and projects. These plans will need to include items such as staff resources, budget, schedules, control/change order procedures, quality control processes, oversight provisions, and reporting mechanisms.

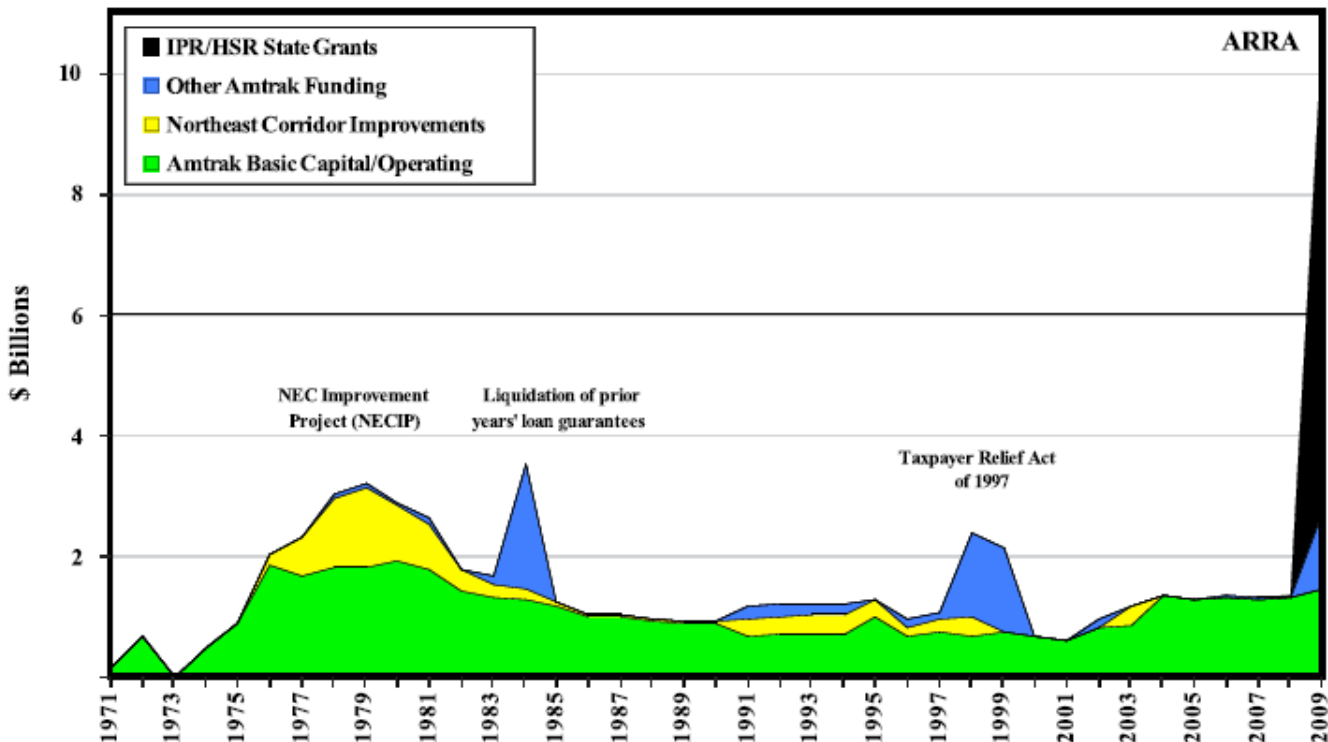
Applications that meet the above prerequisites will then be judged on a series of criteria outlined in the plan (and to be described in more detail in the forthcoming *Federal Register* notice):

- **Achieving public benefits** — contributing to the economic recovery, advancing strategic transportation goals, and furthering other high-speed and intercity passenger rail goals outlined in law.
- **Mitigating risks** — fiscal and institutional capacity to carry out and manage the project, financial projections and plans, commitments from stakeholders, and experience and procedures for managing financial, management and construction risks.
- **Other criteria** — timeliness of benefits, sufficiency of reporting requirements and management approach, and completeness and quality of the application.

Presumably, the final notice will include the relative weighting of these factors in the application process.

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FEDERAL FUNDING FOR INTERCITY PASSENGER RAIL, 1971-2009



Source: President's High-Speed Rail Strategy. Although the chart does not indicate it, these numbers have got to be inflation-adjusted constant 2008 or 2009 dollars—in FY 1979, for example, the Amtrak appropriation for operating subsidies was \$550 million, which adjusted for CPI-U would be almost \$2 billion in 2008 dollars, which looks right on the chart. And the blue bump from 1997-2000 is a welcome reminder of the most ridiculous back-door subsidy in recorded history—since the Appropriations Committees were not being forthcoming with appropriated subsidies, Finance Committee chairman Bill Roth (R-DE) wrote a provision into tax law allowing Amtrak retroactive tax deductions far in excess of what Amtrak actually paid in taxes — which in effect forced the IRS to write Amtrak a total of \$2.2 billion in checks without any action by the Appropriations Committees. Clever, no?

# High-Speed Rail Plan

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Looking at the plan in total, several key questions arise. The first is: how much of the \$8 to \$13 billion in funding over the next five years will be spent on “true” high-speed rail (the European-style rail that the Obama Administration is calling “HSR-Express”)?

Because while \$13 billion sounds like a lot of money, and indeed it dwarfs all past federal expenditures on high-speed rail, it is truly a pittance compared to the costs of building HSR-Express corridors. The estimated cost of the California corridor alone is likely to be well over \$100 billion. If funding is concentrated towards true high-

speed rail, then it can only go towards a very few projects or corridors if it is to do any good.

Even upgrading existing service to higher speeds can get expensive. The CEO of Amtrak recently said that in order to cut the Acela Express’s time for the DC-NYC run from 2 hours 45 minutes to 2 hours 15 minutes, about \$6 billion in capital expenses would be needed. And even then it would only qualify as HSR-Regional, not as HSR-Express.

A more likely outcome is for the initial \$8-\$13 billion to be concentrated in more of the “Emerging HSR” areas where the dollar amounts involved can show tangible (if not high-speed) service improvements in a wide number of areas in a reasonable timeframe.

TENTATIVE SCHEDULE FOR HSR/IPR FUNDING	
June 17, 2009	Deadline for FRA to publish a guidance document in the Federal Register requesting applications for projects and setting rules.
August 2009	Applications for funds under Track 1 (projects) and Track 3 (planning) are due.
October 2009	Grants will be announced under Track 1 and Track 3.
October 2009	Applications for funds under Track 2 (corridors) are due.
December 2009	Grants will be announced under Track 2.
January 2010	Applications for round 2 of funding under Track 2 (planning) are due.
March 2010	Grants will be announced under Track 2, Round 2.
March 2010	Applications for round 2 of funding under Track 1 (projects) are due.
May 2010	Grants will be announced under Track 1, Round 2.
May 2010	Applications for round 2 of funding under Track 2 (corridors) are due.

## RAIL FUNDING TO PROCEED ALONG THREE “TRACKS”

Under the Obama Administration’s new high-speed rail plan, the \$8 billion in stimulus money and the requested \$1 billion per year in regular funding will be given out under three different processes, or “tracks”:

**Track 1—Projects.** Grants to complete individual projects eligible under PRIIA secs. 301 (IPR projects) and 302 (congestion projects), for the benefit of existing services. Projects must have completed the NEPA process and finished preliminary engineering and must demonstrate “independent utility” (the project is usable and provides benefits even if no additional transportation improvements in the area are made). If a project shows independent utility, it can get NEPA and PE funding and then be eligible for future construction funding.

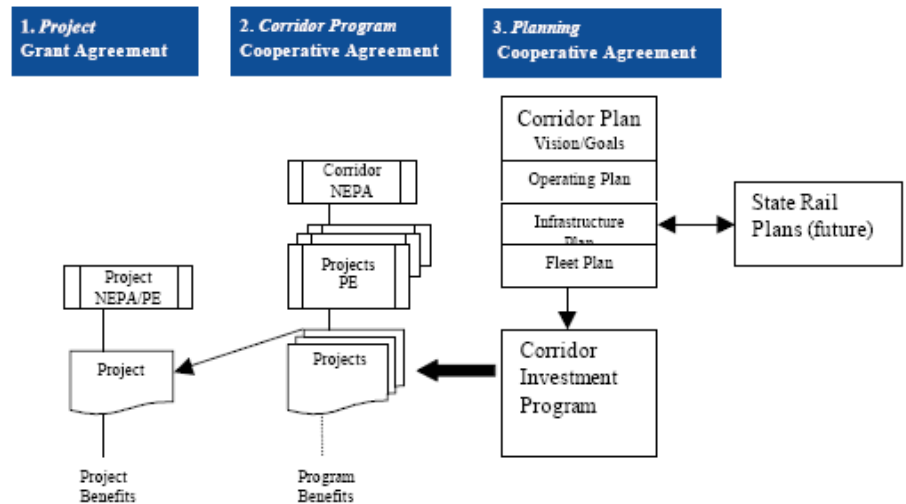
**Track 2—Corridors.** Cooperative agreements to develop entire segments or phases of corridor programs eligible under PRIIA secs. 501 (HSR) and 301 (IPR), benefiting existing or new services. Corridor programs must: (a) be based on a corridor plan that establishes service objectives and includes a prioritized list of projects to achieve

those objectives; and (b) have completed sufficient corridor/section/phase programmatic or NEPA documentation and sufficient planning to provide reasonable project cost and benefit estimates. As with track 1, corridors without NEPA and planning completion can apply for that funding and then apply for construction dollars in later rounds.

**Track 3—Planning.** Cooperative agreements for planning activities (including development of corridor plans and state rail plans) eligible for funding under sec. 301 of PRIIA,

using regular (non-stimulus) appropriations. This provides states an opportunity to prepare themselves for any funding remaining in subsequent rounds of stimulus funding, and/or future year appropriations.

The flowchart below is taken from the Administration plan and shows how they intend the plan to work. The list above shows the approximate dates of deadlines for funding under the various tracks (to be finalized in the rulemaking which must be issued by June 17).





## LaHood Letter

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originally estimated cost, any Federal dollars that are not used for that particular project must be used for other projects consistent with the original Recovery Act appropriation.”

LaHood's statement of the Obama Administration's policy on this subject cannot be questioned, but his statements on the intent of Congress and why states “must” use savings for more transportation projects are not that clear-cut.

The economic stimulus law (P.L. 111-5) does not say anything specific about diversion of unused stimulus appropriations, but the underlying principles of appropriations law apply — an individual appropriation can only be used for the purposes stated in the law. So

the leftover highway money can only be used for the “restoration, repair, construction and other activities” mentioned specifically in the law.

But LaHood is no doubt talking about fungibility and the maintenance of effort requirement of the stimulus law (sec. 1201 of Division A of the law).

The maintenance of effort (or MoE) requirement in sec. 1201(a) simply required states to put in writing what their precise plans were as of February 17, 2009 (the date of enactment of the stimulus law) for spending highway, bridge, transit, rail, airport and shipyard money through September 30, 2010 and give that statement to DOT.

It then in sec. 1201(b) says that if a state winds up spending less than its previously pledged amount between now and September 2010, then the state loses its eligibility for

the August 2011 redistribution of unused highway obligation authority for fiscal year 2011. That's all. (More on that below.)

If a the amount a state winds up spending on its transportation stimulus projects winds up being less than it anticipated because of lower bids and lack of cost overruns, then any attempt to transfer those cost savings to the state's own finances and reduce its own expenditures would place the state in violation of the MoE requirements of sec. 1201.

But this is not quite the same thing as saying that the state “must” not transfer cost savings to its own transportation spending — merely that if they do so, there will be consequences.

The statutory consequences — giving up a share of the August 2011 highway redistribution — are not

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## LETTER FROM SECRETARY LAHOOD TO STATE GOVERNORS AND DEPTS. OF TRANSPORTATION

April 20, 2009

Dear Governor:

Our Recovery Act investments in transportation are off to a great start. In just 7 weeks, the U.S. Department of Transportation has approved over \$7.5 billion in State requests for highway, road, bridge and airport construction and repairs nationwide. Projects have been approved in every State. Our economists estimate that 39,000 job-years will be created just from the projects that we have approved so far.

It is especially gratifying to read reports that contractor bids to build and repair our transportation networks are coming in substantially below State expectations. Across the country, bids are 10-20 percent less than the engineers' estimates. As you hold the line on costs, Americans benefit. We can build more projects with the savings, reducing traffic congestion and creating more jobs. We are, quite literally, getting America moving again.

Obviously, these additional jobs and infrastructure benefits happen only if the cost savings are put to work in new transportation projects. President Obama's policy is that all savings will be reinvested in eligible transportation projects, and only in those projects. This was also the clear intent of Congress when it approved the Recovery Act.

Therefore, whenever federally-assisted Recovery Act transportation dollars are awarded, or constructed, at less than the originally estimated cost, any Federal dollars that are not used for that particular project must be used for other projects consistent with the original Recovery Act appropriation. Money saved from Recovery Act-funded highway projects, for example, may be used for transit and rail. But funds saved must only be used for eligible transportation projects.

We will work with you to ensure that your State benefits from your frugality. Savings you accrue from awarding low bids and from reduced construction costs due to your oversight and project management should remain in your State to be spent on other eligible transportation projects.

The transportation community is the public face of the Recovery Act. As the summer road construction season begins, motorists will see workers at work, thanks to the Recovery Act. We are creating jobs. Just as importantly, we are creating hope.

I look forward to working with you to make that hope a reality.

Sincerely yours,  
Ray LaHood

# LaHood Letter

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that great when compared to the amount of money at stake in the stimulus. As the box below shows, the August redistribution takes back somewhere between 1.4 percent and 5.8 percent of each year's highway obligation limitation that cannot be used by FHWA allocated programs and gives it to states. (The FY 2006 number was abnormally high due to the implementation of a lot of new SAFETEA-LU programs—the three percent range is much more traditional.)

Each state gets a share of that redistribution that is roughly the same as its annual share of the total obligation limitation distribution. The table at the end of this article lists each state's high and low percentage of the Au-

gust redistribution over the first four years of SAFETEA-LU.

So starting in alphabetical order, if Alabama violates the MoE requirement, then in August 2011, they stand to forfeit about 1.6 to 1.8 percent of about 2 to 4 percent of the FY 2011 highway ob limit. Assume that in FY 2011 the ob limit is 21 percent higher than this year — an even \$50 billion.

**THE "AUGUST REDISTRIBUTION" OF UNUSED FEDERAL-AID HIGHWAYS OBLIGATION LIMITATION (BILLIONS OF \$\$)**

	Total Ob Lim	August Redistr.	A.R. as % of OL
<b>FY 2002</b>	31.799	0.495	1.6%
<b>FY 2003</b>	31.593	0.432	1.4%
<b>FY 2004</b>	33.640	0.973	2.9%
<b>FY 2005</b>	34.419	1.167	3.4%
<b>FY 2006</b>	35.672	2.077	5.8%
<b>FY 2007</b>	39.086	1.224	3.1%
<b>FY 2008</b>	42.216	1.160	2.7%

Under that scenario, Alabama would lose between \$16 million and \$36 million in August 2011 if they violate the MoE requirement (unless Congress changes its mind and loosens the rules between now and then). This is not, in the grand scheme of things, a lot of money when

compared to the stimulus funding. Even the biggest state, California, would only lose between \$93 and \$197 million under this scenario if they completely and flagrantly violate the MoE requirement.

Perhaps a more meaningful restriction is LaHood's statement that "We will work with you to ensure that your State benefits from your frugality" — perhaps a reminder that the Secretary has \$1.5 billion in multimodal discretionary project money and \$8 billion in discretionary rail money, and that violating the MoE rules might hurt a state's chances of sharing that wealth.

**State Shares of August Highway Redistribution Under SAFETEA-LU**

	Low	High
ALABAMA	1.59%	1.76%
ALASKA	0.00%	0.23%
ARIZONA	1.65%	1.77%
ARKANSAS	0.01%	1.26%
CALIFORNIA	9.28%	9.85%
COLORADO	1.31%	1.42%
CONNECTICUT	0.82%	1.47%
DELAWARE	0.08%	0.24%
DIST. OF COL.	0.55%	0.60%
FLORIDA	3.58%	4.18%
GEORGIA	3.44%	3.59%
HAWAII	0.84%	0.88%
IDAHO	0.62%	0.72%
ILLINOIS	3.19%	3.45%
INDIANA	2.25%	2.40%
IOWA	1.23%	1.32%
KANSAS	1.22%	1.38%
KENTUCKY	1.49%	1.63%
LOUISIANA	1.44%	2.16%
MAINE	0.53%	0.56%
MARYLAND	1.64%	1.75%
MASSACHUSETTS	4.27%	4.61%
MICHIGAN	2.82%	3.06%
MINNESOTA	1.64%	1.74%
MISSISSIPPI	1.16%	1.25%
MISSOURI	2.33%	2.42%
MONTANA	0.95%	0.97%
NEBRASKA	0.69%	0.92%
NEVADA	0.13%	0.56%
NEW HAMPSHIRE	0.54%	0.58%
NEW JERSEY	2.86%	3.06%
NEW MEXICO	0.84%	0.97%
NEW YORK	1.20%	5.66%
NORTH CAROLINA	2.77%	2.91%
NORTH DAKOTA	0.57%	0.67%
OHIO	3.62%	3.86%
OKLAHOMA	1.47%	1.63%
OREGON	1.08%	1.21%
PENNSYLVANIA	4.17%	4.77%
RHODE ISLAND	0.61%	0.64%
SOUTH CAROLINA	1.70%	1.85%
SOUTH DAKOTA	0.73%	0.79%
TENNESSEE	1.65%	2.30%
TEXAS	7.14%	7.92%
UTAH	0.90%	0.96%
VERMONT	0.56%	0.61%
VIRGINIA	2.57%	2.90%
WASHINGTON	1.39%	1.72%
WEST VIRGINIA	0.72%	1.06%
WISCONSIN	1.79%	1.98%
WYOMING	0.63%	0.73%

## February U.S. VMT Numbers Slightly Better

This month's new numbers on the vehicle-miles traveled on U.S. roads from the Federal Highway Administration and the Bureau of Transportation Statistics can be interpreted two ways.

If one simply looks at the numbers themselves, then February 2009's 215.8 billion VMT is down slightly from February 2008's 217.6 billion (a decrease of just under one percent), as is to be expected during a severe recession.

However, when dealing with a change that small, one must remember that 2008 was a leap year with an extra day in February (Hail, Caesar! Thanks for your calendar!).

Millions of Vehicle Miles-Traveled			
Year	Feb.	YTD	12-mo.
2001	200,871	410,551	2,754,773
2002	208,223	423,423	2,808,420
2003	203,645	422,148	2,853,987
2004	213,300	435,753	2,903,281
2005	219,587	443,681	2,972,095
2006	220,343	453,672	2,999,386
2007	218,780	452,503	3,013,167
2008	217,636	447,115	3,024,403
2009	215,769	438,546	2,916,667

The fraction 1/28 is 3.57 percent, so if you multiply February 2009's 215.8 billion VMT by 1.0357, you get about 223.5 billion VMT—an increase of 5.8 billion, or 2.7 percent, over February 2008.

Obviously, a one-month change could simply be a statistically meaningless blip, so we'll have to wait several months to see if this trend continues (and, obviously, future gas prices will have a huge impact on this.)

## USDOT Announces Initial Round of Staff Appointments

Last week, the U.S. Department of Transportation announced a series of senior and mid-level staff appointments at the Department. Though some are not new (dating back to the start of the Obama Administration three months ago), the total list provides the only comprehensive picture so far of how the new Administration is filling the key USDOT positions below the level of Senate-confirmed Assistant Secretaries and modal administrators.

After looking at the total list, a few conclusions can be drawn.

*Conclusion #1:* It's good to be from Illinois.

As is usually the practice of legislators who move to run Cabinet agencies, several high-up staff for Secretary LaHood used to work for Congressman LaHood.

The chief of staff to the Secretary since day one has been **Joan DeBoer**, who worked with LaHood as a staffer in former Rep. Bob Michel's (R-IL) office before working for LaHood for his entire tenure in the House, serving much of that time as his associate staffer on the Appropriations Committee. Likewise, the Deputy Chief of Staff is **Marlise Streitmatter**, a onetime LaHood staffer who of late has served as Senior Advisor for North American Affairs at the World Bank. And LaHood's former legislative assistant **Sarah Cottingham**, who previously worked for the Illinois Senate Minority Staff, is now Special Assistant to the Undersecretary for Policy-Designee Roy Keinitz. (In the DOT organizational chart, the U. for P. does not have a staff structure of his own but is lumped in with the immediate office of the Secretary and Deputy Secretary.)

In addition to immediate LaHood staff, one must remember that the President and his chief of staff are from Illinois as well, and between their three offices, they knew most everybody in state politics.

Another member of the Illinois delegation is **Christa Fornarotto**, the new Deputy Assistant Secretary for Aviation and International Affairs (no nominee for that job yet). Fornarotto previously was the Legislative Director to Rep. Jerry Costello (D-IL) and was professional staff on the House Aviation Subcommittee.

Two of the Associate Directors for Governmental Affairs under Assistant Secretary for Governmental Affairs-Designee Dana Gresham have Illinois connections as well. **Yasmin Yaver** worked for Rep. Rahm Emanuel (D-IL) on his House Democratic Caucus staff as Deputy Policy Director, and prior to that

worked for Sen. Bob Menendez (D-IL). **Curtis Johnson** was Legislative Correspondent for Rep. Bobby Rush (D-IL).

And the new Assistant Secretary for Public Affairs, **Jill Zuckman**, was well-known and plugged-in throughout the Prairie State as the national political correspondent for the *Chicago Tribune*. Her previous journalistic work included stints at the *Boston Globe*, *Congressional Quarterly*, and the *Milwaukee Journal*, as well as more recent talking-head spots on most of the cable news networks.

*Conclusion #2:* Having worked on the Obama campaign doesn't hurt.

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### CORRECTION

#### U.S. DEPARTMENT OF TRANSPORTATION POSITIONS SUBJECT TO SENATE CONFIRMATION

##### USDOT - Agency-Wide Positions (9)

Secretary	Confirmed
Deputy Secretary	Nomination Made
Under Secretary for Policy	Nomination Made
Asst. Sec. for Transportation Policy	No Nominee Yet
Asst. Sec. for Aviation and Intl. Affairs	No Nominee Yet
General Counsel	Nomination Made
Asst. Sec. for Budget and Programs	No Nominee Yet
Asst. Sec. for Governmental Affairs	Nomination Made
Inspector General	No Vacancy

##### USDOT - Modal Administrations (11)

Administrator, FAA	Nomination Made
Deputy Administrator, FAA	No Nominee Yet
Administrator, FHWA	Nomination Made
Administrator, FMCSA	No Nominee Yet
Administrator, NHTSA	Nomination Made
Administrator, FRA	Nomination Made
Administrator, FTA	Nomination Made
Administrator, MARAD	No Nominee Yet
Administrator, PHMSA	No Nominee Yet
Administrator, RITA	Nomination Made
Administrator, StLSDC	No Nominee Yet

##### Surface Transportation Board (3)\*

Member (term ending 12/31/2013)	No Nominee Yet
Member (term ending 12/31/2010)	No Vacancy
Member (term ending 12/31/2012)	No Vacancy

\*Also, the position of Chairman of the STB is not confirmable by the Senate but is subject to a designation by the President. Frank Mulvey is serving a term as a Member of the STB until December 31, 2012, and the President on March 12 designated him Acting Chairman, but it is still not clear if the forthcoming nominee for the term ending December 31, 2013 will be designated permanent Chairman or not.

Last week's issue inaccurately indicated that the office of Inspector General of the USDOT was a political position that became vacant at the end of a presidential administration like the rest of the Senate-confirmed appointees.

In fact, the position is non-partisan, and the IG serves during good behavior, so there is no vacancy for the Obama Administration to fill there at this time.

The list at right is updated to reflect that, and since we were now including Senate-confirmed positions for which there is no current vacancy, we also added the other two Surface Transportation Board seats which are currently filled. There are a total of 23 positions within the Department of Transportation that require Senate confirmation.

## USDOT Appointees

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**Nate Turnbull** is the new White House Liaison in the Office of the Secretary. Turnbull was Northeast Finance Director for the Obama campaign and then worked on the Inaugural Committee. Prior to his campaign work, Turnbull HELD positions with Governor Deval Patrick (D-MA) and Mellon Financial Corporation.

**Georgette Brammer** will be Special Assistant to the White House Liaison and Scheduling and Advance. She worked on the Obama campaign's finance team in Florida and also came to DC to work on the Inaugural Committee.

**Alex Friendly**, one of the longest-tenured advance staffers on the Obama campaign, is now a Special Assistant in the Office of Scheduling and Advance, as are **Chelsea LaMar**, who has been working advance in the White House after

working on the campaign and the Inaugural Committee, and **Justin Nisly**, who worked advance for the campaign in Nevada before coming to DC to help staff the DOT transition review team.

**Brandon Neal** is the Director of the Office of Small and Disadvantaged Business Utilization. He served as the campaign's Finance Director for African-American Affairs and previously worked in outreach for the Democratic Governors Association.

**Candice Tolliver** is the new Director of Communications at the Federal Motor Carrier Safety Administration. She worked in the press office in the Obama campaign after working as communications director for Reps. Maxine Waters (D-CA) and John Lewis (D-GA) and running the communications shop for a DC charter school system.

And **Olivia Alair** becomes Deputy Press Secretary after working as the Ohio press person for the

Obama campaign and, prior to that, as Deputy Press Secretary to then-Senator Joe Biden (D-DE). (*Ed. Note:* this will work out well, as Vice President Biden appears intent on showing up at every transportation ribbon-cutting for the next eight years.)

*Conclusion #3:* You still need a few DC insiders and policy experts. (Some of the Illinois folks mentioned earlier also qualify here.)

The office of Assistant Secretary for Governmental Affairs usually has three deputies — one intergovernmental, one House, and one Senate. The intergovernmental deputy is **Joanna Turner**, who is known to transportation insiders for her recent work as the head transportation staffer for the National Governors Association, and prior to that for the National League of Cities.

The House deputy is **Bob Letteney**, who has been the transpor-

*CONTINUED ON NEXT PAGE*

## STATUS OF SENIOR EXECUTIVE POSITIONS AT THE U.S. DEPT. OF TRANSPORTATION

According to the November 2008 *Plum Book*, there are a total of 36 senior political appointee positions at the U.S. Department of Transportation that do not require Senate confirmation. "Senior" means that they are jobs that would be classified as being in the Senior Executive Service by OPM if the jobs were not held by political appointee. These jobs are classified as either "NA" (Noncompetitive Appointment) in the *Plum Book* or, in the case of the FAA and STB, as "XS" (Excepted by Statute).

It appears that in the modal administrations, the Secretary's people are waiting for the Senate to confirm the Administrator so that the Administrator can then have some say in their senior-level people. The exception is the Federal Railroad Administration, where the ticking clock on the \$8 billion in stimulus money for high-speed rail has necessitated someone from Team Obama being on-site.

<u>POSITION</u>	<u>NEW APPOINTEE</u>	<u>POSITION</u>	<u>NEW APPOINTEE</u>
<b>OST (13)</b> Chief of Staff Deputy Chief of Staff Counselor to the Secretary Director, Executive Secretariat Director, Office of Civil Rights Director, DBE Utilization Chief Information Officer Asst Sec., Public Affairs Deputy General Counsel Deputy Asst. Sec. for Management and Budget Deputy Asst. Sec. for Trans. Policy #1 Deputy Asst. Sec. for Trans. Policy #2 Deputy Asst. Sec. for Aviation & Int'l. Affairs	Joan DeBoer Marlise Streitmatter Katie Thomson  Brandon Neal  Jill Zuckman  David Matsuda  Christa Fornarotto	<b>FMCSA (2)</b> Deputy Administrator Chief Counsel  <b>FRA (1)</b> Deputy Administrator  <b>FTA (3)</b> Deputy Administrator Associate Admin. for Comm. & Leg. Affairs Chief Counsel  <b>MARAD (2)</b> Deputy Administrator Chief Counsel  <b>NHTSA (3)</b> Deputy Administrator Chief of Staff Chief Counsel  <b>PHMSA (2)</b> Deputy Administrator Chief Counsel  <b>RITA (2)</b> Deputy Administrator Chief Counsel  <b>STB (1)</b> Senior Advisor to the Board	Karen Rae
<b>FAA (4)</b> Chief Counsel Assistant Admin. For Communications Associate Admin. For Airports Assistant Admin. For Govt/Industry Affairs			
<b>FHWA (4)</b> Deputy Administrator Chief Counsel Associate Admin. For Policy & Governmental Associate Admin. For Public Affairs			



## USDOT Appointees

*CONTINUED FROM PAGE EIGHT*

tation appropriations staffer for House Transportation-HUD chairman John Olver (D-MA) since 2007. He previously worked for Olver starting in 2000, leaving to be a Mansfield fellow in the Japanese government from 2003-2005, and then was Rep. Marty Meehan's (D-MA) chief of staff from 2005-2007.

**David Matsuda** is a Deputy Assistant Secretary for Transportation Policy. For the last six years he has been senior transportation counsel to Sen. Frank Lautenberg (D-NJ). Before that, he did a stint on the Senate Commerce Committee staff following five years as a safety attorney with the Federal Railroad Administration.

**Karen Rae** is the Deputy Administrator of the Federal Railroad Administration and has the unenviable job of trying to implement plans for the \$8 billion in rail

money that fell from the sky in the stimulus bill. She comes to DC from a term as Deputy Commissioner of Policy and Planning at the New York state DOT, which follows terms as deputy secretary for local and area transportation at PennDOT, director of the Virginia Department of Rail and Public Transportation, and general manager for the Austin, Texas, Metropolitan Transportation Authority.

**Katie Thomson** is Counselor to the Secretary. She has been an attorney in private practice for eighteen years focusing on environmental and energy matters, with a particular emphasis on Clean Air Act, climate change, hazardous materials transportation and natural resource management issues.

**Shailen Bhatt** is the Special Assistant to the Administrator of the Federal Highway Administration. He comes from Kentucky, where he was Deputy Executive Director with the Kentucky Transportation Cabinet – Division of Highways follow-

ing service as the Bowling Green-Warren County MPO Director.

And **Kevin Chapman** rejoins DOT as Director of Scheduling and Advance. Chapman previously served at DOT as a Special Assistant to the Secretary for Scheduling and Advance from 2001-2003. Since then, he has worked as Director of the Public Campaign at the Vietnam Veterans Memorial Fund. Prior to 2001, he worked for Sen. Chuck Hagel (R-NE).

*Conclusion #4:* The much-anticipated “brain drain” from House and Senate committees to DOT has not taken place yet. Of the persons mentioned above, only three (Matsuda, Letteney, and Fornarotto) worked on Congressional committees, and none of those were on the staff of a full committee chairman (they all worked for subcommittee chairmen and were personal, associate, or “clause 5” staff). Perhaps the drain will pick up once the senior jobs at modal administrations are filled.

### “SCHEDULE C” APPOINTEES AT THE U.S. DEPT. OF TRANSPORTATION

The FY 2009 DOT appropriations law caps the total political appointees at USDOT during this fiscal year at 110. After subtracting out the 23 Senate-confirmed appointees and the 36 SES-level appointees listed on the previous page, this leaves room for 51 or 52 “Schedule C” appointees (depending on whether or not the Inspector General counts towards the cap of 110—we’re not sure).

Schedule C’s are political appointees at the GS-15 pay grade or below. Unlike the SES-level jobs on the previous page, the structure of the Schedule C jobs is flexible—no particular Schedule C job is permanent, so when a Schedule C appointee leaves, the Office of Personnel Management automatically revokes the existence of that job and the agency must then apply to OPM for a new Schedule C slot.

This means that while the SES-level jobs on the previous page will likely be structured the same under the Obama Administration as under the Bush Administration, the new team is free to switch around Schedule C job titles and descriptions and move the Schedule C jobs between offices within the Office of the Secretary or between modal administrations. It appears that Secretary LaHood’s staff are already doing this, as some of the new Schedule C appointments announced so far within the Office of the Secretary don’t match up precisely with the structure from the November 2008 *Plum Book*.

The November 2008 *Plum Book* showed only 44 Schedule C appointees at USDOT at that time (but as noted above, vacancies were not listed).

Only fourteen Schedule C appointees have been publicly announced by the Department to date (though more may have been made and not announced—there is not rule requiring agencies to announce Schedule C’s publicly).

Under previous administrations, modal administrations only had one to three Schedule C’s, and the vast majority of Schedule C’s were concentrated in the Office of the Secretary, where the press, scheduling and advance and governmental affairs offices had five to eight Schedule C’s each, with a few others scattered throughout OST.

The list at left shows the fourteen Schedule C appointees announced by the Department so far.

#### OST (27 in Plum Book)

White House Liaison	Nate Turnbull
Special Assistant to Undersec. For Policy	Sarah Cottingham
Special Assistant	Georgette Brammer
Director for Scheduling and Advance	Kevin Chapman
Special Assistant	Justin Nisly
Special Assistant	Chelsea LaMar
Special Assistant	Alex Friendly
Deputy Press Secretary	Olivia Alair
Deputy Asst Sec for Governmental Affairs	Joanna Turner
Deputy Asst Sec for Governmental Affairs	Bob Letteney
Associate Director for Govt Affairs	Yasmin Yaver
Associate Director for Govt Affairs	Curtis Johnson

#### FHWA (1 in Plum Book)

Special Assistant to the Administrator	Shailen Bhatt
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#### FMCSA (2 in Plum Book)

Director of Communications	Candice Tolliver
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## Full Text of FY 2009 Appropriations “Conference Report” Now In Print

Since Congress has taken to finalizing appropriations bills in large omnibus legislation that does not go to a House-Senate conference committee, it is hard to find the text of the omnibus law and the explanatory materials (clarifying report language, funding tables, and earmark disclosure) in the same place—while the materials are normally found together in a conference report and its statement of managers, without a conference, there is no conference report.

As it did last year, the House Appropriations Committee has prepared a “committee print” of the omnibus appropriations act for FY 2009 (P.L. 111-8) that includes re-paginated versions of the law and all the explanatory material from the *Congressional Record*. Do not call Appropriations and ask for a copy, as they only printed enough freebies for the House and Senate committee staff. PDFs of the various sections can be found online here:

<http://www.gpoaccess.gov/congress/house/appropriations/09conappro2.html>

For those of you who find a printed volume invaluable, the Government Printing Office is selling the entire omnibus committee print—two hefty volumes totaling 2,303 pages, weighing 4 lbs. 10 oz., for \$78.00 — you can order it here:

<http://bookstore.gpo.gov/actions/GetPublication.do?stocknumber=052-071-01500-1>

For those of you who find a printed volume invaluable but who only care about the transportation portion (as we do), *TW* has again contracted with a printing-on-demand service to print and bind only the law text and explanatory materials for the Transportation-HUD division of the omnibus act (Division I) in the same 6 x 9 size as regular committee reports, public laws, and other such GPO documents. It is only 340 pages and costs just \$16.00 (what a bargain!) and can be ordered here:

<http://www.lulu.com/content/paperback-book/fy-2009-thud-appropriations/6859153>

## FHWA Implements \$3.15 Billion Rescission of Highway Apportionments

The Federal Highway Administration has notified states of their share of the \$3.15 billion rescission in federal-aid highway apportionments required by the fiscal year 2009 Transportation-HUD appropriations act (Division I of Public Law 111-8).

The table at right shows each state’s share of the rescission.

In the past, these rescissions have been taken entirely out of “carryover” balances of leftover contract authority, not new contract authority apportioned in the year in which the rescission was made.

But this may be changing. Numbers are hard to come by, but the FY 2009 President’s budget (from fourteen months ago) projected that the unobligated highway CA balance would be \$12.8 billion at the start of FY 2009 and would be down to \$5.0 billion once the \$8.708 billion SAFETEA-LU rescission scheduled to take effect on September 30 of this year is factored in.

This means that the highway program will have rid itself of large carryover balances for the first time since the early 1970s.

ALABAMA	\$	52,584,977	MONTANA	\$	31,910,049
ALASKA	\$	33,964,710	NEBRASKA	\$	22,978,046
ARIZONA	\$	64,592,477	NEVADA	\$	25,261,881
ARKANSAS	\$	39,535,907	NEW HAMPSHIRE	\$	14,211,378
CALIFORNIA	\$	293,253,191	NEW JERSEY	\$	88,242,502
COLORADO	\$	43,583,148	NEW MEXICO	\$	30,509,789
CONNECTICUT	\$	44,603,309	NEW YORK	\$	145,830,156
DELAWARE	\$	12,296,263	NORTH CAROLINA	\$	88,067,164
DIST. OF COL.	\$	12,181,744	NORTH DAKOTA	\$	19,443,205
FLORIDA	\$	161,117,494	OHIO	\$	111,197,305
GEORGIA	\$	109,107,524	OKLAHOMA	\$	47,627,650
HAWAII	\$	15,345,464	OREGON	\$	36,305,573
IDAHO	\$	24,384,215	PENNSYLVANIA	\$	138,715,427
ILLINOIS	\$	109,421,749	RHODE ISLAND	\$	16,610,343
INDIANA	\$	84,117,973	SOUTH CAROLINA	\$	50,911,437
IOWA	\$	36,532,869	SOUTH DAKOTA	\$	21,082,534
KANSAS	\$	29,565,954	TENNESSEE	\$	65,679,045
KENTUCKY	\$	52,476,786	TEXAS	\$	272,403,085
LOUISIANA	\$	55,768,892	UTAH	\$	25,531,368
MAINE	\$	12,576,262	VERMONT	\$	12,128,206
MARYLAND	\$	50,679,943	VIRGINIA	\$	80,340,594
MASSACHUSETTS	\$	54,647,719	WASHINGTON	\$	53,772,670
MICHIGAN	\$	85,406,835	WEST VIRGINIA	\$	31,926,094
MINNESOTA	\$	47,733,647	WISCONSIN	\$	61,015,614
MISSISSIPPI	\$	36,108,932	WYOMING	\$	22,550,639
MISSOURI	\$	74,160,262	TOTAL	\$	3,150,000,000

## NEW AND NOTABLE ON THE INTERNET

### DOT Nominations

Archived video of the Senate Commerce Committee's April 21 hearing on several DOT nominations is here:  
[http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=3e7fc585-7e8c-45d6-b21a-32d52ff77ee8](http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=3e7fc585-7e8c-45d6-b21a-32d52ff77ee8)

### High-Speed Rail Plan

The text of the Obama Administration's high-speed rail plan is here:  
<http://www.fra.dot.gov/Downloads/RRdev/hsrstrategicplan.pdf>

Video of President Obama's remarks at the high-speed rail plan unveiling is here:  
[http://www.youtube.com/watch?v=-0gpaVwcKyI&feature=player\\_embedded](http://www.youtube.com/watch?v=-0gpaVwcKyI&feature=player_embedded)

A useful chronology of how the high-speed rail corridors were designated by law is here:  
<http://www.fra.dot.gov/us/content/618>

## STATUS OF TRANSPORTATION-RELATED NOMINATIONS

Agency	Nominee	Position	Senate Committee	Latest Action
Department of Transportation	Ray LaHood	Secretary	Commerce, Science and Transportation	<b>Sworn into office 1/23/09</b>
Department of Transportation	John Porcari	Deputy Secretary	Commerce, Science and Transportation	Nomination announced 4/10/09
Department of Transportation	Roy Keinitz	Under Secretary for Policy	Commerce, Science and Transportation	Nomination transmitted 3/16/09
Department of Transportation	Robert Rivkin	General Counsel	Commerce, Science and Transportation	Nomination transmitted 4/20/09
Department of Transportation	Dana Gresham	Assistant Secretary for Governmental Affairs	Commerce, Science and Transportation	Nomination transmitted 3/10/09
DOT-Federal Aviation Administration	J. Randolph Babbitt	Administrator	Commerce, Science and Transportation	Nomination announced 3/27/09
DOT-Federal Highway Administration	Victor Mendez	Administrator	Environment and Public Works	Nomination announced 4/2/09
DOT-Federal Railroad Administration	Joseph Szabo	Administrator	Commerce, Science and Transportation	Nomination transmitted 3/26/09
DOT-Federal Transit Administration	Peter Rogoff	Administrator	Banking, Housing and Urban Affairs	Nomination announced 4/8/09
DOT-National Highway Traffic Safety Admin.	Charles Hurley	Administrator	Commerce, Science and Transportation	Nomination announced 4/8/09
DOT-Research & Innovative Tech. Admin.	Peter Appel	Administrator	Commerce, Science and Transportation	Nomination transmitted 4/20/09
Department of the Army	Jo-Ellen Darcy	Assistant Secretary for Civil Works	Armed Services <i>and</i> Enviro. & Public Works	Nomination transmitted 4/2/09

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## THIS WEEK IN COMMITTEE

**Tuesday, April 21, 2009** — Senate Commerce, Science and Transportation — full committee hearing on pending nominations, to include Roy Keinitz to be Under Secretary of Transportation for Policy, Robert Rivkin to be USDOT General Counsel, Joseph Szabo to be Administrator of FRA, Peter Appel to be Administrator of RITA, and Dana Gresham to be Assistant Secretary of Transportation for Governmental Affairs — *2:30 p.m., SR-253 Russell.*

**Wednesday, April 22, 2009** — House Appropriations — Subcommittee on Homeland Security — subcommittee hearing on Coast Guard procurement — *10:00 a.m., 2358-B Rayburn.*

House Transportation and Infrastructure — Subcommittee on Aviation — subcommittee hearing on oversight of helicopter medical services — *10:00 a.m., 2167 Rayburn.*

Senate Homeland Security and Governmental Affairs — full committee hearing on pending nominations, including that of William Fugate to be head of FEMA — *10:00 a.m., SD-342 Dirksen.*

House Transportation and Infrastructure — Subcommittee on Railroads — subcommittee hearing on the RRIF program — *2:00 p.m., 2167 Rayburn.*

## STATUS OF MAJOR TRANSPORTATION BILLS — 111<sup>th</sup> CONGRESS

BILL	HOUSE ACTION	SENATE ACTION	RESOLUTION
<b>FY 2009 Omnibus Appropriations Act</b>	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	Public Law 111-8 3/11/09
<b>Economic Stimulus Appropriations &amp; Tax Cuts</b>	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
<b>FY 2010 Congressional budget resolution</b>	H. Con. Res. 95 passed House 4/2/09 by vote of 233-196	S. Con. Res. 13 passed Senate 4/2/09 by vote of 55-43	
<b>FY 2010 Transportation-HUD Appropriations</b>			
<b>FY 2010 Energy and Water Appropriations</b>			
<b>FY 2010 Homeland Security Appropriations</b>			
<b>Federal Aviation Admin. Reauthorization Bill</b>	H.R. 915 ordered reported 3/5/09 by House T&I Committee		
<b>Surface Transportation Reauthorization Bill</b>			
<b>Water Resources Development Act</b>			
<b>FY 2010 Coast Guard Authorization</b>			