

THE LEGISLATIVE SERVICES GROUP'S

Transportation Weekly

MONITORING AND ANALYZING DEVELOPMENTS IN FEDERAL TRANSPORTATION AND PUBLIC WORKS POLICY

Volume 10, Issue 20

Wednesday, April 29, 2009

Legislative Schedules *Week of April 20, 2009*

House

Wednesday — meets at 10:00 a.m. — complete consideration of S. Con. Res. 13, the budget resolution; consider H.R. 1913, hate crimes enforcement, and general debate only on H.R. 627, credit card debt relief.

Thursday — meets at 10 a.m. — complete consideration of H.R. 627, credit card debt relief.

Senate

The Senate convenes this morning at 9:30 a.m. for morning business. At 10:30 a.m. the Senate will begin consideration of the conference report to accompany S. Con. Res. 13, the budget resolution.

Inside This Issue

| | |
|---|-------|
| <i>New Rules and Reserve Funds in the Budget Conference Rept.</i> | 5 |
| <i>Reference Table: "Guaranteed" Spending in Highway Bills.....</i> | 6 |
| <i>"Big Eight" Highway Legislators Hold Strategy Meeting.....</i> | 7 |
| <i>AASHTO, APTA Announce "Bottom Line: Funding Needs..."</i> | 9 |
| <i>New GAO Report on Aviation Financing.....</i> | 10-11 |
| <i>CBO Issues FAA Cost Estimate</i> | 11 |
| <i>Senate Committee Considers, Approves DOT Nominees.....</i> | 12 |
| <i>New/Notable on the Internet.....</i> | 13 |
| <i>Nominations Calendar.....</i> | 13 |
| <i>This Week In Committee.....</i> | 14 |
| <i>Status of Major Transportation Bills.....</i> | 14 |

Congress To Vote On Final \$3 Trillion FY 2010 Budget New Senate Point of Order Against Gen. Fund Appropriations In Highway Bill

Congress is voting this week on a final budget blueprint for fiscal year 2010 and beyond.

The conference report (H. Rept. 111-89) on the Congressional budget resolution (S. Con. Res. 13) was filed late Monday night and provides for a budget that spends \$3.001 trillion in federal outlays in FY 2010 and takes in \$1.654 trillion in revenues during that time — for an annual deficit of \$1.348 trillion.

Under the plan, the federal debt subject to limit would rise to \$17.023 billion by the end of FY 2014 (99 percent of that year's projected gross domestic product) and the portion of the debt held by the public would rise



to \$11.499 trillion (67 percent of annual GDP), a height not seen since the immediate aftermath of World War II.

The final budget deal sticks with the House's spending numbers for the transportation functional category, calling for a total of \$88.2 billion in new budget authority and \$95.7 billion in outlays

from the Treasury in FY 2010 and \$450.0 billion in budget authority and \$481.0 billion in outlays over the five year period from FYs 2010-2014.

When trying to decide between the differing House and Senate mechanisms to use increased tax revenues for the Highway Trust Fund to

CONTINUED ON PAGE 2

Oberstar Outlines Ambitious Highway Bill Schedule

House Transportation and Infrastructure Committee chairman James Oberstar (D-MN) last week outlined an extremely ambitious timetable for House action on a surface transportation reauthorization bill, with a committee markup scheduled for the week of May 18 and House floor action on the bill in the first week of June.

At a press event on April 24 during which Oberstar was presented with a copy of a new study outlining the vast needs for surface transportation infrastructure funding, Oberstar said that "We are a nation on the move - a nation of mobility. But our infrastructure, the support for that mobility, has not kept pace. The cost of con-

struction has increased and eroded the value of the highway construction dollar and transit construction dollar by 47 percent over the last eight years. We haven't increased the user fee over that period of time just to keep pace with the declining value of the construction dollar, and have not

CONTINUED ON PAGE 7

Budget Conference

CONTINUED FROM FRONT PAGE

pay for increased spending on surface transportation above the functional category totals, the negotiators decided not to decide. Instead, the House gets to draft its bill using its more spending-friendly rules and the Senate must draft its bill under that chamber's more deficit-conscious rules.

Two new items relevant to the surface transportation bill surfaced in the final agreement for the first time, and both of them will have uncertain effects. Sen. Patty Murray (D-WA) was successful in her efforts to add a new point of order in the Senate against any surface transportation authorization bill or short-term extension that appropriates new budget authority from the general fund of the Treasury, and Rep. Allen Boyd (D-FL) won a commitment from House leaders that they will put great pressure on the Senate to enact legislation re-establishing some form of statutory pay-as-you-go (PAYGO) budget rules for mandatory spending (including the highway bill).

How were Murray and Boyd able to get their way? Look at the total number of conferees appointed on the budget resolution:

CONFEREES ON THE BUDGET

| SENATE | HOUSE |
|-----------------------|----------------------|
| Democrat (2) | Democrat (3) |
| Conrad (D-ND) | Spratt (D-SC) |
| Murray (D-WA) | DeLauro (D-CT) |
| | Boyd (D-FL) |
| Republican (1) | Republican(2) |
| Gregg (R-NH) | Ryun (R-WI) |
| | Hensarling (R-TX) |

It was assumed going into the negotiations that no Republican would sign the conference report under any circumstances. This meant that both Murray and Boyd had de facto veto power over the entire budget deal, since if either were to withhold their signature, the De-

QUESTIONS AND ANSWERS: TRANSPORTATION IN THE 2010 BUDGET CONFERENCE AGREEMENT

Which chamber's numbers prevailed? The House. The conference agreement's spending numbers for function 400 (transportation) are identical to the House-passed resolution in all respects. This includes the addition of \$67.1 billion in mandatory budget authority over five years above the CBO baseline to mitigate the effect that large FY 2009 rescissions of highway contract authority had on the baseline, as proposed by the House.

Was the Obama Administration's proposal to change the scoring of contract authority agreed to? No. It was not in either the House-passed or Senate-passed resolutions and was not added in the conference agreement.

Whose reserve fund language did they wind up using for the surface transportation reauthorization bill? The conferees decided not to decide. Instead, the conference agreement uses the House-passed reserve fund language for the House's initial consideration of the reauthorization bill and uses a version of the Senate-passed reserve fund for the Senate's initial consideration of the bill. This is a big difference, as the size of the tax increase necessary to offset increased spending will be tens of billions of dollars larger under the Senate reserve fund language.

Was anything else new added in conference? Yes. Sen. Patty Murray (D-WA) was able to add a new point of order that applies in the Senate (but not in the House) that requires at least 60 Senate votes to pass any surface transportation reauthorization bill or extension if the legislation appropriates any new budget authority from the general fund or from any fund other than the Highway Trust Fund. This is to ensure that the Appropriations Committee (Murray chairs its transportation subcommittee) will continue to control the flow of general fund appropriations.

What will be the effect of the new point of order? It's too early to tell. Highway bills always have to reach a 60-vote margin anyway in order to defeat filibusters, and short-term extensions either pass after a 60-vote closure process or (more importantly) by unanimous consent, so it is not clear if the new point of order will add any new political hurdles.

Will the new point of order apply against future bailouts of the Highway Trust Fund by the general fund? It doesn't look that way. The new point of order only applies against legislation "that appropriates budget authority". This appears to exclude bailouts like the one that took place last September. In the past, the Congressional Budget Office has scored such appropriations from the general fund to the Trust Fund as intra-governmental transfers, not as budget authority, so the point of order would not apply. However, it is not completely certain that CBO would score a future general fund bailout of the Trust Fund in the same way.

mocrats would not have the signatures of a majority of conferees from each chamber, which is the necessary requirement to complete a House-Senate conference.

(Ed. Note: In addition, the Senate Budget Committee staff really need to keep Murray happy, since if Sen. Ted Kennedy (D-MA) is ever unable to remain chairman of the HELP committee, that would set off a game of musical chairs that would probably make Murray the chair-

man of the Budget Committee and the boss of all those staff...)

The Murray point of order is discussed in the box above and the full text is given on page 5 of this issue.

Where Boyd is concerned, House Speaker Nancy Pelosi and Majority Leader Steny Hoyer wrote a letter to budget conferees Monday night promising that the House would not consider conference reports on

CONTINUED ON NEXT PAGE

Budget Conference

CONTINUED FROM PAGE TWO

tax legislation this year until statutory PAYGO has been enacted into law.

While the House and Senate have internal PAYGO rules now, Congress can waive those by a majority House vote and a 60-vote margin in the Senate. Statutory PAYGO cannot be waived without a change in law and is enforced by an automatic sequester of spending if the PAYGO scorecard goes negative.

This makes a difference on highway bills, which usually pass with such large margins that internal Congressional rules like non-statutory PAYGO and other budget points or

order don't matter. SAFETEA-LU busted the budget and few cared because it got 400+ votes in the House. But the TEA21 law had to contain its own mandatory spending cuts in veterans health benefits and other non-transportation areas to offset the bill's higher spending because that law was subject to the original statutory PAYGO rules, which expired in 2003.

The primary enforcement of a budget resolution is the allocations of spending authority to the various committees of the House and Senate. If the committee produces legislation that costs more than its ceiling, a point of order can be raised on the House or Senate floor against the bill.

For discretionary spending, the only allocation given is for the

FY 2010 Budget Allocation

Senate Appropriations Committee

| | <u>BA</u> | <u>Outlays</u> |
|---------------|-----------|----------------|
| Discretionary | 1,082,250 | 1,469,471 |
| Mandatory | 730,253 | 719,740 |
| Total | 1,812,503 | 2,189,211 |

House Appropriations Committee

| | <u>BA</u> | <u>Outlays</u> |
|---------------|-----------|----------------|
| Discretionary | 1,082,540 | 1,269,745 |
| Mandatory | 725,056 | 715,684 |
| Total | 1,807,596 | 1,985,429 |

budget year, which in this case is FY 2010, and the discretionary allocation is entirely given to the Appropriations Committees, like so:

CONTINUED ON NEXT PAGE

COMPARISON OF HOUSE-PASSED, SENATE-PASSED, AND CONFERENCE BUDGET RESOLUTIONS FOR FUNCTIONAL CATEGORY 400 (TRANSPORTATION)

Budget Authority and Outlays, in Millions of Dollars

| | | <u>FY 2009</u> | <u>FY 2010</u> | <u>FY 2011</u> | <u>FY 2012</u> | <u>FY 2013</u> | <u>FY 2014</u> | <u>5-Year</u> |
|-----------------------|--------|----------------|----------------|----------------|----------------|----------------|----------------|---------------|
| Mandatory BA | House | 43,396 | 56,715 | 57,146 | 57,604 | 57,933 | 58,514 | 287,912 |
| Mandatory BA | Senate | 43,396 | 43,810 | 43,991 | 44,199 | 44,318 | 44,525 | 220,843 |
| Mandatory BA | Conf. | 43,396 | 56,715 | 57,146 | 57,604 | 57,933 | 58,514 | 287,912 |
| Discretionary BA | House | 79,061 | 31,436 | 31,925 | 32,443 | 32,933 | 33,295 | 162,032 |
| Discretionary BA | Senate | 79,061 | 31,436 | 31,310 | 31,686 | 31,440 | 31,117 | 156,989 |
| Discretionary BA | Conf. | 79,061 | 31,436 | 31,925 | 32,443 | 32,933 | 33,295 | 162,032 |
| Mandatory Outlays | House | 2,116 | 2,233 | 2,279 | 2,414 | 2,536 | 2,690 | 12,152 |
| Mandatory Outlays | Senate | 2,116 | 2,233 | 2,279 | 2,414 | 2,536 | 2,690 | 12,152 |
| Mandatory Outlays | Conf. | 2,116 | 2,233 | 2,279 | 2,414 | 2,536 | 2,690 | 12,152 |
| Discretionary Outlays | House | 85,668 | 93,462 | 94,195 | 93,437 | 93,614 | 94,103 | 468,811 |
| Discretionary Outlays | Senate | 85,668 | 93,462 | 93,868 | 92,770 | 92,481 | 92,282 | 464,863 |
| Discretionary Outlays | Conf. | 85,668 | 93,462 | 94,195 | 93,437 | 93,614 | 94,103 | 468,811 |
| Total BA | House | 122,457 | 88,151 | 89,071 | 90,047 | 90,866 | 91,809 | 449,944 |
| Total BA | Senate | 122,457 | 75,246 | 75,301 | 75,885 | 75,758 | 75,642 | 377,832 |
| Total BA | Conf. | 122,457 | 88,151 | 89,071 | 90,047 | 90,866 | 91,809 | 449,944 |
| Total Outlays | House | 87,784 | 95,695 | 96,474 | 95,851 | 96,150 | 96,793 | 480,963 |
| Total Outlays | Senate | 87,784 | 95,695 | 96,147 | 95,184 | 95,017 | 94,972 | 477,015 |
| Total Outlays | Conf. | 87,784 | 95,695 | 96,474 | 95,851 | 96,150 | 96,793 | 480,963 |

Budget Conference

CONTINUED FROM PAGE THREE

So the discretionary appropriations in all twelve general appropriations bills for FY 2010 must not exceed \$1.082 billion in budget authority. (Scorekeeping differences between the chambers affect the outlay total, and this gets settled later on).

Once the President submits his detailed budget (hopefully next week), the Appropriations Committees will then subdivide that \$1.082 billion in budget authority amongst their twelve subcommittees, including Transportation-HUD, and then draft their spending bills.

The budget allocates spending authority to authorizing committees in both one-year and five-year amounts. The conference agreement's allocation of spending to the House Transportation and Infrastructure Committee is shown above at right.

Under laws enacted to date, \$14.2 billion in mandatory budget authority under T&I jurisdiction is already on the books (primarily the railroad retirement program). The budget allocates a total of \$55.2

House Transportation and Infrastructure 302(a) Allocation

| | FY 2010 | | FY 2010-2014 | |
|-----------------------|---------------|----------------|----------------|----------------|
| | <u>BA</u> | <u>Outlays</u> | <u>BA</u> | <u>Outlays</u> |
| Enacted Law | 14,192 | 14,649 | 74,384 | 76,644 |
| Reauthorizations | 42,083 | 173 | 210,415 | 2,365 |
| Highway Scoring | 13,085 | - | 69,669 | - |
| Total, T&I | 69,360 | 14,822 | 353,468 | 79,009 |

billion in mandatory budget authority for programs for which no mandatory budget authority has yet been provided in FY 2010. (\$13.1 billion of that replaces money left out of the CBO baseline because scoring rules require CBO to assume that the large highway contract authority rescissions of FY 2009 will be repeated in every subsequent year).

The conference report makes clear that \$4.0 billion of that is reserved for the Airport Improvement Program and most of the rest is for the highway, mass transit, and safety programs supported out of the Highway Trust Fund.

Over five years, the budget gives \$310.1 billion for reauthorizing programs, primarily for the highway bill and AIP.

These numbers and the mandatory budget authority numbers for the

transportation budget function make it possible to get a rough estimate of how much money is in the budget for the highway bill. The table below shows the annual mandatory budget authority totals in the conference agreement for FY 2010-2015 and then subtracts out the presumed level for AIP and the CBO baseline numbers for programs not supported by the Highway Trust Fund. It then follows the CBO scoring rule and assumes FY 2015 contract authority levels will be the same as FY 2014.

It appears that the budget provides for \$309.1 billion in contract authority from the Highway Trust Fund over the anticipated six-year duration of the next surface transportation reauthorization bill.

That amount is \$31.5 billion higher than the net \$277.6 billion in contract authority provided during the

HOW MUCH MONEY IS BUILT INTO THE BUDGET AGREEMENT FOR THE HIGHWAY BILL?

Our initial conclusion is that there is about \$309 billion in Highway Trust Fund contract authority built into the conference agreement for a six-year surface transportation reauthorization bill. When combined with the CBO baseline for general fund transit programs, this would increase to about \$320 billion over six years, but those numbers are outside the scope of the budget resolution and are highly hypothetical.

| | <u>FY 2010</u> | <u>FY 2011</u> | <u>FY 2012</u> | <u>FY 2013</u> | <u>FY 2014</u> | <u>FY 2015</u> | <u>6-Year</u> |
|--|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Conf. Report- Func. 400 Mand. BA | 56,715 | 57,146 | 57,604 | 57,933 | 58,514 | 58,721 | 346,633 |
| Minus Airport Improv. Program | (4,000) | (4,100) | (4,200) | (4,200) | (4,200) | (4,200) | (24,900) |
| Minus Other Non-HTF | (1,800) | (1,882) | (1,990) | (2,110) | (2,317) | (2,524) | (12,623) |
| Remaining For Highway Bill | 50,915 | 51,164 | 51,414 | 51,623 | 51,997 | 51,997 | 309,110 |
| <i>Plus CBO Baseline for GF Transit</i> | <i>1,825</i> | <i>1,836</i> | <i>1,847</i> | <i>1,856</i> | <i>1,873</i> | <i>1,896</i> | <i>11,133</i> |
| Equals Total Highway Bill in Budget Conference (Approx.): | 52,740 | 53,000 | 53,261 | 53,479 | 53,870 | 53,893 | 320,243 |

(The budget resolution only covers 5 years (2010-2014). FY 2015 is postulated using the scoring rule that all expiring CA levels will be the same in 2015 as in 2014 and using existing CBO assumptions for Coast Guard retired pay and other truly mandatory function 400 BA. General fund transit BA is classified as discretionary in the budget resolution, not mandatory, but the CBO baseline assumptions are shown here for an apples to apples comparison with the totals of other six-year bill scenarios. (See page 6.) Don't be deceived by the T&I Committee's larger 302(a) allocation, because it includes several programs outside function 400, principally \$35+ billion for railroad retirement.)

NEW RULES AND RESERVE FUNDS IN THE BUDGET CONFERENCE REPORT

Reserve Funds for the Surface Transportation Reauthorization Bill

The budget conference report does not harmonize the different approaches to the highway bill reserve fund in the House-passed and Senate-passed resolutions. Rather, it simply lets the House and Senate use different rules as they write their reauthorization bills. If the bill gets through a House-Senate conference committee before April 2010, this could be a problem to resolve, but really, how likely is that?

House of Representatives

Sec. 334. Reserve Fund for the Surface

Transportation Reauthorization. The chairman of the House 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 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.

This means that the House's highway bill does not have to raise new revenues to offset all of its new spending commitments (above the allocation in the resolution), only the outlays that occur from those obligations before the end of the bill, and only the outlays that come from the Highway Trust Fund (general fund transit outlays do not have to be offset with revenue increases). And the bill can "spend down" every dollar that is in the Trust Fund as of the day the reauthorization bill takes effect without offsets, and as long as there is one cent left in the Trust Fund on the last day of the bill, the bill meets the "solvency test."

Senate

Sec. 305(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 contract authority paid out of the Highway Trust Fund for surface transportation programs to the extent such new contract 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.

This means that the Senate's highway bill has to offset all new contract authority (above the allocation in the resolution) dollar-for-dollar with new receipts, even if the new receipts don't have to cover outlays until years after the bill is over. And any balances in the Trust Fund on the day the bill takes account do not count towards the "solvency test". The 5-year and 10-year deficit neutrality tests aren't really that important, since almost all outlays from highway and transit programs are scored as discretionary, not mandatory, and are therefore not subject to deficit-neutrality tests.

NEW POINT OF ORDER IN THE SENATE ON SURFACE TRANSPORTATION LEGISLATION

Sec. 405. Point of Order Against Certain Legislation Related to Surface Transportation Funding.

(a) Point of Order.-It shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that extends the authority or reauthorizes surface transportation programs that appropriates budget authority from sources other than the Highway Trust Fund, including the Mass Transit Account of such fund.

(b) Supermajority Waiver and Appeals in the Senate.—

(1) Waiver.-This section may be waived or suspended only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.

(2) Appeals.-An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

(c) Sunset.-This section shall expire on September 30, 2018.

This means that any highway bill or short-term extension needs at least 60 votes to pass the Senate if directly appropriates any money from the general fund (or any other non-HTF fund). However, any highway bill or short-term extension making appropriations would likely have to have cloture invoked, which would take 60 votes anyway. Note that by specifying only a bill "that appropriates budget authority" it appears to exempt future general fund bailouts of the Highway Trust Fund like the one that took place in September 2008 (so far, CBO has scored such transfers as not creating new BA).

Ed. Suggestion: Print this page out by itself and keep it handy for comparison and reference over the coming months, as various proposals for surface transportation spending levels in the reauthorization bill come out.

GUARANTEED "HIGHWAY BILL" SPENDING OBLIGATIONS WRITTEN INTO THE TEXT OF THE LEGISLATION

(Actual after-the-fact totals have varied due to Appropriations action, creation of FMCSA, and RABA.)

TEA21 Guaranteed 6-Year Total Spending Obligations

| | <u>1998*</u> | <u>1999</u> | <u>2000</u> | <u>2001</u> | <u>2002</u> | <u>2003</u> | <u>Total</u> |
|--|---------------|---------------|---------------|---------------|---------------|---------------|----------------|
| Highways (Ob Limit) | 21,500 | 25,511 | 26,245 | 26,761 | 27,355 | 27,811 | 155,183 |
| Highways (Exempt From Limit) | 739 | 739 | 739 | 739 | 739 | 739 | 4,434 |
| Motor Carrier Safety Grants/FMCSA | 85 | 100 | 105 | 112 | 117 | 125 | 644 |
| NHTSA Obligations - HTF Only | 259 | 272 | 279 | 285 | 295 | 297 | 1,687 |
| FTA (Ob Limits From HTF) | 4,260 | 4,213 | 4,576 | 4,938 | 5,297 | 5,660 | 28,943 |
| FTA ("Firewalled" GF Approps.) | 584 | 1,152 | 1,221 | 1,333 | 1,450 | 1,566 | 7,307 |
| Total "Highway Bill" Obligations | 27,426 | 31,987 | 33,165 | 34,168 | 35,253 | 36,198 | 198,197 |
| <i>Total Oblig. Increase Over Prior FY</i> | <i>+20.9%</i> | <i>+16.6%</i> | <i>+3.7%</i> | <i>+3.0%</i> | <i>+3.2%</i> | <i>+2.7%</i> | |

SAFETEA-LU Guaranteed 6-Year Total Spending Obligations*

| | <u>2004</u> | <u>2005</u> | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> | <u>Total</u> |
|--|---------------|---------------|---------------|---------------|---------------|---------------|----------------|
| Highways (Ob Limit) | 33,643 | 34,422 | 36,032 | 38,244 | 39,585 | 41,200 | 223,127 |
| Highways (Exempt From Limit) | 739 | 739 | 739 | 739 | 739 | 739 | 4,434 |
| FMCSA Obligations | 364 | 443 | 496 | 517 | 528 | 541 | 2,889 |
| NHTSA Obligations - HTF Only | 452 | 299 | 693 | 700 | 711 | 729 | 3,583 |
| FTA (Ob Limits From HTF) | 5,813 | 6,691 | 7,120 | 7,409 | 8,031 | 8,529 | 43,592 |
| FTA ("Firewalled" GF Approps.) | 1,453 | 956 | 1,503 | 1,566 | 1,700 | 1,809 | 8,987 |
| Total "Highway Bill" Obligations | 42,464 | 43,550 | 46,583 | 49,174 | 51,294 | 53,547 | 286,612 |
| <i>Total Oblig. Increase Over Prior FY</i> | <i>+17.3%</i> | <i>+2.6%</i> | <i>+7.0%</i> | <i>+5.6%</i> | <i>+4.3%</i> | <i>+4.4%</i> | |

CBO March 2009 Baseline for Total 6-Year "Highway Bill" Obligations

| | <u>2010</u> | <u>2011</u> | <u>2012</u> | <u>2013</u> | <u>2014</u> | <u>2015</u> | <u>Total</u> |
|--|---------------|---------------|---------------|---------------|---------------|---------------|----------------|
| Highways (Ob Limit) | 41,079 | 41,329 | 41,579 | 41,789 | 42,163 | 42,700 | 250,639 |
| Highways (Exempt From Limit) | 739 | 739 | 739 | 739 | 739 | 739 | 4,434 |
| FMCSA Obligations | 551 | 557 | 562 | 568 | 576 | 586 | 3,400 |
| NHTSA Obligations - HTF Only | 738 | 742 | 747 | 751 | 759 | 769 | 4,506 |
| FTA (Ob Limits From HTF) | 8,500 | 8,552 | 8,603 | 8,648 | 8,724 | 8,836 | 51,863 |
| FTA ("Firewalled" GF Approps.) | 1,825 | 1,836 | 1,847 | 1,856 | 1,873 | 1,896 | 11,133 |
| Total "Highway Bill" Obligations | 53,432 | 53,755 | 54,077 | 54,351 | 54,834 | 55,526 | 325,975 |
| <i>Total Oblig. Increase Over Prior FY</i> | <i>-0.2%</i> | <i>+0.6%</i> | <i>+0.6%</i> | <i>+0.5%</i> | <i>+0.9%</i> | <i>+1.3%</i> | |

**The budget "guarantees" and "firewalls" were not put into effect until FY 1999. And FY 2004 was not formally part of SAFETEA-LU, having gone start-to-finish under short-term extensions, but is included here for comparison's sake.*

Note that for TEA21 and SAFETEA-LU, the big spending increases actually took place under the short-term extensions through appropriations action as the bill was being negotiated. That will not be possible this time since there isn't enough money left in the Highway Trust Fund to pay for a large spending increase in 2010...

Highway Bill

CONTINUED FROM FRONT PAGE

increased our surface transportation capacity.”

Oberstar said that the staff of his committee is hard at work drafting the legislative language of the bill and that the House Democratic leadership had given him a commitment to have the bill on the House floor in the first week in June.

While Oberstar did not directly announce a committee markup date, he did say that the T&I panel would mark the bill up before moving it to the floor, and since Congress is scheduled to be in recess from Saturday May 23 through Monday June 1, that leaves the week of May 18 as the only time for a markup. QED. And we have heard that Thursday, May 21 is the tentative markup date.

A Democratic leadership aide indicated, however, that the leader-

ship’s commitment to Oberstar for the first-week-in-June floor time is contingent on two things: agreement from the Ways and Means Committee on the revenue portion of the bill, and agreement from the Obama Administration on the policy choices and funding mechanisms of the bill.

When asked about whether Ways and Means was on board with Oberstar’s plan, a committee spokesman would only say that “We are awaiting further guidance from the Transportation Committee and the Administration on the scope of the reauthorization.”

However, aides to several members of the tax committees said that to their knowledge, no serious conversations had yet taken place between

T&I and Ways and Means about the specific revenue levels needed to support the reauthorization bill (much less discussing the politics of the tax increases that will be necessary to raise those revenues).

Oberstar refused to address any specific funding numbers in his remarks, instead saying that “When we have a new structure, a new delivery mechanism, a reshaping of the Department of Transportation, restructuring of the Federal Highway Administration, and a much more efficient, effective delivery mechanism,

then we can put a figure around it and consider how to invest. Until we are prepared to show the American public what we will deliver,



House Transportation and Infrastructure chairman Jim Oberstar (D-MN) on April 24.

CONTINUED ON NEXT PAGE

“Big Eight” Highway Legislators Hold Strategy Meeting On Reauthorization Bill

On April 22, the legislators most responsible for federal highway policy in the 111th Congress held a strategy meeting to discuss the surface transportation reauthorization bill.

Accordingly, this seemed as good a time as any for a primer on the “Big Eight” (a phrase that readers will see repeated often over the next couple of years).

In this context, it means the eight committee and subcommittee chairmen and ranking minority members who oversee highways (see list below at right).

However, the scope of this legislation (and the failure of the Senate to rationalize its committee jurisdiction in 1980) means that these are not nearly the only legislators with key roles in the process.

In the Senate, there are separate committees the House must deal with on mass transit (the Banking, Housing and Urban Affairs Com-

mittee) and safety (the Commerce, Science and Transportation Committee). That adds eight more Senators.

And the chairman and ranking minority member of the House Ways and Means Committee and the Senate Finance Committee are involved in all tax decisions (they do not have defined subcommittee jurisdiction on tax matters). However, Max Baucus, of the highway Big Eight, is also Senate Finance chairman. The tax-writers’ influence is greater when they are asked to increase revenues, as they are this time.

Add it all together, and six House legislators will have to deal with thirteen Senators on the whole bill.

While this stretches the House members thin, it also gives the House a significant structural advantage, as the four House negotiators are the only ones who see the whole policy picture, and they have often played one Senate committee against another.

However, getting them all together can be difficult—for last week’s meeting of the eight legislators listed below, a series of House votes meant that the four Senators had the meeting to themselves for the first hour, and by the time the House members showed up, Sens. Inhofe and Baucus had already left for other commitments.

"BIG EIGHT" HIGHWAY TRANSPORTATION POLICY LEGISLATORS

| | <u>House</u> | <u>Senate</u> |
|----------------------|-----------------------|-------------------------|
| Full committee chair | James Oberstar (D-MN) | Barbara Boxer (D-CA) |
| Full committee RMM | John Mica (R-FL) | James Inhofe (R-OK) |
| Subcommittee chair | Peter DeFazio (D-OR) | Max Baucus (D-MT) |
| Subcommittee RMM | Jimmy Duncan (R-TN) | George Voinovich (R-OH) |

Highway Bill

CONTINUED FROM PAGE SEVEN

how it will be done, how they can envision the future of transportation serving them better, I don't think it's appropriate to assess a cost."

However, it has been widely reported that Oberstar is contemplating a bill containing about \$450 billion in new spending obligations over six years, which would be 57 percent larger than SAFETEA-LU in nominal dollars and which would be 38 percent larger than the Congressional Budget Office spending baseline for those programs over the next six years. (See the tables on page 6 of this issue for more historical perspective.)

CBO says that its \$326 billion baseline bill would require at least \$65.5 billion in tax increases for the Highway Trust Fund over six

years, and under the House's accounting rules in the final budget resolution, the required tax increase for a \$450 billion reauthorization bill would easily top \$100 billion over six years.

This leads to the problem of getting the Obama Administration to sign off on the bill, since Transportation Secretary Ray LaHood has told Congress and the public several times in no uncertain terms that the Administration will not contemplate a gasoline tax increase this year (and there's really no way to increase taxes on highway users in the short term to raise \$100 billion or more without increasing the gasoline tax).

Oberstar said "What are doing over there in OMB? Are they engaging in prayer sessions or seances? I don't know what's going on. Secretary LaHood is saying what he's told to say by the Office of Management and Budget. I've said several

times that the future of transportation policy is not going to be written in the press room of the White House, it's going to be written by us on Capitol Hill, who know what we're doing."

In any case, it is difficult to see how agreement with the Obama Administration on the revenue increases needed to pay for a bill can be reached by the first week of June (to say nothing of whether the Obama Administration generally is willing to let the House pass the biggest infrastructure bill in 50 years with little to no substantive policy input from the new President's team).

And even if the Obama Administration, T&I and Ways and Means are somehow to reach policy unanimity in the next three weeks, the staff mechanics of getting a bill to the floor may be unworkable in this short a timeframe. Private opinions voiced by the committee staff differ on how much legislative drafting has gone on to date. But preparing a full bill in time for a May 21 markup would require Herculean staff efforts every day until that point.

And the timeframe for the markup appears to violate the new earmark openness rules announced by Speaker Pelosi on March 11, which include allowing federal agencies 20 days in which to review Member earmark requests "to ensure that the earmark is eligible to receive funds and meets goals established in law".

The T&I deadline for earmark requests is May 8, and a May 21 markup would give DOT only 13 days, not 20, to review the earmarks before the markup.

A T&I spokesman acknowledged that the calendar does not permit 20 days of review but said that any DOT objections to projects raised after May 21 would be addressed on the House floor. (*Ed. Note: Pelosi also promised an open amendment process on earmarks on the House floor, which has not happened before on a highway bill in recent memory and which will be fun...*)

Oberstar Certain that HTF Will Not Go Broke Again

At the April 24 press conference with Chairman Jim Oberstar, in response to a press question about the urgent need for additional revenues to be added to the Highway Trust Fund to support current spending levels (to say nothing of increased spending levels), the following exchange took place:

A: Oh, the Trust Fund is able to sustain current levels of investment until we work our way through the authorization process in the House and the Senate and through conference. I've had conversations with the Senate committee leadership on both sides of the aisle and we're prepared to move in concert to address that issue. I'm not concerned about that number.

Q: I thought it was supposed to run out of money sometime this summer, sooner rather than later?

A: No, I don't think so. There'll be enough...

Q: Without a transfer?

A: We made that transfer last year.

Q: Won't you have to make another one soon?

A: I don't think so...The Trust Fund will do just fine until we get our authorization accomplished. [At which point Oberstar started talking in French about the need to be patient].

Oberstar's degree of certitude is not shared by analysts at CBO, OMB, the Department of Transportation, state DOTs, and other Congressional committees, all of whom fear that the Highway Account of the Trust Fund will need another bailout before September 30, 2009 and are certain that either another bailout or more tax revenues will be needed to make it even partly through fiscal year 2010 at existing spending levels.

AASHTO, APTA Announce "Bottom Line" Highway, Transit Funding Needs

Transportation stakeholder groups last week updated their period analysis of the national funding needs for surface transportation legislation.

The American Association of State Highway and Transportation Officials (AASHTO) and the American Public Transportation Association (APTA) released their "Bottom Line" report, a study which AASHTO has organized at the start of the last few reauthorization cycles.

The report echoes the methodology of the biannual FHWA Conditions and Performance report, and is equally difficult to translate into the numbers that Congress uses in the budget process, since the Bottom Line and C&P numbers are (a.) in terms of constant inflation-adjusted dollars from a few years ago and (b.) only given for all levels of governmental investment (federal, state and local) combined.

A difference from prior reports is that on highway funding, AASHTO no longer includes a "cost to maintain the existing system" option, as it would continue to encourage Congress to underfund system needs.

At the press conference, AASHTO CEO John Horsley said that while the "bottom line" needs numbers were huge, as shown in the box at right, "We're ambitious, but we're not as ambitious as asking for all that in one bill. We've documented what is needed. Our request to the chairman, and I'm sure your staff has conveyed this to you, is for a highway program in the range of \$375 billion over six years. That will enable the program to grow from \$43 [billion] now to \$75 [billion]..."

Likewise, Art Guzzetti, the Vice President of APTA, said that APTA's formal request to Congress would be for about half of the total national capital needs number, or \$123 billion over six years in nominal federal spending. (Horsley said that AASHTO's request for transit would be a bit lower than APTA's, totaling about \$93 billion over six years, which conveniently reflects the post-1982 highway-transit split of between 80-20 and 81-19).

Added together, the AASHTO \$375 billion six-year request for highways and bridges (which also includes highway and motor carrier safety) and the APTA request for \$123 billion over six years for transit would give a total size for a six-year reauthorization bill of about \$500 billion.

To put that amount in perspective, House T&I Chairman Jim Oberstar

(D-MN) has discussed a \$450 billion six-year bill (which is regarded as extremely ambitious). The Congressional Budget Office spending baseline, which is basically the FY 2009 enacted spending levels plus annual inflation, totals \$326 billion over six years. And the Congressional budget resolution being finalized this week would allow a six-year bill of between \$320-\$325 billion (depending on the level of general fund support for transit).

And to put the number in even greater perspective, CBO estimates that even its baseline bill (\$326 billion over six years) would require increasing the taxes that support the Highway Trust Fund by at least \$65.5 billion over six years (which is about a six cent per gallon increase in gasoline and diesel taxes, if one relies solely on the fuel taxes for the needed revenue growth).

"BOTTOM LINE" FOR HIGHWAY FUNDING NEEDS

(Numbers are in constant 2006 dollars, for all levels of government combined)

| | 1.0% Annual VMT Growth (Population Rate) | 1.4% Annual VMT Growth (Anticipated) |
|---|--|--|
| Cost to Improve Highways and Bridges | \$132 billion/yr | \$166 billion/yr |

"BOTTOM LINE" FOR MASS TRANSIT CAPITAL FUNDING NEEDS

(Numbers are in constant 2006 dollars, for all levels of government combined)

| | Replace and Rehab Existing Assets Only | 2.4% Annual Ridership Growth (Recent Average) | 3.5% Annual Ridership Growth (Double in 20 Yrs.) |
|----------------------------|--|---|--|
| Urban Capital Total | \$17.5 billion/yr | \$44.5 billion/yr | \$57.7 billion/yr |
| Rural Capital Total | \$0.8 billion/yr | \$1.5 billion/yr | \$1.5 billion/yr |
| Total Capital Needs | \$18.3 billion/yr | \$46.1 billion/yr | \$59.2 billion/yr |

OTHER COSTS

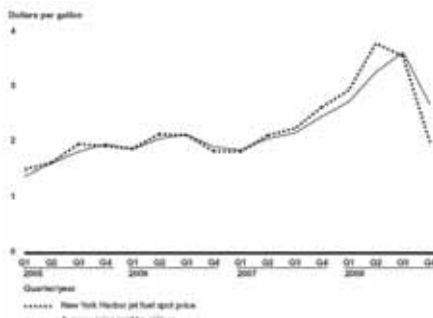
| | |
|---|-------------------|
| Cost Increases to Mitigate Community & Environ. Impacts | \$10.5 billion/yr |
| System Operations | \$1.6 billion/yr |
| Safety | \$1.2 billion/yr |
| Security | \$2.0 billion/yr |
| Total, Other Costs | \$15.3 billion/yr |

Total "Bottom Line" Cost To All Levels Of Government: \$240.5 billion/yr

New GAO Study Sounds Pessimistic Note On Aviation Financing

A new study released last week demonstrates the effect that fluctuating jet fuel prices and the economic downturn is having on demand for aviation, which in turn determines how much money flows into the federal Airport and Airway Trust Fund.

The report says that the dismal financial state of the airlines started with the sharp spike and collapse of jet fuel prices as shown in this graph (which shows average jet fuel prices, by quarter, starting in 1Q 2005 and ending with 4Q 2008:



The report says that the sudden collapse of fuel prices in the second half of 2005 actually caused the financial picture of many airlines to worsen because their fuel hedging contracts involved substantial

downside risk, which forced the airlines to set aside scarce cash as collateral for the hedge contracts.

The airlines responded to the lower profits caused by high fuel prices and bad fuel hedge contracts by decreasing capacity through route cuts that enabled layoffs and equipment savings. This table shows how the total scheduled domestic seats has declined from the fourth quarter of 2007 to the fourth quarter of 2008, by type of airline:

| | |
|------------------|------|
| Legacy Carrier | -10% |
| Low-Cost Carrier | -4% |
| Other Carrier | -35% |

Cutting total seats of course involved fewer planes and fewer routes. The study found that from 4Q 2007 to 4Q 2008, airlines retired small regional planes (50 seats or fewer) and big jets (100 seats or more) while increasing the larger regional jets holding 51 to 99 passengers.

As airlines cut back service on unprofitable routes, some airports lost all commercial service. The GAO study identified 38 airports that lost all commercial service from 4Q 2007 to 4Q 2008 (although some of those

airports are covered under DOT's essential air service subsidy program and are due to have commercial service restored, largely at taxpayer expense).

Smaller airports lost more connecting routes than larger hub airports (as a percentage), as shown in this table:

| Hub Size | Nonstops | | Drop |
|----------|----------|---------|------|
| | 4Q 2007 | 4Q 2008 | |
| Large | 2,810 | 2,607 | -7% |
| Medium | 1,400 | 1,210 | -14% |
| Small | 1,043 | 874 | -16% |
| Nonhub | 950 | 847 | -11% |

As the recession worsened and demand for air travel dropped, total domestic passenger enplanements dropped by nine percent from 4Q 2007 to 4Q 2008, reducing total airport passenger facility charge (PFC) collections by almost \$200 million from the 2007 total.

Fewer tickets bought, lower fares imposed as a response to the recession-induced drop in travel demand, and fewer gallons of jet fuel purchased mean lower tax receipts for the federal Airport and Airway

CONTINUED ON NEXT PAGE

WHAT HAPPENS IF THE AIRPORT AND AIRWAY TRUST FUND UNCOMMITTED BALANCE REACHES ZERO?

We at TW had wondered this ourselves. The new GAO report provides the first definitive answer that we have seen:

In the short term, if there was a risk of overcommitting Trust Fund resources, FAA officials noted that they might be required to delay obligations for capital programs if they do not have adequate revenues in the Trust Fund to cover those obligations—unless additional funding were authorized and appropriated from the General Fund...According to FAA officials, they would start by deferring or deobligating some existing obligations related to FAA's capital programs to continue to first fund operating expenses, such as air traffic control and safety inspections. These actions would ensure that the agency did not incur obligations in excess of the Trust Fund's cash balance, which could potentially lead to a violation of the Antideficiency Act. This act prohibits an officer or employee of the federal government from incurring an obligation, or making an expenditure, in advance or in excess of an appropriation or fund. 31 U.S.C. § 1341(a)(1). However, FAA's aviation programs are partly funded with contract authority, which is an exemption to the Antideficiency Act and authorizes FAA to incur obligations in advance or in excess of an appropriation. This authority permits FAA to incur obligations in excess of the revenue in the Trust Fund. However, FAA must receive an appropriation from the Trust Fund in order to liquidate these obligations. If there is not adequate revenue in the Trust Fund, the obligation cannot be liquidated. Because of the uncertainty in forecasting, the addition of revenues into the Trust Fund throughout the fiscal year, and the mix of FAA programs funded through contract authority and through regular appropriations, it may be difficult for FAA to determine at what point it would violate the Antideficiency Act. Accordingly, FAA must carefully manage its obligations and expenditures so that it can take action before it reaches the point where it could potentially incur an Antideficiency Act violation.

Aviation Financing

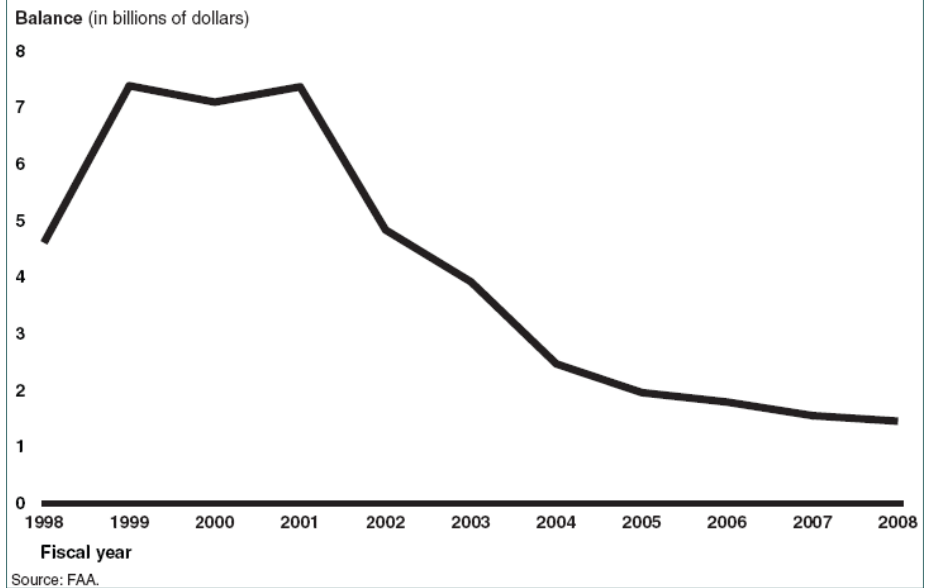
CONTINUED FROM PAGE TEN

Trust Fund. The report says that:

With the industry's contraction, Trust Fund revenues fell, contributing to a decline in the fund's uncommitted balance. Appropriations from the Trust Fund are based on FAA's projected revenues, and actual revenues have been less than FAA's forecast, resulting in the uncommitted balance falling from about \$7.3 billion at the end of fiscal year 2001 to about \$1.4 billion at the end of fiscal year 2008, and may fall further. If the uncommitted balance declines close to zero, FAA might have to delay capital programs unless additional funding is made available.

(See sidebar on previous page.)

Figure 10: Airport and Airway Trust Fund End-of-Year Uncommitted Balance, Fiscal Years 1999 through 2008



CBO Issues Cost Estimate For House FAA Reauthorization Bill

Last week, the Congressional Budget Office issued its cost estimate on the Federal Aviation Administration reauthorization bill (H.R. 915) ordered reported by the House Transportation and Infrastructure Committee.

CBO estimates that the bill as it currently stands would cause the federal deficit to increase by \$60 million over the next five years, due to a small reduction in revenues and increases to FAA retiree costs. However, the Ways and Means Committee has not yet considered its provisions of the bill to extend existing aviation taxes, and it is

anticipated that Ways and Means will simply make a small "tweak" in the existing revenue structure to cover the projected deficit increase.

CBO continues to estimate that the bill's provision repealing the existing labor contract between the FAA and its air traffic controllers (imposed by FAA against the union's will) and authorizing retroactive pay would cost \$1.04 billion over five years if Congress fully appropriates the funding:

According to the FAA and NATCA, returning to the work and pay rules under previous mutual agreements would increase costs, particularly for salaries and benefits

of employees covered by those agreements. For this estimate, CBO assumes that the agreements that would be reinstated upon enactment of H.R. 915 would remain in effect into early 2010 while the dispute resolution process prescribed by the bill unfolds. Relative to current law, CBO expects that reinstating those agreements would increase FAA's spending for compensation and benefits by an average of 12 percent for more than 9,000 individuals that were employed by the FAA before the end of 2006. We also estimate that FAA's costs for compensating and providing benefits for roughly 5,500 individuals hired since 2006, including those hired between the date of enactment of H.R. 915 and the conclusion of the dispute resolution process would increase by about 40 percent.

Based on information from the FAA and NATCA, CBO estimates that implementing this provision would require additional funding of about \$1 billion over the four-year authorization period (2009-2012) covered by H.R. 915.

The controllers union (NATCA) maintains that this estimate is far in excess of the real costs.

CBO's Estimated Cost of H.R. 915, ATC Contract Provision, If Fully Appropriated

| | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | 6-Year |
|---------|---------|---------|---------|---------|---------|---------|--------|
| BA | 83 | 385 | 323 | 249 | - | - | 1,040 |
| Outlays | 56 | 370 | 330 | 257 | 27 | - | 1,040 |

CBO's Estimate of the Increase in the Federal Deficit Caused by H.R. 915

| | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | 6-Year |
|--|---------|---------|---------|---------|---------|---------|--------|
| | - | 6 | 17 | 32 | 48 | (43) | 60 |

Reminder: Transportation-HUD Portion of FY 2009 Omnibus Available in Book Form

This is a reminder that if anyone wants a copy of the Transportation-HUD division of the FY 2009 omnibus appropriations law (P.L. 111-8) together with the explanatory material, earmark disclosure lists and funding tables from the Congressional Record, printed and bound in book form (so that it lines up on the shelf with previous conference reports) for the low price of \$16.00, click on this link:

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

Senate Panel Holds Hearing On, Approves Five DOT Nominees

On April 21, the Senate Commerce Committee held a hearing on and later approved five key U.S. Department of Transportation nominations: Roy Kienitz (Under Secretary for Policy), Robert Rivkin (General Counsel), Dana Gresham (Assistant Secretary for Governmental Affairs), Joseph Szabo (FRA Administrator), and Peter Appel (RITA Administrator).

As is usual in this kind of nominations hearing, the questions and answers told as much about the priorities of the Senators on the committee as they did about the views of the nominees.

Sen. Kay Bailey Hutchison (R-TX) led off the questioning by asking Szabo to reassure her that a "national" passenger rail system meant not cutting existing routes in Texas, to which Szabo of course agreed. She then asked Kienitz how the Obama Administration would jump-start the NextGen air traffic control system, to which Keinitz responded that getting an agreement on NextGen financing and implementing a confidence-inspiring strategy for its implementation will be the two top aviation priorities of the Administration.

Kienitz also said in response to a question that Secretary LaHood has an "optimistic view" that the negotiations between the FAA and the air traffic controllers union can reach a mutually agreeable outcome, but he did not give specifics.

There followed an attempt by Sens. Mike Johanns (R-NE), Nick Begich (D-AK), Amy Klobuchar (D-MN) and John Thune (R-SD) to out-rural each other in questioning the panel about rural transportation issues, which Kienitz rightly noted are always a priority of the Senate in writing the formulas for highway funding distribution.

Sen. Frank Lautenberg (D-NJ) noted that his region is ready to begin the new trans-Hudson tunnel, the largest transit project in memory (perhaps ever), when the federal

funding can be found. Kienitz noted the problem lies with Congress, which must first amend the law to increase the total amount of funding that DOT can commit to future transit projects.

Likewise, Klobuchar asked about federal bridge funding and the state practice of transferring funding from the bridge program to other funding needs, to which Kienitz rightly responded that Congress has repeatedly declined to change the law to prevent this practice.

Thune asked Kienitz how the Obama Administration planned to address the Highway Trust Fund's financial shortfall, noting that he and Sen. Ron Wyden (D-OR) have a bill authorizing a bonding mechanism for infrastructure projects.

Kienitz said that the funding shortfall is the biggest obstacle in the way of the reauthorization debate and that the ongoing mismatch between the rate of cost increase and rate of revenue increase has to be fixed. He said that Secretary LaHood and DOT are looking at a wide variety of options for how to fund surface transportation programs at the levels Congress expects.

Kienitz said "That conversation is not complete..but I know they are talking about a whole bunch of different ways to do it and that [LaHood] is well aware of the great difficulty there will be in reauthorizing the program if the funding were to go down substantially from the last reauthorization rather than grow."

This led to the most amusing exchange of the day:

Thune: "That was sufficiently vague."

Kienitz: "Those were my instructions."

Sen. Mark Warner (D-VA) noted the "silo nature" of federal transportation funding and praised the \$1.5 billion in multimodal funding in the stimulus bill, to which Kienitz noted that the program is a great way to demonstrate what a multimodal process can be like (though such projects are usually by definition in urban areas, where modes cross, not rural areas).

The committee formally approved the five DOT nominees on April 23 by voice vote. Yesterday afternoon, the Senate Majority Leader tried to "hotline" the five nominees, the process by which the Senate tries to get all 100 Senate offices to sign off on the nominations to then confirm them by unanimous consent, which could happen as early as today if there are no objections.

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

Corrected - again- see St. Lawrence Seaway Development Corp.

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 Vacancy |

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.

NEW AND NOTABLE ON THE INTERNET

AASHTO/APTA "Bottom Line" Report

The executive summary of the AASHTO/APTA Bottom Line report is here:

<http://bottomline.transportation.org/ataglance.html>

And the full report is here:

<http://bottomline.transportation.org/BottomLineReport.pdf>

Budget Resolution for FY 2010

The budget conference report and statement of managers is online here:

http://rules.house.gov/bills_details.aspx?NewsID=4231

FAA Reauthorization

The CBO cost estimate for H.R. 915 the House-reported FAA reauthorization bill, is here:

<http://www.cbo.gov/ftpdocs/100xx/doc10096/hr915.pdf>

U.S. Government Accountability Office

A new GAO report entitled *Commercial Aviation: Airline Industry Contraction Due to Volatile Fuel Prices and Falling Demand Affects Airports, Passengers, and Federal Government Revenues* is available here:

<http://www.gao.gov/new.items/d09393.pdf>

STATUS OF TRANSPORTATION-RELATED NOMINATIONS

| Agency | Nominee | Position | Senate Committee | Latest Action |
|--|---------------------|--|--|----------------------------------|
| Department of Transportation | Ray LaHood | Secretary | Commerce, Science and Transportation | Sworn into office 1/23/09 |
| Department of Transportation | John Porcari | Deputy Secretary | Commerce, Science and Transportation | Nomination transmitted 4/27/09 |
| Department of Transportation | Roy Keinitz | Under Secretary for Policy | Commerce, Science and Transportation | Nomination reported 4/23/09 |
| Department of Transportation | Robert Rivkin | General Counsel | Commerce, Science and Transportation | Nomination reported 4/23/09 |
| Department of Transportation | Dana Gresham | Assistant Secretary for Governmental Affairs | Commerce, Science and Transportation | Nomination reported 4/23/09 |
| 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 reported 4/23/09 |
| 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 reported 4/23/09 |
| 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 |

Transportation Weekly is a publication of:

THE LEGISLATIVE SERVICES GROUP

P. O. Box 661
Front Royal, VA 22630

Email: mail@transportationweekly.com



THE LEGISLATIVE SERVICES GROUP

*All original content © 2009,
The Legislative Services Group.
All rights reserved.*

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

*Please send comments or corrections to:
Mail@transportationweekly.com*

THIS WEEK IN COMMITTEE

Tuesday, April 28, 2009 - Senate Armed Services - full committee hearing to examine several nominations including that of Jo-Ellen Darcy to be Assistant Secretary of the Army (Civil Works) - *9:00 a.m., SD-106 Dirksen.*

House Transportation and Infrastructure - Subcommittee on Highways and Transit - subcommittee hearing to examine member requests for high priority project earmarks in the surface transportation reauthorization bill - *10:00 a.m., 2167 Rayburn.*

Senate Commerce, Science and Transportation - Subcommittee on Surface Transportation and Merchant Marine - subcommittee hearing to examine the future of national surface transportation policy - *2:30 p.m., SR-253 Russell.*

Wednesday, April 29, 2009 - House Transportation and Infrastructure - full committee hearing to receive a ten-week progress report for transportation and infrastructure programs under the economic stimulus act - *11:00 a.m., 2167 Rayburn.*

Thursday, April 30, 2009 - Senate Appropriations - Subcommittee on Transportation, HUD, and Related Agencies - subcommittee hearing on USDOT's implementation of the economic stimulus act - *9:15 a.m., SD-138 Dirksen.*

House Transportation and Infrastructure - Subcommittee on Water Resources and Environment - subcommittee hearing on coal combustion waste storage and water quality - *10:00 a.m., 2167 Rayburn.*

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 | Public Law 111-8 3/11/09 |
| 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 | H. Con. Res. 85 passed House 4/2/09 by vote of 233-196 | S. Con. Res. 13 passed Senate 4/2/09 by vote of 55-43 | Conference report (H. Rept. 111-89) filed 4/27/09 |
| 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 | | | |