

THE LEGISLATIVE SERVICES GROUP'S

Transportation Weekly

MONITORING AND ANALYZING DEVELOPMENTS IN FEDERAL TRANSPORTATION AND PUBLIC WORKS POLICY

Volume 10, Issue 21

Wednesday, May 06, 2009

Legislative Schedules Week of May 4, 2009

House

Wednesday — meets at 10 a.m. for legislative business — six measures under suspension of the rules.

Thursday — meets at 10 a.m. — H.R. 1728, mortgage reform and predatory lending (subject to a rule).

Friday — no votes.

Senate

The Senate convened at 9:30 a.m. today and is currently considering S. 896, housing reform.

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Oberstar Outlines Plan For Reauthorization Bill Program Consolidation A Given, But Details Unclear and No Dollar Amounts Yet

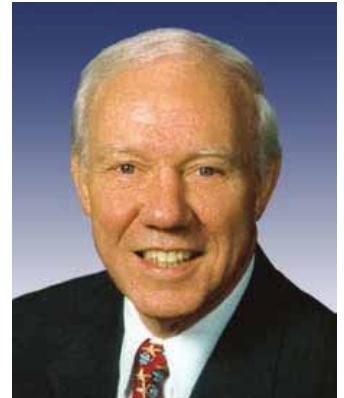
House Transportation and Infrastructure Committee chairman James Oberstar (D-MN) has been circulating a hand-written outline of his surface transportation reauthorization proposal to other legislators and interest groups. While the outline lacks detail, it is the best indication yet of the direction in which Oberstar wants to take

The majority staff of the committee are working hard to translate Oberstar's plan into legislative language, but face two considerable hurdles. First, the calendar is not in their favor, with Oberstar pushing hard to have his bill on the House floor in early June.

Second, to this point Oberstar has refused to discuss any dollar amounts, either for specific programs or for the bill as a whole.

Oberstar told reporters last week that the key senior members of the T&I Committee from both parties had agreed to support the plan he presented to them, but the ease with which agreement was reached speaks more to the vagueness of the proposal and the postponement of hard funding decisions than it does to the actual merits of the Oberstar proposal.

In particular, Oberstar's outline defers the entire question of the "donor-done" fight between states for larger shares of Highway Trust Fund



House Transportation and Infrastructure Committee chairman James Oberstar (D-MN).

moneys. The outline says only that the existing equity bonus program is a "problem" and that the plan will "Retain as some form of equity".

Legislators are loath to vote for a reauthorization bill, even in committee, until they have seen a

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Details of Obama Budget Due Out Tomorrow

Tomorrow, the White House's Office of Management and Budget will release most of the details of its budget request for fiscal year 2010.

The Administration released a 134-page outline of its budget proposal in February, but that document did not contain nearly enough detail to allow the Appropriations

Committees to begin their work (it only contained a dollar total for each federal agency, rounded off to the hundreds of millions of dollars — it's hard to write an appropriations bill based on that.)

Tomorrow, OMB will release the Appendix to the budget. This is the thousand-page or so document that contains

the text of every fiscal year 2009 appropriations bill and the changes proposed by the Administration to each paragraph for 2010, along with tabular and explanatory material for each appropriations account.

This information, together with the thousands of pages of minutely detailed budget

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Oberstar Plan

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table from the Federal Highway Administration showing the precise dollar amount of their state's formula apportionments under the bill and the percentage "rate of return" on the state's gas tax contributions to the Highway Trust Fund under the bill. (This just indicates that Oberstar has a long way to go to flesh out this part of the outline into tangible dollars before he can expect the committee to go on record and support it.)

Page one of the Oberstar outline, shown below, deals with the past (in the left-hand column) and with

the future — intermodalism and program consolidation.

The plan calls for a new DOT official, at the Assistant Secretary or Undersecretary level, to be tasked with intermodalism — coordinating the various DOT modal administrations and agencies outside DOT, like the Coast Guard and the Corps of Engineers, to ensure that projects and processes that cross modal or department lines proceed smoothly.

The new official would hold meetings between the modes at least monthly and would pay special attention to implementing the National Strategic Plan and overseeing high-dollar "megaprojects" which often cross modal lines.

In some ways, this is a restoration of laws that Congress repealed earlier. In 1984, Congress created the post of Associate Deputy Secretary of Transportation, and the 1991 ISTEA law created an Office of Intermodalism within the Office of the Secretary, which the Associate Deputy Secretary headed.

But the Bush Administration proposed to replace the Associate Deputy Secretary with an Under Secretary for Policy, and Congress acquiesced in 2002. And the 2004 law that created the Research and Innovative Technology Administration (RITA) moved the Office of Intermodalism there, where it withered and died.

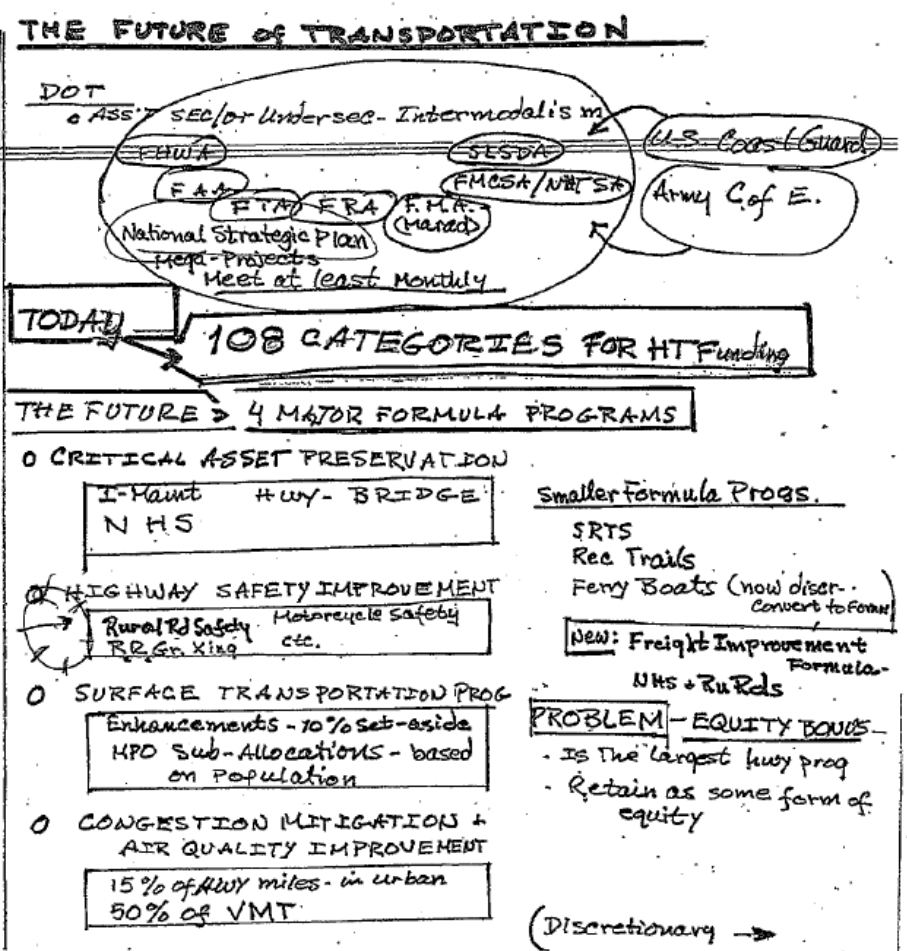
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CHAIRMAN OBERSTAR'S OUTLINE, IN HIS OWN HAND—PAGE 1 OF 2

THE PAST
1956 - '77
 • I-SYST: 90-10 HTF
 • Primary } 50-50
 • Secondary } Gen Revs
 • Rural }

1978 - '91
 • I-Syst: 90-10 HTF
 • P/S/R: 70-30 HTF

 ISTEA/TEA-21/SAFETEA
1991 - 2005
 • NHS — 80-20
 - I-SYST.
 - NHS (P/S/R)
 - Safety
 - MPO
 - Mega-projects
 - SR25
 - Bridge



Oberstar Plan

CONTINUED FROM PAGE TWO

So Oberstar's plan to some degree simply undoes the changes made by Congress in 2002 and 2004.

The remainder of Oberstar's page one deals with consolidation of the various highway formula programs. Oberstar's outline notes that today there are "108 categories for HTF funding" and he told reporters last week that his plan would reduce the number from 108 to four.

This may be a bit of an exaggeration, both on the high number and the low number. It seems from the overall structure of the Oberstar proposal that the 2008 report of the blue-ribbon National Surface Transportation Policy and Revenue Study Commission was much on the chairman's mind when he wrote down his proposal. The figure of 108 programs comes from that report. But that number includes all transportation modes, not just highways and transit but safety and rail as well, and includes the programs at the Federal Railroad Administration, the Federal Transit Administration, and the National Highway Traffic Safety Administration that are funded from the general fund of the Treasury as well. (See inset box on this page.)

It seems that the Oberstar proposal would consolidate the number of "core formula" programs from seven to four or five (depending on how you count the equity bonus program—at present, it is apportioned to states via a separate formula but then that money is simply added to the other core formula programs).

The big item is Oberstar's proposal to consolidate the Interstate Maintenance, National Highway System, and Highway Bridge Program formula programs into one large "Critical Asset Preservation" formula program. (The IM, NHS and Bridge formula programs totaled \$15.4 billion in FY 2009).

The big unanswered question, of course, is whether or not each program would keep its own apportionment formula within the CAP or if a new formula encompassing all those programs would be created. There are also unanswered questions about transferability of funds between programs or sub-programs, particularly for bridges.

Beyond that, the Oberstar proposal appears to keep the all-purpose Surface Transportation Program intact, along with its existing ten percent set-aside for transportation enhancements and its sub-allocation of a portion of its funds to metropolitan areas by population.

The Oberstar plan would also keep the Highway Safety Improvement Program and the Congestion Mitigation and Air Quality programs intact in substantially similar form. And as noted earlier, some form of donor-done equity program would be retained in an as-yet-undisclosed form.

Beyond the big "core" formula programs, there are at present five other smaller formula programs (we count Rail-Highway Crossings as a part of HSIP, not as a separate formula program). The Oberstar plan would explicitly keep two of those intact—Safe Routes to Schools and Recreational Trails. Beyond that, his plan is silent, though Metropolitan Planning funding has to come from somewhere (whether via formula or allocation) and there is a strong constituency for the existing Appalachian Highways program).

The Oberstar outline lists two new formula programs: Ferry Boats (this is currently an allocated program with large state set-asides) and a new Freight Transportation Formula, details unknown. (And the details of that one are of huge importance, given the prominent

role that freight transportation is expected to play in the attempts to build a coalition in support of the reauthorization bill).

So at present, there are twelve highway formula programs (counting Equity Bonus but not counting Rail-Highway Crossings) and under the Oberstar plan there appear to be at least eight, with more programs possible depending on how the money for state equity, metropolitan planning, and Appalachian highways is distributed.

Turning to page two of the Oberstar outline (see following page), the left side of the page is devoted to what Oberstar calls "discretionary" programs but which are more commonly called "allocated" programs because funds are allocated by statute or by DOT decision, not via formula.

The Federal Lands Highways program and the National Scenic Byways Program would be kept intact. The big news is a new program called "Metropolitan Mobility/Access".

This appears to track the Surface Transportation Policy panel's report, which recommended that the 108 existing programs be winnowed down to ten, one of which would be dedicated to reducing congestion in metropolitan areas of one million or more residents.

Oberstar's hand-written notes seem to indicate that 68 metro areas would be eligible for funding under this program, which would put the population cutoff at around 750,000 according to the latest census estimates. The plan would require a six-year plan for improving traffic congestion within these areas and would require accountability if areas did not meet their congestion goals. (These kind of performance-based metrics are another way in

108 PROGRAMS?

Under Current Law...

FHWA	62 Programs
FTA	20 Programs
FRA	6 Programs
NHTSA	12 Programs
FMCSA	8 Programs
Total	108 Federal surface trans. Programs

Source: National Surface Transportation Policy and Revenue Study Commission, final report, Vol. 1, p. 15

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Oberstar Plan

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which the Oberstar plan reflects the Policy Commission's report.)

Oberstar's plan also appears to dedicate \$1 billion per year within the Metropolitan Mobility program towards innovative financing mechanisms of all stripes, including TIFIA credit assistant, state infrastructure banks, GARVEE bonds, toll pilot projects, bonding, and congestion pricing. (Perhaps locating this funding here is an admission that innovative finance plans almost never work in rural areas.)

The outline also mentions Projects of National Significance. The 2005 SAFETEA-LU law created a program by which DOT could allocate funds to "megaprojects" that had a total cost of at least \$500 million or 75 percent of a state's annual for-

mula apportionment. However, SAFETEA-LU also earmarked 100 percent of the money provided for the program, rendering DOT's criteria for projects worthless. Perhaps Oberstar intends to fund the program without earmarks this time.

And the Oberstar outline makes no mention of earmarked High Priority Projects, yet they are certain to be included in the bill.

The Oberstar outline makes only a brief mention of mass transit, principally by talking about restructuring the need "level decision-making factors between hwy & transit choices/projects". Oberstar would attempt to do this by getting rid of existing cost-benefit analysis requirements for transit new start projects (in this, he departs from the Policy Commission, which wanted more cost-benefit analysis, not less). He would replace the ex-

isting CBA evaluation with a more streamlined process designed to greatly reduce new start delivery time (cutting it roughly in half).

Still in question is the Obama Administration's role in all this. Last week at a Senate hearing, Secretary LaHood was asked what role the Administration would play in the reauthorization bill. LaHood's response:

We're going to present some principles to the Congress that we think are very important, some transportation principles. We want to be in the room, we want to be available when folks are writing the bill. So, we're working with the president and his team and OMB to develop these principles as soon as we have them, you'll all have them and you'll know what direction the president wants to take with the transportation and the authorization.

CHAIRMAN OBERSTAR'S OUTLINE, IN HIS OWN HAND—PAGE 2 OF 2

DISCRETIONARY PROGRAMS

- Non-Formula

METROPOLITAN MOBILITY/ACCESS

- 68 maj metros
- \$78B congestion costs
- NAS/TRB - evaluate, Recommend (e.g.) 30%
- \$1B/4yrs, + RCB/REXB/GARVEE/PAB/TIF/SEB
- TOLLS/Conces. Pricing
- * Pub. Fin. Auth oversight
- 6YR TARGET PLAN -
 - Annual Progress Reports
 - 6-yr Accountability Report
- Might have a formula element-

• Projects of Nat'l Significance

• Federal Lands Hwys

- Public lands
- Park Roads
- Forest Hx Roads
- Refuge Roads
- I.R. Rds
- All Have internal formulas, but are consid. Discr.

• Scenic By-Ways

MANAGE'T STRUCTURE

- From 108 > 4 categories

• FROM PRESCRIPTIVE

TO

PERFORMANCE

- DOT + STATES design:
 - 6-yr Targets for each of 4
 - Annual Benchmarks
 - Annual Reports on progress TO DOT/Congress
 - Transparency - on Web
 - Practical Design Solutions

F. Hwy Adm Re-Structure

Ofc. of Expedited Project Delivery

Ofc. of Liveability

TRANSIT - New starts / small starts

- Level decision-making factors between Hwy + Transit choices/projects
- CEI (Cost-Effec. Index): Delete
 - Replace w/ greatly simplified Review process.
- Reduce time from 14 yrs to 6-8yrs

HIGHWAY PROGRAM CONSOLIDATION UNDER OBERSTAR PLAN

The following is our summary of the highway formula portion of the hand-written Oberstar plan shown on the previous pages.

CORE HIGHWAY FORMULA PROGRAMS

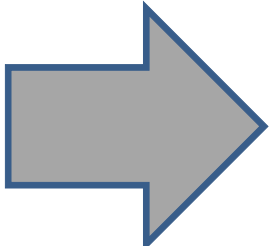
Current Law

Oberstar Proposal

Interstate Maintenance
\$5.02 billion in FY09

National Highway System
\$6.13 billion in FY09

Highway Bridge Program
\$4.29 billion in FY09



Critical Asset Preservation
Dollar amount unknown
Question: Will the new combined program retain the three existing program formulas in some weighted ratio, or use a new formula?

Highway Safety Improvement Program
\$1.07 billion in FY09



Highway Safety Improvement Program
Dollar amount unknown

Surface Transportation Program
\$6.46 billion in FY09



Surface Transportation Program
Dollar amount unknown

Congestion Mitigation & Air Quality
\$1.75 billion in FY09



Congestion Mitigation & Air Quality
Dollar amount unknown

Equity Bonus
\$9.59 billion in FY09



Some form of state equity guarantee
Dollar amount unknown

OTHER HIGHWAY FORMULA PROGRAMS

Current Law

Oberstar Proposal

Appalachian Development Highways
\$470 million in FY09

???????

Certain to survive in some form, but not specifically listed on Oberstar chart.

Metropolitan Planning
\$304 million in FY09

???????

Certain to survive in some form, but not specifically listed on Oberstar chart.

Coordinated Border Infrastructure
\$210 million in FY09

???????

To be consolidated with another program, details unknown.

Safe Routes To Schools
\$180 million in FY09



Safe Routes To Schools
Dollar amount unknown

Recreational Trails
\$84 million in FY09



Recreational Trails
Dollar amount unknown

Ferry Boats
Currently a discretionary program

Freight Transportation Formula
Funding and structure unknown

Note: The rail-highway crossing formula is currently a set-aside from the Highway Safety Improvement Program and would remain that way under the draft Oberstar plan.

Highway Bill Timing—Is 2009 More Like 1991, or 1982?

The outlook for the surface transportation reauthorization bill this year is highly uncertain. House leaders want to push ahead with a bill quickly, but the Senate's path is less certain, and the new President says he is strongly opposed to increasing the federal gas tax in the legislation, which will greatly limit the options for increasing funding for programs.

In Washington, history has a habit of repeating itself. For persons with a long memory of prior reauthorization cycles, the question arises: will this year be more like 1991, or 1982?

1991. In 1991, Congress faced a President (Bush the First) who was unalterably opposed to increasing the federal gas tax in the highway bill, and for a good reason — Bush had supported a five cent-per-gallon increase just the year before, but dedicated to deficit reduction, not to highways, and he paid a steep political price. His violation of his “read my lips, no new taxes” pledge had, it seemed, permanently alienated much of his GOP base and had ensured that somebody

would challenge Bush from the right in the 1992 primaries.

The Bush Administration proposed a draft bill on February 13, 1991 and sent it to the White House. The Senate marked up a bill in May 1991 that did not contain a gas tax increase and debated it in June, passing the bill on June 19 by a wide 91-7 margin. As was the Senate practice at that time, the bill did not contain earmarked projects.

House leaders took a different approach and introduced a bill on July 18, 1991 which called for increasing the gas tax by five cents per gallon (from fourteen cpg to nineteen cpg), which the leaders of the Public Works and Transportation Committee dubbed the “Nickel For America.” The bill also contained \$6.3 billion in earmarked highway projects — more than six times the amount contained in the previous (1987) highway bill.

The problem, obviously, was that by including a tax increase and a lot of earmarks in the same plan, the legislation created the perception that the tax increase existed in part to pay for the earmarks.

That perception was strong within Congress as well as on the outside. *CQ Weekly Report* on July 27, 1991 noted that:

...every member clamoring for an offramp or a road for his district knows the deal: You want your project, support the gas tax increase...some lawmakers criticize [Public Works chairman] Roe for coupling the tax increase with projects so dear to their hearts. Although Roe adopted the slogan “a nickel for America” to put an upbeat gloss on the necessity of raising taxes to pay for crumbling infrastructure and mass transit programs, he regularly warns his members: If we lose the tax, your projects are in jeopardy.

House Speaker Thomas Foley (D-WA) wanted the bill passed by the House before the August recess, as existing highway funding was set to expire on September 30. The Public Works panel marked up the bill on July 25 and Ways and Means chairman Dan Rostenkowski (D-IL) twisted arms to pass the tax increase by a one-vote margin in his panel on July 31.

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STEPS LEADING TO INITIAL HOUSE CONSIDERATION OF SURFACE TRANSPORTATION BILLS

(Note that the STURAA and SAFETEA-LU laws started in one Congress, got held up, and were re-introduced and finished in the subsequent Congress.)

	STAA H.R. 6211 97th Cong.	STURAA I H.R. 3129 99th Cong.	STURAA II H.R. 2 100th Cong.	ISTEA H.R. 2950 102nd Cong.	TEA21 H.R. 2400 105th Cong.	SAFETEA-LU I H.R. 3550 108th Cong.	SAFETEA-LU II H.R. 3 109th Cong.
Bill Introduced	4/29/1982	7/31/1985	1/6/1987	7/18/1991	9/4/1997	11/20/2003	2/9/2005
T&I Subc. Markup	5/6/1982	6/19/1986	None	7/23/1991	9/10/1997	None	None
T&I Full Comm. Markup	5/12/1982	6/25/1986	None	7/25/1991	3/24/1998	3/24/2004	3/2/2005
T&I Reported	5/17/1982	7/2/1986	None	7/26/1991	3/25/1998	3/29/2004	3/7/2005
W&M Markup	12/2/1982	7/22/1986	None	7/31/1991	3/26/1998	3/17/2004	3/3/2005
W&M Reported	12/6/1982	None	None	8/2/1991	3/27/1998	3/23/2004	3/8/2005
Rules Committee	12/3/1982	7/24/1986	1/7/1987	10/22/1991	3/31/1998	4/1/2004	3/8/2005
Passed House	12/6/1982	8/15/1986	1/21/1987	10/23/1991	4/1/1998	4/2/2004	3/10/2005
Eventual Outcome	Public Law	Died in Conf.	Public Law	Public Law	Public Law	Died in Conf.	Public Law

Note on STAA: House T&I marked up and approved further amendments to the already-reported bill on 8/10/1982 but the big event was President Reagan's huge public about-face on 11/27/82 where he reversed himself and began advocating a doubling of the federal gas tax.

Note on ISTEA: On 8/1/1991 the Speaker decided that the Ways and Means-reported 5 cent per gallon gas tax increase did not have the votes to pass the House and demanded a new approach. On 10/15/1991 the Public Works Committee approved an amendment to H.R. 2950 with lower spending levels and on 10/16/1991 Ways and Means approved a new revenue title with no tax increase. Both were incorporated into H.R. 2950 by the Rules Committee.

Note in general: After the adoption of the "Subcommittee Bill of Rights" by the House Democratic Caucus in 1974, holding a subcommittee markup of major legislation was almost mandatory, as it required a major public smackdown and majority rollcall vote for a full committee chairman to discharge a bill from a subcommittee. In 1995, the Gingrich leadership team repealed most of the rights of subcommittee chairmen, and Speaker Pelosi has not renewed those rights, making us wonder if subcommittee markups of major authorization bills are a thing of the past....

1991 or 1982?

CONTINUED FROM PAGE SIX

But a funny thing happened on the way to the House floor: it turned out that no one had bothered to count heads to see if there were enough votes in the House to pass the gas tax increase. The day after the Ways and Means markup, on August 1, 1991, the House Rules Committee was holding its hearing on the reauthorization bill, preparing to send it to the House floor the following day for consideration. As the chairmen of Public Works and Ways and Means testified at the Rules hearing, the Democratic whip organization reported that the head count on the bill was heading rapidly downhill, and Speaker Foley decided to pull the bill from consideration and send members home.

Condemnation of the Democratic approach was widespread, and not just amongst Republicans. Witness this *New York Times* editorial from August 19, 1991, bearing the headline "The House's Pork-and-Tax Bill":

Properly embarrassed, the House leadership has postponed action on its 1991 transportation bill until after Labor Day. Speaker Tom Foley was aiming for a vote before the vacation break, but retreated in the face of a members' revolt against paying for pork with higher taxes.

The Public Works Committee's bill earmarks \$6.3 billion for \$458 "Congressional projects of national significance." That's the new euphemism for home-district programs that used to be called "demonstration projects," which itself was a euphemism for "pork barrel."

The committee chairman, Robert Roe of New Jersey, protests that the pork is only a fraction of the \$150 billion total cost over the next five years. That may be. But the bill contains three times as many special projects as were authorized in the last law, five years ago, a fact that demonstrates that in House politics this year, it's business as usual.

After the August recess, Public Works and Ways and Means used

their mulligan and reported out a new version of the bill that kept the projects but did not contain the tax increase, and President Bush proudly signed the bill into law.

The 1991 experience is of particular relevance now, since Transportation and Infrastructure Chairman Oberstar appears determined to report an earmark-laden bill from his committee which will require a gas tax increase, and to do so before a political consensus in support of the tax increase exists. (*Ed. Note:* Yes, there will probably be fewer earmarks in this bill than in the last bill, and they will be vetted better, but the optics will still be bad.)

1982. In 1982, the political calculus of the reauthorization bill had three chief parts:

1. The widespread consensus among transportation experts that the double-digit inflation over the 1974-1981 period had eroded the buying power of the existing gas tax dollars so badly that the tax rate itself, which had not been increased since 1959, simply had to be increased to prevent catastrophic failure of infrastructure systems;
2. The constant requests by Democrats for some kind of federal legislation creating jobs to counteract an unemployment rate which in September 1982 rose above ten percent for the first time since the Great Depression; and
3. President Ronald Reagan, who consistently opposed legislation spending federal funds for the sole purpose of job creation, and who was vocally opposed to any gas tax increase.

Witness Reagan's remarks at a September 28, 1982 press conference:

Q. ...can you assure the American people now that you'll flatly rule out any tax increases, revenue enhancers, or specifically an increase in the gasoline tax?

The President. Unless there's a palace coup and I'm overtaken or overthrown, no, I don't see the necessity for that.

But a funny thing happened five weeks later: on November 2, 1982, Republicans lost 27 seats in the U.S. House in the midterm elections, costing Reagan his working majority in that chamber.

The following week, Rostenkowski gave a major speech to the American Petroleum Institute advocating a five cent-per-gallon gas tax increase to pay for infrastructure, and it didn't take Reagan long to see the light.

On November 23, 1982, Reagan announced that he would be submitting a new highway bill for Congressional consideration during the forthcoming lame-duck session:

As you know, this measure would mean an increase in highway user fee, or gas tax, of 5 cents a gallon. For the average motorist, that's estimated to—that additional cost would amount to some \$30 a year. But we wouldn't be considering such costs unless our needs were both large and pressing...

Our country's outstanding highway system was built on the user fee principle—that those who benefit from a use should share in its cost. It is appropriate that we rely on this same concept now...

Reagan made the point more clear in a radio address four days later:

Common sense tells us that it'll cost a lot less to keep the system we have in good repair than to let it crumble and then have to start all over again. Good tax policy decrees that wherever possible a fee for a service should be assessed against those who directly benefit from that service. Our highways were built largely with such a user fee—the gasoline tax. I think it makes sense to follow that principle in restoring them to the condition we all want them to be in.

The 1982 experience is relevant because if President Obama is truly opposed to a gas tax increase "during a recession," then that rules one out during 2009. And 2010 is an election year, during which it is very difficult to raise any kind of tax, particularly a regressive tax like gasoline. Which would make a post-election 2010 lame-duck session the earliest feasible date to pass a gas tax hike.

Budget Tomorrow

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justifications to be transmitted directly to the Appropriations Committees by each federal agency tomorrow, will allow the Appropriations Committees to hold hearings on agency budget requests (if they desire) and to start writing their bills.

But OMB won't have all of its material ready for release tomorrow. The remaining two volumes of budget materials — the Analytical Perspectives volume and the Historical Tables volume—wont be released by GPO until next week.

Historical Tables are good to have, but the Analytical Perspectives volume contains the details on current year and future year highway, transit and airport obligations by state, as well as the future tax and

spending projections for federal trust funds (including the Highway Trust Fund) and a whole lot of other detail and analysis of mandatory spending programs, tax receipts, and user fees.

So it is not likely that the Treasury Department's projections for the Highway Trust Fund will be released before next week. (These may be significantly different from the Congressional Budget Office's projections due to different economic assumptions being used.)

Under a practice started last year, the thousands of pages of detailed budget estimates for the Department of Transportation will be put online via the USDOT website at some time tomorrow.

Ideally, the documentation to be released this week and next week would not only clue readers into the specific appropriations proposals for

fiscal year 2010 but would also give details about pending multi-year spending plans. However, Capitol Hill aides who have been briefed on the budget plan say they were told not to expect much detail from the Obama Administration on the several-hundred-billion-dollar question of the surface transportation reauthorization bill.

Tomorrow's Appendix will tell us how much the President proposes to spend on each surface transportation program in 2010, but the tables to be released as part of next week's documentation include out-year numbers for fiscal years 2011 through 2014 for each individual program, as well.

But the Hill budget aides say that both the 2010 and out-year numbers for surface transportation programs in the budget will just be "placeholders" and will be subject to revision when the Obama Administration submits its plan for a surface transportation reauthorization bill.

Similarly, next week's budget submission (the Analytical Perspectives book) should give us some more detail on a big question mark in the budget framework — the Obama Administration's apparent willingness to press on with some form of the Bush Administration's proposal to replace most of the taxes currently supporting federal aviation programs with a new system of user fees that would raise significantly more money than the existing taxes.

And the budget may also give more details of proposed user fee changes at the Transportation Security Administration.

We here at *TW* hope to put out a brief update on the initial Appendix numbers sometime tomorrow and then perform a more thorough analysis in next week's *Transportation Weekly*.

Specter Defection = GOP Subcommittee Changes

The political earthquake that was last week's defection by Sen. Arlen Specter from the Republican party to the Democratic party will have a significant effect in the coming weeks on the Republican lineup on the Senate Appropriations Committee, but its effect on the majority side of the aisle will have to wait until 2011.

Last night, the Senate adopted two new resolutions (S. Res. 130 and S. Res. 131) taking Specter off the Republican rolls for the committees he served on and adding him to the Democratic side. Specter is now the lowest Democrat in seniority on the Appropriations, Environment and Public Works, Judiciary, and Veterans Affairs committees. But Specter claims that Majority Leader Reid has promised him that if he wins reelection in 2010, he will be granted his full seniority at the start of the 112th Congress and will be placed high in the pecking order for subcommittee gavels.

On the Republican side, Specter's departure leaves only twelve Republicans on Appropriations.

While there are only twelve subcommittees, Minority Leader Mitch McConnell (R-KY) is prohibited from serving as ranking member due to his leadership duties, so someone will have to do double duty. And while full committee ranking member Thad Cochran (R-MS) is serving as ranking on both Defense and Specter's vacated Labor-HHS panel temporarily, his colleagues probably won't let him serve for long running what are by far the two biggest subcommittees. Someone will bid on the basis of seniority to take Labor-HHS, which will start a musical chairs scenario down the line. But it seems unlikely that Sen. Kit Bond (R-MO) would leave Transportation-HUD for Labor-HHS.

On EPW, there are now seven minority members for seven subcommittees, which may also require some doubling up. Senate Republican Conference rules are designed to ensure that no Republican Senator has more than one ranking member slot, but the rules are inconsistent with the math here.

Sen. Hutchison Introduces Highway Opt-Out Legislation

Sen. Kay Bailey Hutchison (R-TX), the head Republican on the Senate Commerce, Science and Transportation Committee, last week introduced legislation to allow states to opt out of the federal-aid highway program and instead receive an annual rebate of the state's estimated tax payments into the Highway Account of the Highway Trust Fund.

The legislation (S. 903) is seen as a marker being laid down by the Republican Senators from the three "megadonor" states (Texas, Arizona, and Florida) which always receive the bare minimum annual rate of return on their Highway Account payments set under minimum guarantee/equity bonus legislation. The legislation has about zero chance of passing but allows the megadonor state Senators to stake out their end of the traditional donor-done fight.

(*Ed. Note:* the traditional gripe of the donor states is about the tens or hundreds of millions of dollars that they lose each year in the difference between the tax dollars they pay and the highway funds they receive. However, the Highway Trust Fund is currently overspending itself so greatly that it has solved the donor state problem from a dollars-in, dollars-out perspective. In FY 2007, the Highway Account took in \$34.9 billion but gave out \$41.8 billion, so even Texas broke even with \$3.20 billion in tax payments but \$3.21 billion in apportionments and allocations. So as long as the Trust Fund can keep giving out 20 percent more than it takes in every year, things are just peachy for the donor states.)

S. 903 would allow a state governor to petition USDOT to opt out of the highway program, and USDOT would be forced to agree if the Secretary determines that the state will maintain its Interstate maintenance commitment and has plans to spend the money only on STP-eligible projects.

The amount of HTF taxes received by the state would be equal to its estimated Highway Account contributions less a pro-rata reduction for NHTSA and FMCSA programs.

Versions of "opt-out" or "turnback" offered in previous Congresses have allowed USDOT to keep a small amount of the opt-out state's gas tax to pay for Interstate maintenance and for highways on federal lands. The Hutchison plan dispenses with these, putting the state on the honor system to maintain these roads. (*Ed. Note:* it also raises the interesting specter of national parks and forests in other states charging any car with an opt-out state license plate a special toll for admittance).

The legislation is cosponsored by Sens. Martinez (R-FL), Cornyn (R-TX), and Kyl (R-AZ). (*Ed. Note:* It should be noted that Martinez's home-state colleague Rep. John

Mica (R-FL) does not support this approach. Though if Florida were to opt out of the federal highway program, it would solve the Coconut Road problem once and for all, as opting out has the effect of canceling all federal contract authority in the state, including earmarks.)

(*Further Ed. Note:* It should also be noted that Hutchison is almost certainly running for governor of Texas next year against incumbent Rick Perry (R-TX). At anti-tax rally on April 15, Perry talked sympathetically to protestors about how some Texans may want to secede from the Union. Again. So Hutchison's legislation could be seen as doing double duty — staking out the far end of the donor state debate, and currying favor with certain parts of the Texas electorate by allowing the Lone Star State to secede from the federal-aid highway program.)

Senate Confirms Five Senior USDOT Nominees

The U.S. Senate last week by unanimous consent confirmed five senior appointees to the U.S. Department of Transportation.

On April 29, the Senate unanimously confirmed the following five nominees:

- Roy Keinitz, Undersecretary of Transportation for Policy.
- Robert Rivkin, General Counsel.
- Dana Gresham, Assistant Secretary of Transportation for Governmental Affairs.
- Joseph Szabo, Administrator of the Federal Railroad Administration.
- Peter Appel, Administrator of the Research and Innovative Technology Administration.

The confirmations were handled *en bloc* with no debate, though Majority Whip Richard Durbin (D-IL) did make brief remarks afterwards congratulating his home-stater Szabo on his confirmation.

The Deputy Secretary's nomination and four modal administrators have been announced and are still pending. (Though no hearing can take place on the FAA nominee, Randy Babbitt, until the White House formally sends his paperwork to Capitol Hill, and as of the close of business yesterday, this had not taken place, even though the White House announced Babbitt's nomination on March 27. The delay — almost six weeks now — is growing to unusual lengths.)

Nominations still to be announced by the White House include the last two modal administrations (Federal Motor Carrier Safety Administration and Pipeline and Hazardous Materials Safety Administration) and the Assistant Secretaries for Transportation Policy, Aviation and International Affairs, and Budget and Programs.

See the table on the following page for more information on nominees.

NEW AND NOTABLE ON THE INTERNET

Budget of the United States Government

When the budget Appendix is released tomorrow, it should be online here:

<http://www.gpoaccess.gov/usbudget/index.html>

And the detailed justifications for the Department of Transportation should be available at this link if DOT follows the form of prior year URLs:

<http://www.dot.gov/bib2010/2010budgetrequest.htm>

Federal Transit Administration

A new FTA Rail Modernization Study submitted to Congress last week is here:

http://www.fta.dot.gov/documents/Rail_Mod_Final_Report_4-27-09.pdf

USDOT Inspector General

The new OIG report on possible computer hacking of FAA air traffic control systems is here:

http://www.oig.dot.gov/StreamFile?file=/data/pdfdocs/ATC_Web_Report.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 confirmed 4/29/09
Department of Transportation	Robert Rivkin	General Counsel	Commerce, Science and Transportation	Nomination confirmed 4/29/09
Department of Transportation	Dana Gresham	Assistant Secretary for Governmental Affairs	Commerce, Science and Transportation	Nomination confirmed 4/29/09
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 transmitted 4/23/09
DOT-Federal Railroad Administration	Joseph Szabo	Administrator	Commerce, Science and Transportation	Nomination confirmed 4/29/09
DOT-Federal Transit Administration	Peter Rogoff	Administrator	Banking, Housing and Urban Affairs	Nomination transmitted 4/29/09
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 confirmed 4/29/09
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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THE LEGISLATIVE SERVICES GROUP

P. O. Box 661
Front Royal, VA 22630

Email: mail@transportationweekly.com



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THIS WEEK IN COMMITTEE

Tuesday, May 5, 2009 - House Transportation and Infrastructure - Subcommittee on Economic Development, Public Buildings, and Emergency Management - subcommittee oversight hearing of GSA's use of federal stimulus money - *2:00 p.m., 2167 Rayburn.*

Senate Commerce, Science and Transportation - Subcommittee on Surface Transportation and Merchant Marine - subcommittee hearing on piracy on the high seas - *3:00 p.m., SR-253 Russell.*

Thursday, May 7, 2009 - House Homeland Security - Subcommittee on Border, Maritime, and Global Counterterrorism - subcommittee hearing on implementing the Western Hemisphere Travel Initiative - *10:00 a.m., 311 Cannon.*

House Transportation and Infrastructure - Subcommittee on Railroads, Pipelines, and Hazardous Materials - subcommittee hearing on reauthorization of DOT's hazardous materials safety program - *10:00 a.m., 2167 Rayburn.*

House Ways and Means - full committee hearing on the financial status of the Airport and Airway Trust Fund - *10:00 a.m., 1100 Longworth.*

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) agreed to 4/29/09
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			