

# THE LEGISLATIVE SERVICES GROUP'S

## *Transportation Weekly*

MONITORING AND ANALYZING DEVELOPMENTS IN FEDERAL TRANSPORTATION AND PUBLIC WORKS POLICY

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### *Legislative Schedules* *Week of May 25, 2009*

The House and Senate are in recess this week for the Memorial Day District Work Period.

The House will next meet at 2:00 p.m. on Tuesday, June 2 and the Senate will next convene at 2:00 p.m. on Monday, June 1.

### **Inside This Issue**

<i>House Vote on H.R. 915.....</i>	2
<i>Amendments Offered to H.R. 915 in the House.....</i>	3
<i>Section-by-section Summary of S. 146, Rail Antitrust Bill.....</i>	4-5
<i>Senate Confirms 3 DOT Noms</i>	5
<i>T&amp;I Requests: 6,868 Earmarks</i>	5
<i>TSA Reauthorization Goes To House Floor Next</i>	6
<i>New/Notable on the Internet....</i>	7
<i>Nominations Calendar.....</i>	7
<i>This Week In Committee.....</i>	8
<i>Status of Major Transportation Bills.....</i>	8

## House Passes FAA Reauthorization

The House of Representatives last week easily passed a bill authorizing the programs of the Federal Aviation Administration for the next three fiscal years, despite opposition from the Republican leaders on the normally bipartisan Transportation and Infrastructure Committee.

The bill (H.R. 915) passed the House by a vote of 277 to 196 on May 21.

Although T&I ranking minority member John Mica (R-FL) and the Aviation ranking member Tom Petri (R-WI) spoke against the bill and voted no on final passage, twelve Republican members of the T&I panel voted in favor of the bill: Cao (LA), Capito (WV), Dent (PA), Diaz-Balart,

M. (FL), Duncan (TN), Gerlach (PA), Johnson (IL), LoBiondo (NJ), Miller (MI), Moran (KS), Platts (PA), and Young (AK).

T&I chairman James Oberstar (D-MN) pointed out that the bill was mostly bipartisan and was largely the same as the bill (H.R. 2881, 110th Congress) that passed the House in the 2007 but died in the Senate:

"We're getting very good at this. We did it 2 years ago. It passed the House overwhelmingly. Unfortunately, the other body did not act on it. So we held further hearings and reshaped the bill. Essentially we have 95 percent of what we had in 2007 in this bill...So that we bring a bill for which there is broad bipartisan support



The House has passed a bill reauthorizing the Federal Aviation Administration for the next three years. The timing of Senate action is unclear.

except perhaps for four areas in which there are differences."

Mica and Petri did a good job of pointing out the four areas of disagreement:

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## Rail Antitrust Bill Faces Some Democratic Opposition

Senate Majority Leader Harry Reid (D-NV) is fulfilling his promise to Sen. Herb Kohl (D-WI) to bring up Kohl's railroad antitrust bill for a vote on the Senate floor. The Senate is scheduled to hold a cloture vote to shut off debate on the motion to proceed to the bill (S. 146) on Tuesday, June 2. No less than 60 votes are needed.

But the cloture vote is occurring before the Senate Commerce, Science and Transportation Committee has had time to work out its approach to the bill (which was reported from the Judiciary Committee). So the staff of a senior Democrat on the Commerce Committee has urged other Democratic Senators to oppose the cloture

motion and keep the bill from coming before the Senate.

Last week, the chief of staff to Sen. Frank Lautenberg (D-NJ), the chairman of Commerce's Subcommittee on Surface Transportation, emailed all Senate Democratic offices to say that Lautenberg "strongly opposes S.

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# FAA Bill

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- The bill would send the labor dispute between the FAA and the air traffic controllers union to binding arbitration.
- The bill would require direct FAA inspection of foreign repair facilities, which Republicans say would cause the European Union to take retaliatory trade measures that could cost American jobs.
- The bill would set an expiration date on existing antitrust immunity granted to combinations of airlines with codesharing agreements.
- The bill would amend the Railway Labor Act in a manner designed to make it easier for labor unions to organize the ground-side workers of Federal Express.

Mica in particular dwelled on the controller arbitration issue, since

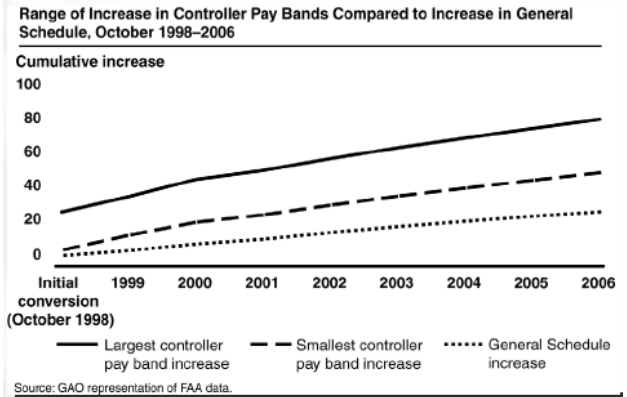
Mica was able to release a new report from the U.S. Government Accountability Office that he commissioned which indicated that before the FAA implemented the new labor "agreement" over the union objections in 2006, the annual rate of increase of pay for air traffic controllers significantly outpaced the annual pay raises for other federal employees on the General Schedule (see graph above at right taken directly from the GAO report).

Aviation Subcommittee chairman Jerry Costello (D-IL) responded that "I strongly believe in collective bargaining and bargaining in good faith with a fair dispute resolution process for both sides. Unfortunately, that did not happen in 2006 and we corrected that wrong in the T&I Committee by adopting the Costello amendment with a strong bipartisan vote of 53-16. This amendment is included in H.R. 915 and will ensure fair treatment of FAA employees."

Much of the debate centered on the issue of foreign repair stations. Mica inserted letters into the *Congressional Record* from General Electric Aviation, the U.S. Chamber of Commerce, and the National Association of Manufacturers addressing the FRS issue.

The letter from GE VP Sean O'Keefe sums up the issue better than any legislators managed to do during the debate:

In recent conversations with the FAA, European officials have made it clear that, should these provisions be enacted, the European Aviation Safety Agency (EASA) would reciprocate and require the same twice-annual inspections of its U.S.-based certificated facilities. Based on EASA's own estimates, certification costs for repair stations would rise from an average of \$960 to \$32,100 per station, if they conducted only one annual inspection



per facility. Such a drastic increase in certification costs would pose significant hardships on repair facilities throughout the U.S.

There are approximately 2,000 FAA-certificated repair stations worldwide--over 1200 of them are in the U.S. On the other side of the globe, the aerospace industry has experienced substantial growth in the emerging Asian and Pacific Rim markets. While reciprocal agreements are not yet in place to the same degree as with the EU, this legislation as currently proposed will negatively impact any attempt at amicable agreements there in the future. We believe that the proposed language would do irreparable harm to the hundreds of small businesses that make up the U.S. aviation maintenance industry and the thousands of Americans they employ. In addition to the cost of certification, a greater concern is the fact that EASA does not have sufficient staff to conduct twice annual inspections of its 1,237 certificated U.S.-based repair facilities (as compared to only 425 FAA certificated repair locations in Europe). Stations unable to be reviewed by EASA personnel at such a rate would no longer be able to work on European-registered aircraft and components, thus damaging stations whose customers require both U.S. and EASA certification, and place tens of thousands of U.S. jobs at risk.

Republican critics of the FRS language tended to cite the maximum possible job loss statistic for every FRS repair facility in the U.S. As Costello pointed out, those numbers assume that (a.) retaliation will occur and that (b.) every single FRS station in the U.S. will shut down as a result. This seems unlikely, and the worst-case job loss numbers would be significantly lower.

(Ed. Note: However, the Democrats should never underestimate the EU's willingness to implement unwise retaliatory trade sanctions.)

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## HOUSE VOTE ON H.R. 915

In the 277-136 vote on final passage of H.R. 915 on May 21, all Democrats voted "yes" and all Republicans voted "no" except for the following:

### REPUBLICAN "YES" VOTES (37)

Biggert	Johnson (IL)	Radanovich
Bono Mack	King (NY)	Reichert
Buyer	Kirk	Rogers (KY)
Cao	Lance	Ros-Lehtinen
Capito	LaTourette	Shimkus
Castle	Lee (NY)	Smith (NJ)
Davis (KY)	Lewis (CA)	Thompson (PA)
Dent	LoBiondo	Tiahrt
Diaz-Balart, L.	McCotter	Wittman
Diaz-Balart, M.	Miller (MI)	Wolf
Duncan	Moran (KS)	Young (AK)
Gerlach	Murphy, Tim	
Jenkins	Platts	

### DEMOCRATIC "NO" VOTES (4)

Bright	Cohen	Minnick
Sestak		

### NOT VOTING (20)

Bachmann	Kaptur	Pomeroy
Barrett (SC)	Kingston	Sanchez, Linda
Berkley	Lofgren, Zoe	Schauer
Boyd	Markey (CO)	Schock
Deal (GA)	McHugh	Stark
Driehaus	Nunes	Walden
Flake	Perlmutter	

## FAA Bill

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The amendments offered during debate (listed at the bottom of this page) were less than major, the Rules Committee having done a good job of preventing the most significant amendments from being offered.

At the end of debate, House rules allow the minority party to offer one surprise amendment (if germane to the bill). At the direction of the GOP leadership, Rep. John Campbell (R-CA), who does not serve on the T&I Committee, offered

an amendment that listed the \$150+ million in federal appropriations for capital improvements received by the John P. Murtha-Cambria County Airport near Johnstown, Pennsylvania over the years and specifically cutting that airport off from the \$1.4 million per year that currently is paid (via statutory formula, not via earmark) by DOT to United Airlines to subsidize the six commercial flights per week that service the airport through the Essential Air Service subsidy program.

Oberstar denounced the Campbell amendment as an "assault on rural

America" and when that statement met with derisive laughter from the Republican side of the aisle, Oberstar raised the veiled threat of asking members to imagine what will happen if the motion is successful and other amendments are offered in future bills to single out and cut off the EAS subsidies for the 100+ other communities that are only able to maintain commercial air service via federal subsidy.

The House defeated the Campbell motion by a mostly party-line vote of 154 yeas (11 D, 143 R), and 263 nays (235 D, 28 R).

### AMENDMENTS AGREED TO AUTOMATICALLY BY THE ADOPTION OF THE RULE:

1. Oberstar (MN) amendment in the nature of a substitute adding a section 602 to the bill clarifying the applicability of the Back Pay Act to air traffic controllers.
2. Rangel (NY) amendment adding a revenue title to the bill extending expenditure authority for the Airport and Airway Trust Fund and existing aviation excise taxes through September 30, 2012, and increasing the excise tax rates on general aviation kerosene and aviation gasoline.

### AMENDMENTS OFFERED ON THE HOUSE FLOOR:

1. Oberstar (MN) manager's amendment to (1) make technical corrections; (2) add a new section regarding participation of disadvantaged business enterprises in contracts, subcontracts, and business opportunities funded using passenger facility revenues and in airport concessions; (3) require the FAA to hold discussions with countries that have foreign repair stations to harmonize safety standards; (4) clarify that the foreign repair station section (section 303) is an exercise of the rights of the United States under an international agreement; (5) require the FAA to conduct a rulemaking to improve the safety of flight crewmembers, medical personnel, and passengers aboard helicopters providing air ambulance services under federal regulations; (6) establish within the FAA an Aviation Safety Whistleblower Office to assess and investigate complaints regarding aviation safety; (7) clarify that passengers may not smoke in intrastate and interstate aircraft; (8) require air carriers to permit passengers to carry musical instruments under certain circumstances; (9) permit the Secretary to make grants to airport operators and units of local government for soundproofing certain buildings; (10) require the FAA to initiate research and development work on effective air cleaning and sensor technology for the engine and auxiliary power unit for bleed air supplied to the passenger cabin and flight deck; (11) require the owner or operator of a large hub airport to publish on the Internet a phone number to receive aviation noise complaints and report such complaints to the FAA; (12) authorize the Secretary to grant releases from terms of the August 28, 1973 conveyance from the United States to St. George, Utah, for airport purposes; (13) require the FAA to ensure that any air traffic control tower or facility in operation at Palm Beach International Airport after September 30, 2009, or to replace such tower or facility placed into operation before such date, includes an operating terminal radar approach control; (14) addresses the safety concerns at Santa Monica Airport. – *agreed to by voice vote.*
2. Lee (NY) amendment requiring a GAO audit of airline pilot training programs – *agreed to by voice vote.*
3. Richardson (CA) amendment requiring a DOT rulemaking on airline text message updates – *agreed to by voice vote.*
4. Burgess (TX) amendment expressing the sense of Congress on FAA whistleblower protection – *agreed to by recorded vote of 420 yeas, zero nays.*
5. Cuellar (TX) amendment, as modified, requiring an FAA study of radar signal effects on energy technologies – *agreed to by voice vote.*
6. McCaul (TX) amendment prohibiting FAA funds from being used to name a project or program after a current Member of Congress – *agreed to by recorded vote of 417 yeas, 2 nays.*
7. Murphy (CT) amendment relating to appraisals of property purchased with AIP funds – *agreed to by voice vote.*
8. Cassidy (LA) amendment requiring the IG study to include the effect that limited carrier operations have on delays and cancellations – *agreed to by voice vote.*
9. Kilroy (OH) amendment requiring a GAO study of smoke mitigation on flights – *agreed to by voice vote.*
10. Frelinghuysen (NJ) amendment requiring a FAA study of NY-NJ-Philadelphia airspace redesign – *offered and withdrawn.*
11. Lowey (NY) amendment directing a FAA rulemaking relating to whether the Westchester County airport can re-impose overnight flight restrictions – *agreed to by voice vote.*
12. Ackerman (NY) amendment requiring the FAA to declare the College Point Marine Transfer Station (near LaGuardia airport) to be a hazard to air navigation – *agreed to by voice vote.*
13. Campbell (CA) motion to recommit the bill with instructions to report the bill back immediately with an amendment making the John P. Murtha-Cambria County Airport near Johnstown, Pennsylvania ineligible for Essential Air Service subsidies — *motion rejected by a recorded vote of 154 yeas, 263 nays.*

## Rail Antitrust Bill

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146 and urges your bosses to oppose cloture on the bill.”

The email outlined the jurisdictional problems with the bill. The Judiciary Committee has jurisdiction because the bill primarily amends the Clayton Act, over which Judiciary has complete jurisdiction.

But the bill also directly and indirectly affects the Surface Transportation Board, and railroads generally, over which Commerce has complete jurisdiction.

In the House, there are rules whereby committees can correct the portion of other committee's legislation under their jurisdiction, subject to arbitration by the Speaker and the Rules Committee. No such process exists in the Senate except by unanimous consent or common courtesy, which poses problems from time to time.

After listing the specific jurisdictional crossovers and the effect the bill could have on the STB, the email says that:

Chairman Lautenberg understands the need to update the existing rail regulatory environment. That is why he is working in a bipartisan manner with Chairman Rockefeller, Senator Hutchison, and Senator Thune on comprehensive legislation to reauthorize the STB, which has not been reauthorized since it was created in 1996. This bill will provide targeted, comprehensive solutions to alleviate the concerns raised by shippers that the Kohl-Vitter bill purports to address. If the Kohl-Vitter bill passes, it could threaten the delicate consensus that is developing on real reform.

The email from Lautenberg's chief of staff prompted a response email from Kohl's chief of staff to all Democratic Senate offices saying that Lautenberg's chief of staff "...seems to suggest (indirectly) that, well, we should continue to leave this whole Railroad thing up to the STB. Simply put, if an agency lets railroads merge their way from 30 down to 4 and screw shippers across the coun-

try on prices then I think it's time to get some new watchdogs.”

Kohl's chief of staff then gives a political rationale for Democrats:

But entirely apart from the back-and-forth on STB and DOJ etc. etc. (see attached if you're interested in the thoughts of our lawyers) I have yet to hear a good counter to the political argument: If the Chairman of the Antitrust Subcommittee brings a bill unanimously out of the Judiciary Committee and the Majority Leader brings it to the floor then...Democrats should support cloture. If you really want to tell Herb that, instead of voting yes on cloture you want to filibuster his top 2009 legislative priority, well, then be my guest and go in peace. But...please think of how that looks from our perspective. It's really not a big ask on our part, I think.....

(*Ed. Note:* S. 146 was approved by voice vote in the Judiciary Committee, but a voice vote is not always the same as saying that everyone on the panel supports the bill — sometimes (like this time) it means that the opponents of the bill weren't sure they wanted to put their colleagues on the spot at the time, preferring to wait for another occasion, like a cloture vote on the floor.)

The dispute puts Commerce chairman Jay Rockefeller (D-WV) in a strange position. Rockefeller is an original cosponsor of S. 146, but he has a vested institutional interest in keeping the negotiations between his panel and the railroad industry going, and it is rumored that he will oppose cloture on S. 146 (at least for the first time, on Tuesday).

If a full committee chairman opposes cloture because of a jurisdictional issue, this makes it easier for other Democratic chairmen to oppose cloture on the grounds that someday another committee might try to take their own jurisdiction away, at which point they would want friends to vote with them.

### SECTION-BY-SECTION SUMMARY OF THE BILL

**Section 1. Short title.** This section provides that the legislation may be cited as the 'Railroad Antitrust Enforcement Act.'

**Section 2. Injunctions against railroad common carriers.** Amends Section 16 of the Clayton Act of 1914, which sets forth

the principal remedies available for violations of the federal antitrust laws. Section 16 permits private parties threatened with loss or damage by a violation of the federal antitrust laws to sue for injunctive relief against such violations by a civil action in the courts of the United States. Section 16, however, presently contains a proviso that this fundamental antitrust remedy is not available against common carriers subject to regulation by the Surface Transportation Board (STB). Section 2 of the bill revises this proviso so that it will apply only to non-railroad common carriers subject to STB jurisdiction. It thereby makes injunctive relief available to parties threatened with economic injury by antitrust violations of railroad common carriers.

**Section 3. Mergers and acquisitions of railroads.** Amends section 7 of the Clayton Act of 1914, to make railroad combinations subject to its provisions. Section 7 bars anticompetitive mergers, consolidations and acquisitions. It declares unlawful acquisitions of the stock or assets of persons engaged in or affecting interstate commerce 'where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to a monopoly.' Proposed or consummated transactions that are unlawful under section 7 can be enjoined by federal courts in civil actions by Federal antitrust authorities or private parties. The fifth paragraph in section 7, however, provides that nothing contained in that section shall apply to transactions duly approved by a number of federal agencies acting under other statutes authorizing such approvals. Among the agencies listed in the fifth paragraph is the STB, which has statutory authority to approve railroad combinations under 49 U.S.C. 11322 (combinations relating to the pooling or division of traffic and earnings) and 11323 (consolidations, mergers, and acquisitions of control). Section 3 creates an exception to the fifth paragraph that eliminates this exemption with respect to STB-approved transactions described in 49 U.S.C. 11321, i.e. STB-approved rate agreements or combinations subject to 11322 and 11323.

**Section 4. Limitation of primary jurisdiction.** Removes any requirement that a federal district court defer to the primary jurisdiction of the STB in any civil antitrust action against a common carrier railroad (1) by a private party seeking treble damages (15 U.S.C. Sec. 15); (2) by the United States seeking an injunction (15 U.S.C. 25); or (3) by a private party seeking an injunction (15 U.S.C. 26).

**Section 5. Federal Trade Commission enforcement.** Changes existing law so that the Federal Trade Commission (FTC) may enforce the antimerger and other provisions of the Clayton Act

## Rail Antitrust Bill

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against railroad common carriers. Section 11(a) of the Clayton Act presently vests such authority in the STB. Section 5 of the bill amends this provision to create an exception to the STB's enforcement jurisdiction under the Clayton Act with respect to two categories of transactions: STB-approved agreements among two or more rail carriers relating to rates subject to 49 U.S.C. 10706; and STB-approved agreements or combinations subject to 11322 and 11323. The exceptions from the STB's authority enacted by section 5 will fall within the jurisdiction of the FTC.

**Section 6. Expansion of treble damages to rail common carriers.** Eliminates the judicially-created barrier against recovery of private antitrust damages from railroad carriers under the 'Keogh Doctrine,' which holds that shippers injured by a railroad's antitrust violations are limited to the railroad's filed rate. Section 6 of the bill adds a new subsection to the treble damage provision in section 4 of the Clayton Act. It provides that treble damages shall be available in civil antitrust suits to parties injured by railroad antitrust violations without regard to whether such railroads have filed

rates or whether a complaint challenging rates has been filed.

**Section 7. Termination of antitrust exemptions in Title 49.** Eliminates certain exemptions from the antitrust laws presently enjoyed by railroad common carriers under subchapter IV of Title 49. First, 49 U.S.C. Sec. 10706(a)(2)(A), (4) and (5) currently exempt from the antitrust laws ratemaking agreements among railroads that are approved by the STB. Section 7(a)(1) of the bill amends this provision by striking the exemption. Second, 49 U.S.C. 10706(e) currently provides for a periodic report by the FTC and the Antitrust Division of the Department of Justice on possible anti-competitive features of railroad rate agreements approved by or submitted to the STB. Section 7(a)(2) of the bill strikes this provision and substitutes a command that nothing in section 10706 exempts proposed agreements described in section 10706 from the antitrust laws, and a requirement that the STB and any other reviewing agency consider the impact of the proposed agreement on shippers and on affected communities. Third, 49 U.S.C. 11321 currently exempts from the antitrust laws transactions described therein, i.e. STB-approved railroad agreements or combinations subject to 49 U.S.C. 11322 (combinations relating to the pooling or division of traffic and earnings), or

to 49 U.S.C. 11323 (consolidations, mergers, and acquisitions of control). Section 7(b)(1) strikes this exemption. However, any transaction relating to the pooling of railroad cars approved by the STB pursuant to 49 U.S.C. 11322 is excluded from this language; such railroad car pooling arrangements will continue to be exempt from antitrust law. Section 7(b)(2) adds to 49 U.S.C. 11321 a new subsection (c) commanding that nothing in section 10706 exempts proposed agreements described in section 10706 from the antitrust laws, and requiring that the STB consider the impact of the proposed agreement on shippers and on affected communities.

**Section 8. Effective date.** Provides that a civil action under Sections 4, 15, or 16 of the Clayton Act, or Section 5 of the Federal Trade Commission Act (the antitrust laws revived with respect to railroads by this bill) may not be filed with respect to conduct exempted from the antitrust laws by the Surface Transportation Board or Interstate Commerce Commission. However, under subsection (b) of section 8, such an action may be brought with respect to previously exempted conduct or activity that is continued subsequent to the date of enactment of this Act when such a civil action is filed 180 days after the date of enactment of the Act.

### House Surface Earmark Request Totals: 6,868 Projects; \$136.3 Billion

The House Transportation and Infrastructure Committee announced on May 20 that 405 House members had filed a total of 6,868 earmark requests with the panel for the forthcoming surface transportation reauthorization bill.

The total dollar value of all the earmark requests is \$136.3 billion according to the committee.

The total value of highway and transit earmarks in the House reauthorization bill, even if it is the \$450 billion bill that T&I Chairman James Oberstar (D-MN) would prefer, will be far, far less than \$136 billion.

There is widespread belief amongst stakeholders that SAFETEA-LU earmarked too high a percentage of the highway budget (over twelve percent of the FHWA budget — only about four percent for FTA). The previous two bills, ISTEPA and TEA21, each earmarked less than six percent of the highway budget.

Cutting that \$136 billion down to somewhere between a hypothetical low point in the low teens and a hypothetical maximum in the \$30-40 billion range will necessitate a drastic reduction in the number of projects if Oberstar holds true to his principle of only funding earmarks that make a sizeable dent in a project's total cost — members would not be able to pro-rate cuts amongst all their requests but would have to pick and choose.

### Senate Confirms 3 More DOT Nominees

On May 21, the Senate confirmed three more senior nominees for positions at the U.S. Department of Transportation as part of a larger unanimous consent package. They were John Porcari, to be Deputy Secretary of Transportation; Randy Babbitt, to be Administrator of the Federal Aviation Administration, and Peter Rogoff to be Administrator of the Federal Transit Administration.

With those three confirmations, the only USDOT nomination pending in the Senate is that of Victor Mendez to head the Federal Highway Administration. The Environment and Public Works Committee has scheduled a hearing on the nomination for June 2.

There are still nine vacant positions at USDOT for which President Obama has not made a nomination (the nomination of Chuck Hurley for NHTSA now will not be made). Those vacant positions are:

- Assistant Secretary for Budget and Programs
- Assistant Secretary for Transportation Policy
- Assistant Secretary for Aviation and International Affairs.
- Deputy Administrator, FAA
- Administrator, FMCSA
- Administrator, NHTSA
- Administrator, MARAD
- Administrator, PHMSA
- Member, STB for a term ending 12/31/2013.

## TSA Reauthorization Goes To House Floor Next Week

Just before the House of Representatives adjourned for the Memorial Day recess, the House Rules Committee approved a special rule for consideration of the Transportation Security Administration reauthorization bill recently reported from the House Homeland Security Committee.

This will allow the bill (H.R. 2200) to be the first major item of business on the House floor next week when the House returns from recess.

H.R. 2200 was approved by the

Homeland Security Committee on a mostly bipartisan basis, though committee R's expressed their disappointment that they were not allowed to fully address the issue of whether or not Guantanamo Bay detainees would be automatically added to no-fly watchlists.

The Rules Committee decided only to allow fourteen amendments to be offered to H.R. 2200 next week, shown below. The Thompson (MS) manager's amendment contains several provisions in areas where Homeland's jurisdiction borders on

the Transportation and Infrastructure Committee, particularly a section updating public transportation security grants.

Under current law, the allowable amount of public transportation security grants that can be used for operational costs (as opposed to capital costs) was to decline from 30 percent in FY 2009 to 20 percent in FY 2010 and 10 percent in FY 2011. The manager's amendment will keep the percentage at 30 percent in 2010 and 2011.

### AMENDMENTS MADE IN ORDER TO OFFER TO H.R. 2200 ON THE HOUSE FLOOR

- 1. Thompson, Bennie (MS)** managers' amendment to clarify which aviation facilities qualify for general aviation security grants, including helicopter operators and heliports, establish a plan and implements a program for screening air passengers with metal implants, improve public transportation security assistance, require a study of the creation of new transportation security positions at TSA, and requiring a GAO review of other transportation security functions at TSA.
- 2. Mica (FL)** amendment to alter the standard for when TSA can issue an emergency regulation or security device without adhering to the rule making and public notice and comment provisions of the Administrative Procedures Act (APA). Would allow TSA to issue a regulation or security directive when needed "to respond to an imminent threat of finite duration" and would require TSA to comply with the rule making requirements of the APA when a security directive or emergency order has been in place for more than 180 days.
- 3. Mica (FL)** amendment requiring TSA to establish a "known air traveler credential" that incorporates biometric identifier technology.
- 4. Bachus (AL)** amendment to direct the (TSA) to develop and implement an expedited security screening program for members of the Armed Forces traveling on official orders while in uniform through commercial airports. Additionally, family members would be eligible to accompany the service members through the expedited screening process onto the concourse.
- 5. Hastings, Alcee (FL)** amendment to require the TSA, within 6 months of enactment, to submit a report to Congress on complaints and claims received by the TSA for loss of property with respect to passenger baggage screened by the TSA.
- 6. Diaz-Balart, Lincoln (FL)** amendment to reimburse airports for eligible costs incurred before August 3, 2007, that were previously reimbursed at 90% of such costs. The Secretary would reimburse such airports an amount equal to the difference for such eligible costs.
- 7. Castor (FL)** amendment to direct the Secretary of Homeland Security to prohibit states from requiring separate security background checks for transportation security cards, and waives application of the prohibition if a compelling homeland security reason necessitates a separate background check.
- 8. Flake, Jeff (AZ)** amendment to prevent earmarking in a new grant program established in the bill, and would clarify that Congress presumes that grants awarded through that program will be awarded on a risk-based competitive basis, and if they are not, require the Assistant Secretary to submit a report to Congress explaining the reason.
- 9. Lynch (MA)** amendment to provide that any TSA personnel voluntarily may wear personal protective equipment (including surgical and N95 masks, gloves, and hand sanitizer) during any public health emergency.
- 10. Chaffetz (UT)** amendment to prohibit the TSA from using Whole Body-Imaging machines for primary screening at airports, and would require the TSA to give passengers the option of a pat-down search in place of going through a WBI machine, information on the images generated by the WBI, the privacy policies in place, and the right to request a pat-down search, and would prohibit the TSA from storing, transferring, or copying the images.
- 11. Bordallo (GU)** amendment to direct the Secretary of Homeland Security to report to Congress on a review to be conducted by the Transportation Security Administration (TSA) for preferred and alternative methods of having the airports in territories comply with TSA security regulations. The report would also address the cost differences and financing opportunities for such airports to fully comply with the TSA regulations.
- 12. Hastings, Doc (WA)** amendment to require TSA to increase the number of canine detection teams used for air cargo screening by a minimum of 100 from the date enactment.
- 13. Butterfield (NC)** amendment to require a study on the use of the combination of facial and iris recognition to rapidly identify individuals in security checkpoint lines. The study would focus on increased accuracy of facial and iris recognition and the possibility of using this advanced technology broadly for accurate identification of individuals.
- 14. Roskam (IL)** amendment to require the Secretary of Homeland Security to collect public comments from transit agencies to determine the extent to which current allowable uses of grant funds under the Transit Security Grant Program are sufficient to address security improvement priorities identified by transit agencies. Where security improvement priorities identified by local transit agencies are not met by the regulations implementing the grant program, the Secretary will report to Congress on how such regulations should be changed to accommodate them or why these are not appropriate priorities.

## NEW AND NOTABLE ON THE INTERNET

### FAA Reauthorization Bill

The text of the FAA reauthorization bill (H.R. 915) as passed by the House last week can be found here:

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h915eh.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h915eh.txt.pdf)

### TSA Reauthorization Bill

The text of the TSA reauthorization bill (H.R. 2200) as it will be brought before the House is here:

[http://www.rules.house.gov/111/LegText/111\\_hr2200\\_text.pdf](http://www.rules.house.gov/111/LegText/111_hr2200_text.pdf)

And the text of all amendments to H.R. 2200 made in order by the Rules Committee is here (scroll down):

[http://rules.house.gov/SpecialRules\\_details.aspx?NewsID=4275](http://rules.house.gov/SpecialRules_details.aspx?NewsID=4275)

### U.S. Government Accountability Office

GAO has issued a new report entitled *Federal Transit Administration: Progress and Challenges in Implementing and Evaluating the Job Access and Reverse Commute Program* which is available here:

<http://www.gao.gov/new.items/d09496.pdf>

GAO has issued a new report entitled *Effect of Personnel Reform on the Federal Aviation Administration's Budget* which is available here:

<http://www.gao.gov/new.items/d09645r.pdf>

## STATUS OF TRANSPORTATION-RELATED NOMINATIONS

Agency	Nominee	Position	Senate Committee	Latest Action
Department of Transportation	Ray LaHood	Secretary	Commerce, Science and Transportation	Nomination <u>confirmed</u> 1/22/09
Department of Transportation	John Porcari	Deputy Secretary	Commerce, Science and Transportation	Nomination <u>confirmed</u> 5/21/09
Department of Transportation	Roy Keinitz	Under Secretary for Policy	Commerce, Science and Transportation	Nomination <u>confirmed</u> 4/29/09
Department of Transportation	Robert Rivkin	General Counsel	Commerce, Science and Transportation	Nomination <u>confirmed</u> 4/29/09
Department of Transportation	Dana Gresham	Assistant Secretary for Governmental Affairs	Commerce, Science and Transportation	Nomination <u>confirmed</u> 4/29/09
DOT-Federal Aviation Administration	J. Randolph Babbitt	Administrator	Commerce, Science and Transportation	Nomination <u>confirmed</u> 5/21/09
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 <u>confirmed</u> 4/29/09
DOT-Federal Transit Administration	Peter Rogoff	Administrator	Banking, Housing and Urban Affairs	Nomination <u>confirmed</u> 5/21/09
DOT-National Highway Traffic Safety Admin.	Charles Hurley	Administrator	Commerce, Science and Transportation	Nomination reportedly will be withdrawn
DOT-Research & Innovative Tech. Admin.	Peter Appel	Administrator	Commerce, Science and Transportation	Nomination <u>confirmed</u> 4/29/09
Department of the Army	Jo-Ellen Darcy	Assistant Secretary for Civil Works	Armed Services <i>and</i> Enviro. & Public Works	Hearing held on 5/12/09

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**THIS WEEK IN COMMITTEE**

*No hearings are scheduled for this week, since Congress is in recess for Memorial Day.*

**NEXT WEEK IN COMMITTEE**

**Tuesday, June 2, 2009** — Senate Environment and Public Works — full committee hearing on the nomination of Victor Mendez to be Federal Highway Administrator — *10:00 a.m., SD-406 Dirksen.*

**Wednesday, June 3, 2009** — House Transportation and Infrastructure — Subcommittee on Water Resources and Environment — subcommittee hearing on agency budget priorities for FY 2010 — *10:00 a.m., 2167 Rayburn.*

**Thursday, June 4, 2009** — House Transportation and Infrastructure — full committee markup of pending calendar business — *11:00 a.m., 2167 Rayburn.*

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

BILL	HOUSE ACTION	SENATE ACTION	RESOLUTION
<b>FY 2009 Omnibus Appropriations Act</b>	H.R. 1105 passed House 2/25/09 by a vote of 245-178	H.R. 1105 passed Senate 3/10/09 by voice vote	Public Law 111-8 3/11/09
<b>Economic Stimulus Appropriations &amp; Tax Cuts</b>	H.R. 1 conference report passed House 2/13/09 by 246-183-1	H.R. 1 conference report passed Senate 2/13/09 by a vote of 60-38	Public Law 111-5 2/17/09
<b>FY 2010 Congressional budget resolution</b>	H. Con. Res. 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
<b>FY 2010 Transportation-HUD Appropriations</b>			
<b>FY 2010 Energy and Water Appropriations</b>			
<b>FY 2010 Homeland Security Appropriations</b>			
<b>Federal Aviation Admin. Reauthorization Bill</b>	H.R. 915 passed House 5/22/09 by a vote of 277-136		
<b>Surface Transportation Reauthorization Bill</b>			
<b>Water Resources Development Act</b>			
<b>FY 2010 Coast Guard Authorization</b>			
<b>Transportation Security Admin. Reauthorization</b>	H.R. 2200 reported 5/19/09 H. Rept. 111-123		