

THE LEGISLATIVE SERVICES GROUP'S

Transportation Weekly

MONITORING AND ANALYZING DEVELOPMENTS IN FEDERAL TRANSPORTATION AND PUBLIC WORKS POLICY

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Tuesday, June 16, 2009

Legislative Schedules Week of June 15, 2009

House

Tuesday — meets at noon — four measures under suspension of the rules, plus the conference report on H.R. 2346, supplemental appropriations, and begin consideration of H.R. 2847, Commerce-Justice-Science appropriations.

Wednesday and the balance of the week — meets at 10 a.m. (9 a.m. Friday) — complete consideration of H.R. 2847 and consider H.R. _____. Homeland Security appropriations.

Senate

The Senate convened at 10 a.m. today and is currently considering S. 1023, travel promotion.

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Oberstar To Unveil Surface Blueprint This Week

House Transportation and Infrastructure Chairman James Oberstar (D-MN) has scheduled a press conference for Thursday morning to unveil a "blueprint" for the surface transportation reauthorization bill he hopes to introduce and mark up in subcommittee by the end of June.

It is not certain how much detail will be contained in the blueprint — we hear there are two different documents in the works: a twelve- to fourteen-page outline, and a much more detailed outline of perhaps a hundred pages. It is uncertain which of these will be released at the press conference.

And the blueprint is almost certainly not going

to contain any dollar amounts, formulas, or specific revenue-raising proposals. (In the absence of definite revenue numbers, in fact, it's difficult and pointless to put dollars to the spending programs, and without fixed dollar amounts, you can't estimate formula apportionments or shares.)

It is still unclear if enough legislative text can be drafted and vetted in time for a Highways and Transit subcommittee markup next week.

(*Ed. Note:* This article was supposed to be several pages longer. However, the rollout schedule for the blueprint has slipped and we think it's easier to just send this issue out today and perhaps do a supplemental



Chairman James Oberstar (D-MN) hopes to release a detailed outline of his surface transportation reauthorization proposal later this week.

issue later in the week as events warrant.)

(*Further Ed. Note:* In fact, we had trouble even filling these twelve measly column-inches in this article. As the length of this superfluous Editor's Note attests.)

FHWA Firms Up Plans For Next HTF Default

The Federal Highway Administration began briefing Congress last week on the specific steps the agency intends to take to manage the rapidly diminishing cash balances in the Highway Account of the Highway Trust Fund.

The Obama Administration is expected to put forth a legislative proposal in the next few

weeks for adding extra money to the Highway Account to stave off a financial default. But in the absence of another bailout of the Trust Fund, the procedures described by FHWA last week will be utilized as the cash balance in the Highway Account drops further.

As of the close of business on Friday, June 5,

the Highway Account had about \$4.5 billion cash on hand. For the last five months, the end-of-the-week cash balances have stayed relatively constant, oscillating between \$4.5 billion and \$6.0 billion.

However, the height of the construction season is approaching, and outlays from the Highway Ac-

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HTF Default

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count peak in July, August and September. At the same time, fuel tax payments increase, but not nearly so much. So the Highway Account “burns through” a lot of cash in the July-September period.

To put the problem in a nutshell: the Highway Account started out FY 2009 with about \$10 billion in cash (\$8 billion from the last bailout by the general fund and \$2 billion from the big retroactive year-end tax payment that takes place on the sixth business day of October).

FHWA’s current projections of Highway Account receipts and outlays looks like this:

FY 2009 Receipts:	29.3
FY 2009 Outlays:	40.4
FY 2010 Receipts:	32.6
FY 2010 Outlays:	42.2

(Ed. Note: you don’t have to be an expert to realize that if you start the year with \$10 billion, and you spend \$11.1 billion more during the year than you take in, you have a problem.)

The annual totals may turn out to be worse than these numbers show. The receipt estimates are based on the President’s budget, and will be formally re-estimated by the Treas-

ury (quite possibly downwards) as part of the mid-session review of the budget in late July or early August.

The actual timing of the future default cannot be pinpointed exactly. As part of its briefing to Capitol Hill last week, FHWA submitted estimated week-by-week cash flow projections for the Highway Account for the first time.

That information from February through September 2009 is shown in graphical form below in terms of the closing balance of the Highway Account at the close of business each Friday.

The data points zig-zag for one big reason: while cash flows out of the Highway Account every business day, tax deposits are only transferred from the general fund of the Treasury to the Trust Fund twice a month.

The slow pace of winter-spring outlays has kept the Highway Account’s balance in a constant range for the February –May period, as shown below. But as outlays accelerate, the balance is likely to drop below \$4.0 billion — the level that FHWA says is the minimum needed to manage cash flows and prepare for all contingencies. So FHWA is sounding the alarm bell now, as things are about to get worse.

Take next month. There are 22 business days in July 2009, and on each of those days, FHWA estimates paying out about \$185 million in outlays. This would make

total July outlays about \$4.0 billion. But that money would only be offset by two tax payments of about \$1.45 billion each, meaning that the Highway Account would have a \$1.1 billion deficit in July alone.

In August, that would accelerate, as the pace of outlays climbs above \$200 million per day and the first tax payment drops somewhat (we’re not sure why). The Highway Account could hit a zero balance in the second week of August and be temporarily rescued by the first tax payment, only to hit zero again two weeks later, be rescued again, and then go permanently into the red by the end of the month.

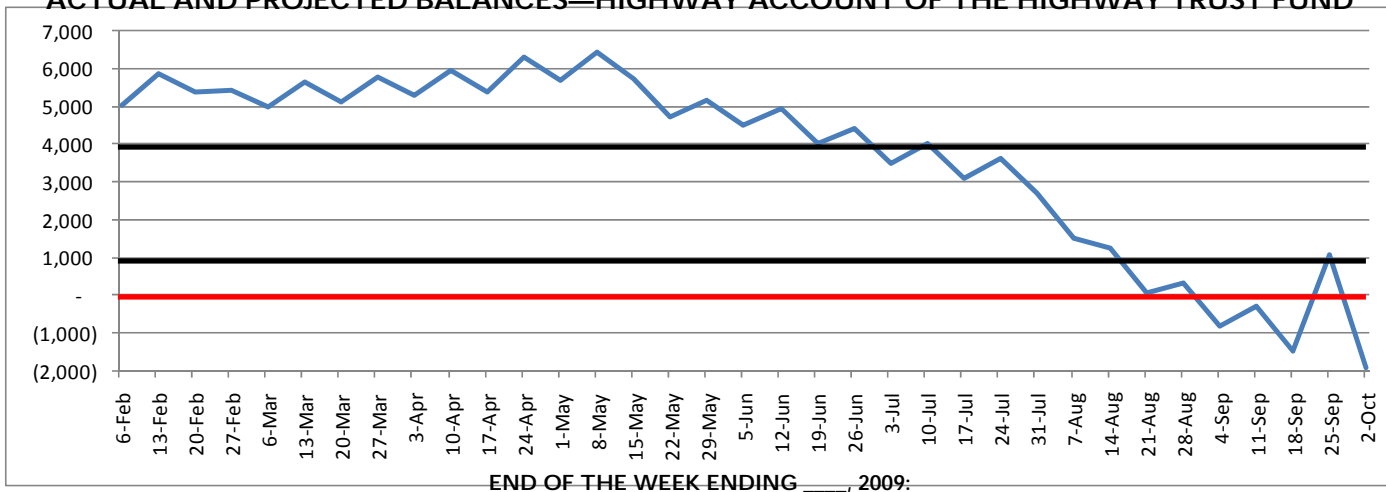
Accordingly, FWHA told Congress that it intends to do what it did when the Highway Account ran dry in September 2008—cease making daily reimbursements to state DOTs and instead make payments once a week (also working with the Treasury Department to speed up tax payments from the current twice-monthly to once a week as well.)

FHWA intends to take this step when the Highway Account balance drops to \$1.0 billion, which they currently anticipate would be in the week ending August 21.

And since the stack of unpaid bills would keep growing at a faster pace than the tax receipts through the remainder of the construction season, states would be forced to wait

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ACTUAL AND PROJECTED BALANCES—HIGHWAY ACCOUNT OF THE HIGHWAY TRUST FUND



HTF Default

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for smaller, pro-rated reimbursement amounts as the unpaid bills keep piling up.

This would meet with the usual howls of anguish from the states. When FHWA went to once-weekly pro-rated reimbursements last September, the head of AASHTO (the organization of the state DOTs) said that "States are suspending new contract awards, halting right-of-way acquisition and looking for ways to stop on-going construction while maintaining public safety. It is truly a crisis that Congress must resolve immediately. Every day the federal IOUs are piling up and the states' financial hole gets deeper."

The table at right shows the detailed week-by-week numbers for the Highway Account (actual through June 5 2009, and projections thereafter). It bears repeating that the Highway Account cannot actually have a negative balance and that the switch to weekly pro-rated reimbursements in mid-August would of course change these numbers.

But the projected negative balances in these figures does give a sense of how much additional money will be needed to fulfill existing spending commitments and keep cash flowing to the states.

Given that FHWA has determined that the Highway Account balance should never be allowed to drop below \$4 billion for cash management reasons, they have determined that an additional \$5-7 billion will ultimately be needed to see the programs through September 30, 2009 without interruption, and that an additional \$8-10 billion will be needed to get through September 30, 2010 at the requested budget level for FY 2010 (which is the actual 2009 level plus one percent growth).

That adds up to somewhere between \$13 billion and \$17 billion being needed to get through the remainder of FY 2009 and FY 2010.

The only answer that works in the short-term is a second bailout of the Trust Fund by the general fund. The Obama Administration has expressed a strong desire to see that the cost of the next bailout is fully offset by spending reductions and/or revenue increases, and they have also expressed a preference to deal with the immediate bailout for FY 2009 and the bailout for FY 2010 at the same time, rather than months apart.

The House Ways and Means Committee and Senate Finance Commit-

tees have jurisdiction over this issue, but the chairmen of both panels appear to be waiting for the Obama Administration's proposals for offsetting the cost of the bailout before putting their own proposals forward.

The deadline for Congress to send legislation to the President to avert an August default in the Highway Account is Friday, July 31 (the last business day before Congress leaves for a five-week recess).

Actual/Projected HTF Highway Account Cash Flow

Year	Week	Actual			End-of-Wk. Balance	Year	Week	Projected			End-of-Wk. Balance
		Ending	Deposits	Outlays				Ending	Deposits	Outlays	
2009	6-Feb		1	485	5,071	2010	1-Jan	1,291	480	(2,393)	
2009	13-Feb	1,201		365	5,907	2010	8-Jan	-	480	(2,872)	
2009	20-Feb	-		513	5,394	2010	15-Jan	1,362	480	(1,991)	
2009	27-Feb	893		862	5,425	2010	22-Jan	-	480	(3,284)	
2009	6-Mar	-		441	4,985	2010	29-Jan	-	480	(2,951)	
2009	13-Mar	1,206		512	5,679	2010	5-Feb	1,251	582	(2,282)	
2009	20-Mar	-		501	5,153	2010	12-Feb	-	582	(2,863)	
2009	27-Mar	1,158		519	5,792	2010	19-Feb	931	582	(2,514)	
2009	3-Apr	2		484	5,309	2010	26-Feb	-	582	(3,096)	
2009	10-Apr	1,238		554	5,992	2010	5-Mar	1,256	745	(2,585)	
2009	17-Apr	-		603	5,389	2010	12-Mar	-	745	(3,330)	
2009	24-Apr	1,403		448	6,344	2010	19-Mar	1,206	745	(2,869)	
2009	1-May	-		647	5,697	2010	26-Mar	-	745	(3,614)	
2009	8-May	1,414		651	6,460	2010	2-Apr	1,289	476	(2,801)	
2009	15-May	-		693	5,767	2010	9-Apr	-	476	(3,277)	
2009	22-May	(137)		895	4,735	2010	16-Apr	1,461	476	(2,293)	
2009	29-May	1,144		691	5,188	2010	23-Apr	-	476	(2,769)	
2009	5-Jun	5		687	4,506	2010	30-Apr	1,473	476	(1,723)	
2009	12-Jun	1,390		922	4,974	2010	7-May	-	834	(2,610)	
2009	19-Jun	-		918	4,057	2010	14-May	(143)	834	(3,583)	
2009	26-Jun	1,292		922	4,427	2010	21-May	1,191	834	(3,225)	
2009	3-Jul	-		918	3,510	2010	28-May	5	834	(4,054)	
2009	10-Jul	1,452		922	4,040	2010	4-Jun	1,448	1,097	(3,703)	
2009	17-Jul	-		918	3,123	2010	11-Jun	-	1,097	(4,800)	
2009	24-Jul	1,452		922	3,653	2010	18-Jun	1,346	1,097	(4,552)	
2009	31-Jul	-		918	2,735	2010	25-Jun	-	1,097	(5,649)	
2009	7-Aug	-	1,189	1,547	1,547	2010	2-Jul	1,512	830	(4,966)	
2009	14-Aug	916	1,185	1,278	1,278	2010	9-Jul	-	830	(5,796)	
2009	21-Aug	-	1,189	89	89	2010	16-Jul	1,512	830	(5,113)	
2009	28-Aug	1,447	1,185	352	352	2010	23-Jul	-	830	(5,943)	
2009	4-Sep	-	1,177	(825)	(825)	2010	30-Jul	-	830	(6,723)	
2009	11-Sep	1,702	1,173	(297)	(297)	2010	6-Aug	954	1,226	(7,045)	
2009	18-Sep	-	1,177	(1,474)	(1,474)	2010	13-Aug	-	1,226	(8,271)	
2009	25-Sep	567	1,173	1,080	1,080	2010	20-Aug	1,507	1,226	(7,990)	
2009	2-Oct	-	830	(1,909)	(1,909)	2010	27-Aug	-	1,226	(9,216)	
2009	9-Oct	2,059	830	(680)	(680)	2010	3-Sep	1,772	1,214	(8,658)	
2009	16-Oct	673	830	(837)	(837)	2010	10-Sep	-	1,214	(9,872)	
2009	23-Oct	-	830	(1,666)	(1,666)	2010	17-Sep	1,664	1,214	(9,422)	
2009	30-Oct	-	830	(2,496)	(2,496)	2010	24-Sep	-	1,217	(10,639)	
2009	6-Nov	1,505	808	(1,799)	(1,799)						
2009	13-Nov	-	808	(2,608)	(2,608)						
2009	20-Nov	1,350	808	(2,066)	(2,066)						
2009	27-Nov	-	808	(2,874)	(2,874)						
2009	4-Dec	1,318	762	(2,318)	(2,318)						
2009	11-Dec	-	762	(3,080)	(3,080)						
2009	18-Dec	1,401	762	(2,441)	(2,441)						
2009	25-Dec	-	762	(3,203)	(3,203)						

House Appropriators Make Initial Budget Allocations For FY 2010

Last week, the House Appropriations Committee approved a plan for dividing up \$1.09 trillion in fiscal year 2010 discretionary spending authority between that panel's twelve subcommittees.

The move, required under section 302(b) of the Budget Act, allows the panel to begin reporting general appropriations bills for FY 2010 to the House.

The table at right shows the budget authority (potential new spending commitments) for discretionary spending for FY 2009 (excluding the stimulus bill and other supplemental emergencies), the FY 2010 request (as scored by CBO), and the 302(b) allocations for House Appropriations.

At the June 9 committee markup, Appropriations ranking member Jerry Lewis (R-CA) complained that the 2010 allocations increased the Defense Department and the VA by only 4 percent in total but increased the other subcommittee budgets by an aggregate total of 12 percent over last year.

Lewis instead proposed his own plan that would have increased Defense and VA by 6 percent, in-

Initial House 302(b) Allocations - Budget Authority Only (Excludes Emergencies)					
	FY 2009	FY 2010	FY 2010	House is Above/ Below Request By:	
	Enacted	Request	House		
Agriculture	20,456	22,980	22,900	-80	-0.3%
Commerce-Justice-Science	57,652	64,511	64,314	-197	-0.3%
Defense	487,737	511,540	508,040	-3,500	-0.7%
Energy and Water	33,261	34,393	33,300	-1,093	-3.2%
Financial Services	22,697	24,228	24,150	-78	-0.3%
Homeland Security	42,164	42,838	42,384	-454	-1.1%
Interior and Environment	27,579	32,325	32,300	-25	-0.1%
Labor-HHS-Education	152,255	163,452	163,400	-52	0.0%
Legislative Branch	4,402	5,154	4,700	-454	-8.8%
Military Construction-VA	72,863	76,260	76,500	+240	0.3%
State-Foreign Operations	36,620	52,043	48,843	-3,200	-6.1%
Transportation-HUD	55,000	68,870	68,821	-49	-0.1%
Total Discretionary BA	1,012,686	1,098,594	1,089,652	-8,942	-0.8%

These numbers have been adjusted to reflect actions taken by the budget resolution that affect the President's request (mostly a denial of the proposal to shift Pell Grants from discretionary to mandatory) and reflect a \$3.9 billion increase in the 302(a) that will take place once the Labor-HHS and Financial Services bills are reported.

creased Homeland Security by 4 percent, and held all other subcommittees to a 2 percent increase.

Appropriations chairman David Obey (D-WI) responded that this debate had already taken place during consideration of the budget resolution and that Lewis's side lost.

The Lewis amendment was rejected by a 21-31 vote, and Obey's proposed allocations were then adopted by a 34-21 vote.

THUD. The budget authority allocation for the Transportation-HUD

subcommittee rises from \$55.0 billion in FY 2009 to \$68.8 billion in FY 2010—on its face, a staggering 25 percent increase. But much of that \$13.8 billion increase either goes for new programs or is cosmetic to reflect changes in procedure.

The 302(b) does make room for the proposed new \$5 billion National Infrastructure Bank and the new \$1 billion high-speed and intercity passenger rail program (which replaced a similar \$90 million program funded last year).

Also, the budget assumes a gimmick-free bill (no rescissions of contract authority will be used to offset new discretionary budget authority). And there is a slight score-keeping difference between 2009 and 2010 dealing mostly with HUD advance appropriations. Add those four items together and you get:

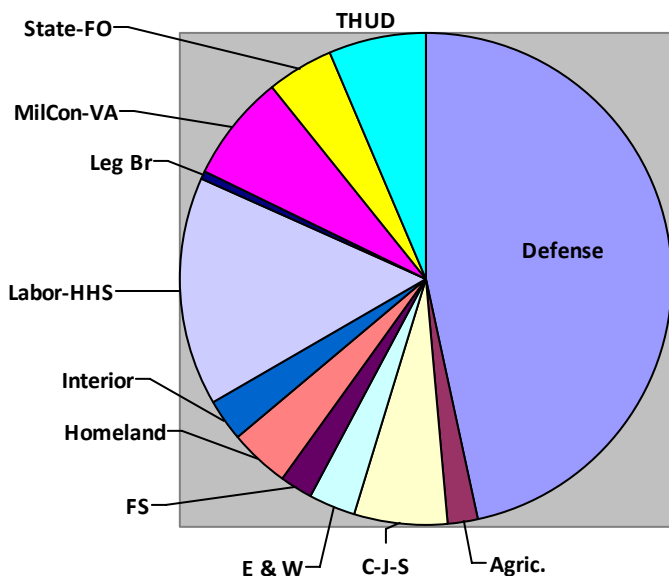
Increases (Not) Over FY 2009

Nat'l Infrastructure Bank	5,000
No more CA rescissions	3,480
Extra High-Speed Rail	910
Scoring adjustments	231
Total	9,621

So \$9.6 billion of the \$13.8 billion increase in budget authority is already spoken for and can't be used to boost existing programs.

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THE HOUSE'S DIVISION OF 2010 DISCRETIONARY SPENDING



302(b) Allocations

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That still leaves a \$4.2 billion increase available for existing programs under the 302(b) ceiling. But the Obama Administration's budget confines most of that increase to HUD, not to the Department of Transportation.

The table at right shows the breakdown of budget authority in 2009 and in the 2010 request in the THUD bill. The budget proposes to increase gross DOT discretionary spending from \$17.0 billion to \$18.2 billion (an increase of \$1.178 billion). But once you subtract the extra \$910 million for high-speed rail, that only leaves a \$268 million increase for all other DOT discretionary programs together (an increase of about 1.6 percent, which is very, very far from 25 percent).

At HUD, by contrast, the budget proposes to increase the base spending from \$38.7 billion to \$42.0 billion — a \$3.3 billion increase. Even though almost \$800 million of that is a positive credit subsidy requirement that won't actually give any program growth, this is still a much bigger percentage increase than the budget proposes to give to DOT (once the new high-speed rail program is removed from the calculations).

The new allocation is slightly below the requested total, so the THUD subcommittee staff must reduce the total budget authority in the President's request by \$49 million (we've got a rounding error somewhere between the table on this page and the table on the previous page). This should not be too difficult.

In addition to the cap on new budget authority, the subcommittee also faces a cap on total outlays (paying off new and previous commitments) attributable to the subcommittee. That cap is \$134.6 billion.

The table below shows the relative sources of the outlays attributable to the THUD subcommittee under the President's budget request (as estimated by CBO). The subcommittee must reduce outlays by \$408 million below the President's request. \$408 million is only three-tenths of a percent of \$135 billion, but it's not quite that simple.

Transportation-HUD Subcommittee Budget Authority (Millions of \$)		
	FY 2009 Enacted	FY 2010 Request
Title I: Department of Transportation		
USDOT Non-Emergency Appropriations (Regular)	16,999	18,177
New General Fund Appropriation for Highways	-	36,107
New General Fund Appropriation for Transit Formulas	-	3,343
USDOT Rescissions of Appropriations	(39)	-
USDOT Rescissions of Contract Authority	(3,480)	-
Equals: USDOT Net Total for 302(b)	13,480	57,627
Title II: Housing and Urban Development		
HUD Non-Emergency Appropriations	38,662	41,977
HUD Rescissions of Appropriations	(793)	(28)
HUD Advance Appropriations	4,400	4,400
HUD Offsetting Receipts and Collections	(735)	(867)
Equals: HUD Net Total for 302(b)	41,535	45,483
Title III: Other Independent Agencies		
National Infrastructure Bank	-	5,000
Other Agencies Non-Emergency Appropriations	304	296
Other Agencies Rescissions of Appropriations	(1)	-
Equals: Other Agencies Net Total for 302(b)	303	5,296
Scorekeeping Adjustments		
Adjustment for Pipeline Safety User Fees	(75)	(87)
Less HUD Advance Appropriations	(4,400)	(4,400)
Plus Prior Year HUD Advance Appropriations	4,158	4,400
Other Scorekeeping Adjustments	(1)	-
Total Scorekeeping Adjustments	(318)	(87)
Total THUD Subject to 302(b) Ceiling	55,000	108,319
Minus: General Fund Appropriation for Highways	-	(36,107)
Minus: General Fund Appropriation for Transit Formulas	-	(3,343)
Total General Fund Proposals for HTF Solvency	-	(39,450)
Total THUD Subject to 302(b) Ceiling if General Fund Proposals for HTF Solvency Are Ignored	55,000	68,869
FY 2010 House THUD 302(b) Ceiling (BA)		68,821
Amount Requested Budget Authority Must Be Cut:		48

The table shows that \$82.7 billion of the total \$135 billion in outlays under the President's request result from legally binding commitments made in FY 2009 and prior years. In effect, these outlays are "uncontrollable" and will take place no matter what actions Congress takes to fund FY 2010.

So that \$408 million cut has to come out of the \$52.4 billion in outlays resulting from new FY 2010 decisions. But DOT in particular has so many slow-spending capital programs that cutting outlays is difficult (for highways, for example, you have to cut \$4 in new 2010 spending commitments to save \$1 in new 2010 outlays).

The full Appropriations panel set aside a "reserve fund" of \$711 million in outlays to help subcommittees fix problems like this, but since the THUD panel will be the last to mark up, all the other subcommittees will have had a chance to raid the outlay reserve fund before THUD gets a shot.

OUTLAYS FROM THE U.S. TREASURY UNDER THE THUD SUBCOMMITTEE AGENCIES - 2010 REQUEST

Dollar amounts in millions.

	FY 2010 Request
USDOT Outlays from Previously Enacted Authority	53,634
Other THUD Outlays from Previously Enacted Authority	29,035
Total, "Uncontrollable" Outlays Occuring in FY2010	82,669
USDOT New FY 2010 Outlays from New Authority	26,424
Other THUD New FY 2010 Outlays from New Authority	25,997
Total, Controllable FY2010 Outlays From New Authority	52,421
Scorekeeping Adjustment	-87
Total THUD Outlays Subject to 302(b) Ceiling	135,003
FY 2010 THUD 302(b) Outlay Ceiling	134,595
Amount that Requested Outlays Must Be Reduced	-408

House Appropriators Release Schedule For FY 2010 Bills

Last week, House Appropriations Committee chairman David Obey (D-WI) released the tentative schedule for his panel's actions on the twelve general appropriations bills to fund the discretionary portions of the federal government for fiscal year 2010.

The committee has already approved three of the twelve bills, including the Homeland Security bill.

Under the tentative plan, the House would pass all twelve bills before adjourning for the five-week August recess on July 31.

The Transportation-HUD bill is scheduled to be the last of the twelve bills to be marked up in subcommittee and in full committee, with a subcommittee markup date of Wednesday, July 15 and a full committee markup date of Tuesday, July 21. (The Sotomayor hearings in the Senate are scheduled to start

on July 13, ensuring that all the oxygen in the Capitol complex will be sucked out and the THUD markups won't register on the national radar, no matter what happens there.)

Keeping the schedule is dependent on things going well with the bills on the House floor. For example, the schedule assumes that floor debate on the Financial Services bill will only take one business day. (In previous years, the House has spent at least that much time debating the Cuba policy amendments to that bill.)

Under the tentative schedule, the Transportation-HUD bill would get two days on the House floor, July 28 and 29. It would be followed by the defense bill on July 30 and 31.

The key to getting the appropriations bills through the House floor

TENTATIVE HOUSE SCHEDULE

Subcommittee on Transportation-HUD

Subcommittee markup	Wed. July 15
Full committee markup	Tue. July 21
House Floor debate	Tue. & Wed. July 28-29

Subcommittee on Energy and Water

Subcommittee markup	Thu. June 25
Full committee markup	Tue. July 7
House Floor debate	Thurs. July 16

in a reasonable period of time is the cooperation of the minority party, especially the Republicans on the Appropriations Committee. So far, ranking member Jerry Lewis (R-CA) has expressed a willingness to work with Obey to return to "regular order" and move the panel's workload through the House in an expeditious manner.

The House last passed all of the general appropriations bills prior to the August recess in 2007.

Obama Makes Nominations For NTSB Chair, FMC Commissioner

President Obama made two more transportation-related nominations on June 8, naming Debbie Hersman to be Chairman of the National Transportation Safety Board and Richard Lidinsky, Jr. to be a member of the Federal Maritime Commission.

Hersman has been a rank-and-file member of the NTSB since June 2004 and has served as the on-scene board member at several major accident investigations.

Before joining the NTSB, Ms. Hersman was a Senior Professional Staff Member of the U.S. Senate Committee on Commerce, Science and Transportation from 1999 to 2004 where she was responsible for the legislative agenda and policy initiatives affecting surface transportation issues, including economic and safety regulation of railroads, trucks, buses, pipelines, and hazardous materials transporta-

tion. Prior to that appointment, she served as Staff Director and Senior Legislative Aide to Congressman Bob Wise of West Virginia from 1992 to 1999. Ms. Hersman received undergraduate degrees from Virginia Tech and a Master of Science in Conflict Analysis and Resolution from George Mason University in Virginia.

Lidinsky is a career maritime attorney, beginning with service as an aide to the House Merchant Marine and Fisheries Committee in the early 1970s and working in the FMC's General Counsel's office from 1973-1975. He then worked for the Maryland Port Authority from 1975-1985. While representing the Port of Baltimore on both regional and national port organizations, he was a key architect of the port protection sections in the Panama Canal Treaty Implementing Legislation and the Shipping Act of 1984. He also helped negotiate on behalf of

the port one of the first US-China trade agreements.

From 1985-2006 he worked for Sea Containers Ltd. in their Washington DC office, eventually rising to Vice President for Governmental Affairs. He also served as a member of the Sealift Transportation Committee of the National Defense Transportation Association and as a High-Level Expert to the U.S. NATO Delegation on the Ports and Intermodal Transportation Committee from 1995-2005.

He is currently working as an attorney and international trade consultant in private practice. He received his JD from the University of Maryland in 1972 and his BA from the School of Government and Public Administration of American University in 1968. From 1968 to 1975, he served in the U.S. Coast Guard on active and reserve duty.

House Panel Approves \$44 Billion Homeland Appropriations Bill

The House Appropriations Committee on June 12 approved, by voice vote, a \$44.0 billion spending bill for the Department of Homeland Security for fiscal year 2010.

DHS funds several major transportation activities, including the Transportation Security Administration, the Coast Guard, and federal port security and rail/transit security grants. However, the debate at the full committee level addressed almost none of these issues, focused as it was on the issue of Guantanamo Bay detainees.

Rep. Hal Rogers (R-KY), the ranking minority member of the Homeland Security subcommittee, offered an amendment to the bill requiring TSA to place all Guantanamo Bay detainees on the No-Fly list unless the President personally certifies in writing that the individual poses no threat. It also prohibited any funds under the bill from being used to provide any "immigration benefit" to any person detained at Guantanamo Bay as of April 30, 2009.

To clarify the amendment, Appropriations full committee ranking member Jerry Lewis (R-CA) offered a second-degree amendment stating that detainees could be flown into the U.S. to face trial.

After extensive debate (during which Appropriations Chairman David Obey (D-WI) made the sage comment that "Its not against the rules of this committee to accept an amendment that makes no sense," Obey and Homeland subcommittee chairman David Price (D-NC) attempted to accept the Rogers amendment (as modified by the Lewis amendment, which was agreed to by voice vote) by voice vote as well, but a roll call vote was demanded, and the amended Rogers amendment passed, 34-24.

The only other amendments offered that touched on transportation in any way was a Price manager's amendment that modified some report language in the TSA and

SELECTED FY 2010 SPENDING LEVELS (GROSS)

Transportation Security Administration

	<u>FY 2009</u>	<u>Request</u>	<u>House</u>
Aviation Security	\$5.755 billion	\$5.311 billion	\$5.266 billion
Surface Security	\$50 million	\$128 million	\$103 million
Threats/Credentialing	\$156 million	\$220 million	\$172 million
Support	\$948 million	\$1.005 billion	\$993 million
Federal Air Marshals	\$819 million	\$860 million	\$860 million

United States Coast Guard

	<u>FY 2009</u>	<u>Request</u>	<u>House</u>
Operating Expenses	\$6.195 billion	\$6.798 billion	\$6.822 billion
AC&I (procurement)	\$1.495 billion	\$1.384 billion	\$1.347 billion
Reserve Training	\$131 million	\$133 million	\$133 million
R&D, T&E	\$18 million	\$20 million	\$20 million
Environmental C&R	\$13 million	\$13 million	\$13 million
Alteration of Bridges	\$16 million	zero	\$10 million

FEMA (Transportation Grants Only)

	<u>FY 2009</u>	<u>Request</u>	<u>House</u>
Port security grants	\$400 million	\$250 million	\$250 million
Rail/transit security gr.	\$400 million	\$250 million	\$250 million
Bus security grants	\$12 million	zero	\$12 million
Trucking security gr.	\$8 million	zero	zero

Coast Guard portions of the committee report, which was agreed to by voice vote.

The bill is tentatively scheduled to go before the House Rules Committee on Thursday and be on the House floor on Friday and next Tuesday.

Following is a brief overview of the transportation-related portions of the bill.

TSA. Under the reported bill, a total of \$7.69 billion in resources will be available to the Transportation Security Administration in fiscal year 2010. This is an increase of 10.2 percent over the 2009 level (once the stimulus money is subtracted from 2009) but is 1.3 percent below the budget request.

\$250 million of that is the mandatory Aviation Security Capital Fund, and that spending will take place whether or not the appropriators take any action. And once \$2.1 billion in offsetting security fees and \$45 million in other fee-funded accounts are taken into account, the net discretionary cost of the TSA under the bill is \$5.29 billion.

Within TSA's aviation security budget, there are three significant deviations from the President's budget request. First, total spending for EDS and trace screening systems at airports is \$1.14 billion in the bill, 5.5 percent below the request. But this is still a gigantic 83 percent increase over FY 2009's \$621 million. (This does not count another \$700 million that was provided in the stimulus law.)

The committee report says that "This funding, coupled with the \$700,000,000 provided in ARRA earlier this year, fully satisfies TSA's list of airports that have approved optimal screening designs that could be funded. Within the \$800,000,000 discretionary appropriation, 25 shall be applied to the needs of medium and small sized airports."

Second, the budget increases funding for air cargo security from \$108 million in the budget request to \$123 million. The committee report says that the extra funding will help TSA meet the 9/11 Act's man-

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DHS Appropriations

CONTINUED FROM PAGE EIGHT

date that 100 percent of air cargo carried on passenger planes be screened starting in August 2010.

(See the new subsection 513(d) of the reported bill requiring TSA to report on how it will meet the August 2010 deadline.)

Third, the budget proposed \$16.8 million for four new fee-offset programs within the Aviation Security account which the reported bill moves to the Transportation Threat Assessment and Credentialing account.

Within surface transportation security, the overhead account receives the budget request but the rail security inspectors and canine teams is cut 29 percent below the budget request (though that is still hugely above 2009) — the committee report says that the existing backlog of unfilled posts is so large that it is unwise to increase spending further in 2010.

Within the threats and credentialing account, the budget request for crew and other vetting is cut by 18.6 percent below the request. Four new fee-funded programs are approved: certified cargo screening, large aircraft security, and “other security threat assessments” (which are defined in the budget justifications as “other various security threat assessments that are required for very small transportation populations not mentioned above”).

Transportation security support is given a 1.2 percent reduction below the request (still a 4.8 percent increase over 2009) and the air marshals service gets the exact amount of the budget request.

Coast Guard. The reported bill provides a total of \$9.97 billion for the U.S. Coast Guard, which is essentially the same amount of the budget request and which is a 6.5 percent increase over the 2009 non-emergency level.

Within the big account (Operating Expenses), the appropriated

amount is four-tenths of a percent above the request, which is in turn a 10.1 percent increase over 2009. The only significant deviation from the budget request is a cut in the centrally managed accounts line-item. Overseas contingency operations receive \$241.5 million.

The procurement (AC&I) account is given a 2.6 percent cut below the budget request, and this represents a 9.8 percent cut from last year. The entire reduction below the budget request comes in the massive Integrated Deepwater System program. Within Deepwater, the cut appears to come entirely from the rejection of a proposal to spend \$36.5 million to accelerate the purchase of a maritime patrol aircraft flight simulator.

The Obama Administration, like the Bush Administration, proposed to kill the Alteration of Bridges account, but this Congress (like the Republican Congresses before it) will decline. That account receives \$10 million in the reported bill, down from \$16 million in 2009 (but this does not count the ridiculous \$142 million given to that in the stimulus act).

The reserve training and R&D accounts receive the requested amounts.

FEMA. The reported bill meets the budget request for the two big transportation-related grant accounts within FEMA. Both port security grants and rail/transit se-

curity grants receive \$250 million each, which is \$150 million each below the 2009 level. However, each of those accounts got \$150 million in the stimulus bill, so the total effect of the request and the reported bill appears to be a wash.

Following up on the spring hearings which evinced difficulties in accessing previously appropriated funds, the committee report says that with regard to the transit grants, “The Committee notes that after two recent hearings, FEMA and TSA understand that they must work diligently to comprehend this issue and provide solutions. The Committee expects FEMA and TSA to report on their progress, by August 2009, in working with the transit agencies to get funds drawn down from fiscal years 2006, 2007 and 2008.”

The budget proposed to eliminate the over-the-road bus security grant program, but the reported bill provides the same \$12 million that the program got last year.

The reported bill does concur with the budget’s request to eliminate the trucking security grant program, and goes further and rescinds the \$5.7 million that is still left over from last year’s appropriation for the program (see sec. 550 of the bill).

The tables on the following two pages give more detail on the transportation spending in the reported bill.

HOUSE JUDICIARY PANEL CANCELS SUBCOMMITTEE MARKUP OF RAIL ANTITRUST BILL

The House Judiciary Committee’s subcommittee on Courts and Competition Policy was scheduled to hold a markup of H.R. 233, the Railroad Antitrust Enforcement Act of 2009, on June 11. However, that subcommittee markup was abruptly postponed shortly before it was scheduled to take place and has not yet been rescheduled as of press time.

One industry source said that the markup had been postponed because subcommittee members who are allied with the railroad industry were prepared to offer amendments to the bill that the majority did not know if they had the votes to defeat.

H.R. 233 is identical to Senate legislation (S. 146) that was supposed to go before the Senate on June 1 but which was withdrawn after it became clear that its supporters did not have the 60 votes necessary in the Senate to invoke cloture on the motion to proceed to consider the bill.

TRANSPORTATION SECURITY ADMINISTRATION FUNDING IN THE HOUSE BILL

(Dollar amounts in thousands — excludes emergency funding from the FY 2009 stimulus act)

	FY 2009	FY 2010	FY 2010	House vs. 2009		House vs. Request	
	Enacted	Request	House	K \$\$\$	Pct.	K \$\$\$	Pct.
Transportation Security Administration							
Aviation Security							
Screening Operations							
<i>Screener workforce - Privatized Screening</i>	151,272	149,643	149,643	(1,629)	-1.1%	-	0.0%
<i>Screener workforce- PC&B</i>	2,716,014	2,788,575	2,788,575	72,561	2.7%	-	0.0%
Screener workforce - Total	2,867,286	2,938,218	2,938,218	70,932	2.5%	-	0.0%
Screener training and other	197,318	203,463	204,713	7,395	3.7%	1,250	0.6%
Checkpoint support	250,000	128,739	128,739	(121,261)	-48.5%	-	0.0%
<i>EDS/ETD procurement and installation</i>	294,000	856,591	800,000	506,000	172.1%	(56,591)	-6.6%
<i>EDS/ETD maintenance and other equipment</i>	305,625	326,625	316,625	11,000	3.6%	(10,000)	-3.1%
<i>Operation integration</i>	21,481	21,481	21,481	-	0.0%	-	0.0%
EDS/ETD systems - Total	621,106	1,204,697	1,138,106	517,000	83.2%	(66,591)	-5.5%
Subtotal, Screening Operations	3,935,710	4,475,117	4,409,776	474,066	12.0%	(65,341)	-1.5%
Aviation Security Direction and Enforcement							
Aviation regulation/other enforcement	245,268	254,064	254,064	8,796	3.6%	-	0.0%
Airport management, IT and support	401,666	448,424	453,924	52,258	13.0%	5,500	1.2%
FFDO and flight crew training	25,025	25,127	25,127	102	0.4%	-	0.0%
Air cargo security	122,849	108,118	122,849	-	0.0%	14,731	13.6%
Airport perimeter security	4,000	-	-	(4,000)	-100.0%	-	n/a
Subtotal, Aviation Security Direction and Enforcement	798,808	835,733	855,964	57,156	7.2%	20,231	2.4%
Discretionary Fee Programs:							
General aviation at DCA	75	100	100	25	33.3%	-	0.0%
Indirect air cargo	200	2,600	2,600	2,400	1200.0%	-	0.0%
Certified cargo screening	-	5,200	-	-	n/a	(5,200)	-100.0%
Large aircraft security program	-	1,600	-	-	n/a	(1,600)	-100.0%
Secure identification display checks	-	10,000	-	-	n/a	(10,000)	-100.0%
Other security threat assessments	-	100	-	-	n/a	(100)	-100.0%
Subtotal, Discretionary Fee Programs	275	19,600	2,700	2,425	881.8%	(16,900)	-86.2%
9/11 Act Implementation	20,000	-	-	(20,000)	-	-	n/a
Aviation Security Capital Fund (mandatory)	250,000	250,000	250,000	-	0.0%	-	0.0%
Total, Aviation Security (gross)	5,004,793	5,580,450	5,518,440	513,647	10.3%	(62,010)	-1.1%
Discretionary Fee Collections:							
Discretionary Aviation Security Fees	(2,320,000)	(2,100,000)	(2,100,000)	220,000	-9.5%	-	0.0%
Other fees	(275)	(19,600)	(2,700)	(2,425)	881.8%	16,900	-86.2%
Mandatory Fee Collections:							
Aviation Security Capital Fund	(250,000)	(250,000)	(250,000)	-	0.0%	-	0.0%
Total, Aviation Security (net discretionary)	2,434,518	3,210,850	3,165,740	731,222	30.0%	(45,110)	-1.4%
Surface Transportation Security							
Staffing and operations	24,885	42,293	42,293	17,408	70.0%	-	0.0%
Rail security inspectors and canines	24,721	86,123	61,123	36,402	147.3%	(25,000)	-29.0%
Total, Surface Transportation Security	49,606	128,416	103,416	53,810	108.5%	(25,000)	-19.5%
Transportation Threat Assessment and Credentialing							
Secure Flight	82,211	84,363	84,363	2,152	2.6%	-	0.0%
Crew and other vetting (FY 09)	33,807	107,636	87,636	53,829	159.2%	(20,000)	-18.6%
Registered Traveler program fees	10,000	-	-	(10,000)	-100.0%	-	n/a
TWIC fees	9,000	9,000	9,000	-	0.0%	-	0.0%
Hazardous materials fees	18,000	15,000	15,000	(3,000)	-16.7%	-	0.0%
Alien flight school fees	3,000	4,000	4,000	1,000	33.3%	-	0.0%
Certified cargo screening	-	-	5,200	5,200	n/a	5,200	n/a
Large aircraft security program	-	-	1,600	1,600	n/a	1,600	n/a
Secure identification display checks	-	-	10,000	10,000	n/a	10,000	n/a
Other security threat assessments	-	-	100	100	n/a	100	n/a
Total, TTAC (gross)	156,018	219,999	216,899	60,881	39.0%	(3,100)	-1.4%
Offsetting fees for fee-funded programs	(40,000)	(28,000)	(44,900)	(4,900)	12.3%	(16,900)	60.4%
Total, TTAC (net)	116,018	191,999	171,999	55,981	48.3%	(20,000)	-10.4%
Transportation Security Support							
Administration	234,870	248,929	248,929	14,059	6.0%	-	0.0%
Human Capital Services	218,105	226,338	226,338	8,233	3.8%	-	0.0%
Information Technology	472,799	501,110	489,510	16,711	3.5%	(11,600)	-2.3%
Intelligence (net)	21,961	28,203	28,203	6,242	28.4%	-	0.0%
Total, Transportation Security Support	947,735	1,004,580	992,980	45,245	4.8%	(11,600)	-1.2%
Federal Air Marshals							
Management and administration	725,081	762,569	762,569	37,488	5.2%	-	0.0%
Travel and training	94,400	97,542	97,542	3,142	3.3%	-	0.0%
Total, Federal Air Marshals	819,481	860,111	860,111	40,630	5.0%	-	0.0%
Total, Transportation Security Administration (gross)	6,977,633	7,793,556	7,691,846	714,213	10.2%	(101,710)	-1.3%
Mandatory fee collections:	(250,000)	(250,000)	(250,000)	-	0.0%	-	0.0%
Discretionary fee collections:	(2,320,275)	(2,119,600)	(2,102,700)	217,575	-9.4%	16,900	-0.8%
Fee-funded accounts	(40,000)	(28,000)	(44,900)	(4,900)	12.3%	(16,900)	60.4%
Total, Transportation Security Administration (net disc.)	4,367,358	5,395,956	5,294,246	926,888	21.2%	(101,710)	-1.9%

U.S. COAST GUARD FUNDING IN THE HOUSE APPROPRIATIONS BILL

(Dollar amounts in thousands — excludes emergency funding from the FY 2009 stimulus act)

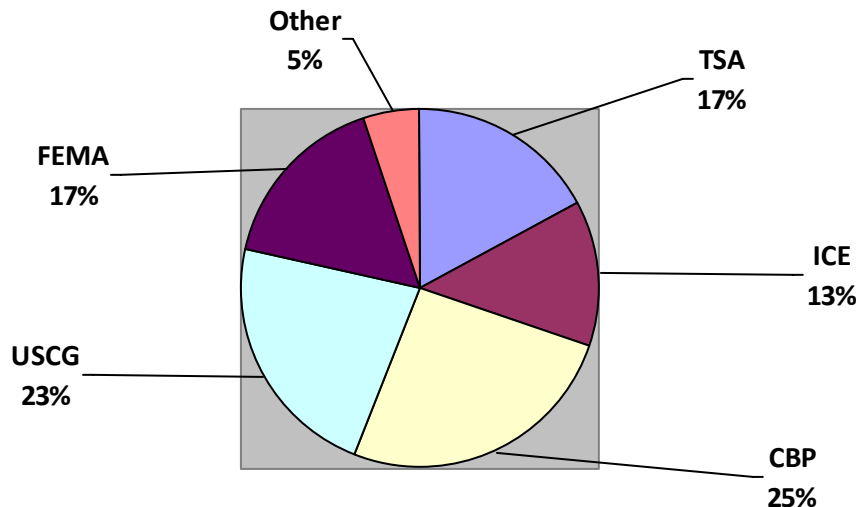
United States Coast Guard	FY 2009	FY 2010	FY 2010	House vs. 2009		House vs. Request	
	Enacted	Request	House	K \$\$\$	Pct.	K \$\$\$	Pct.
Operating Expenses							
Military pay and allowances	3,061,663	3,244,861	3,270,978	209,315	6.8%	26,117	0.8%
Civilian pay and benefits	645,350	699,594	700,490	55,140	8.5%	896	0.1%
Training and recruiting	195,919	205,970	206,776	10,857	5.5%	806	0.4%
Operating funds and unit-level maintenance	1,177,406	1,149,513	1,159,562	(17,844)	-1.5%	10,049	0.9%
Centrally managed accounts	262,294	353,071	331,058	68,764	26.2%	(22,013)	-6.2%
Intermediate and depot-level maintenance	823,793	903,179	911,659	87,866	10.7%	8,480	0.9%
Port/vessel security and environmental response	23,500	-	-	(23,500)	-100.0%	-	n/a
Aviation mission hour gap	5,000	-	-	(5,000)	-100.0%	-	n/a
Overseas contingency operations		241,503	241,503	241,503	n/a	-	0.0%
Total, Operating Expenses	6,194,925	6,797,691	6,822,026	627,101	10.1%	24,335	0.4%
Environmental Compliance & Restoration	13,000	13,198	13,198	198	1.5%	-	0.0%
Reserve Training	130,501	133,632	133,632	3,131	2.4%	-	0.0%
Acquisition, Construction & Improvements							
Vessels	113,000	103,000	103,000	(10,000)	-8.8%	-	0.0%
Other equipment	89,174	119,500	119,500	30,326	34.0%	-	0.0%
Personnel compensation and benefits	92,830	100,000	100,000	7,170	7.7%	-	0.0%
Integrated Deepwater System	1,033,994	1,047,621	1,014,980	(19,014)	-1.8%	(32,641)	-3.1%
New Coast Guard headquarters facility	97,578	-	-	(97,578)	-100.0%	-	n/a
Shore facilities and aids to navigation	68,000	10,000	10,000	(58,000)	-85.3%	-	0.0%
Total, AC&I	1,494,576	1,383,980	1,347,480	(147,096)	-9.8%	(36,500)	-2.6%
Alteration of Bridges	16,000	-	10,000	(6,000)	-37.5%	10,000	#DIV/0!
Research, Development, Test & Evaluation	18,000	19,745	19,745	1,745	9.7%	-	0.0%
Health Care Fund Contribution	257,305	261,000	261,000	3,695	1.4%	-	0.0%
Subtotal, USCG Discretionary	8,124,307	8,609,246	8,607,081	482,774	5.9%	(2,165)	0.0%
Retired Pay (mandatory)	1,236,745	1,361,245	1,361,245	124,500	10.1%	-	0.0%
Total, United States Coast Guard	9,361,052	9,970,491	9,968,326	607,274	6.5%	(2,165)	0.0%

FEMA TRANSPORTATION GRANTS IN THE HOUSE APPROPRIATIONS BILL

(Dollar amounts in thousands — excludes emergency funding from the FY 2009 stimulus act)

Federal Emergency Management Agency (excerpt) State and Local Programs (excerpt)	FY 2009	FY 2010	FY 2010	House vs. 2009		House vs. Request	
	Enacted	Request	House	K \$\$\$	Pct.	K \$\$\$	Pct.
Discretionary Grants (excerpt)							
Port security grants	400,000	250,000	250,000	(150,000)	-37.5%	-	0.0%
Rail and transit security grants	400,000	250,000	250,000	(150,000)	-37.5%	-	0.0%
Trucking security grants	8,000	-	-	(8,000)	-100.0%	-	n/a
Over-the-road bus security grants	12,000	-	12,000	(12,000)	-100.0%	12,000	n/a
Subtotal, Transportation Security Grants	820,000	500,000	512,000	(320,000)	-39.0%	12,000	2.4%

GROSS BUDGETARY RESOURCES IN THE HOUSE DHS APPROPRIATIONS BILL



Transit Operating Assistance Proviso Stays In Supplemental Bill

Last week, conferees from the House and Senate Appropriations Committees finalized the conference agreement on the supplemental appropriations bill for Iraq and Afghanistan operations (H.R. 2346). The conference report is scheduled to be considered in the House and Senate this week.

The fate of the conference report itself is tied to provisions relating to the release of photographs of detainee abuse and a bailout of the International Monetary Fund, neither of which has anything to do with transportation. But the conference report does contain nearly \$800 million for the water projects of the Army Corps of Engineers, \$140 million for the Coast Guard, and a \$13 million appropriation for Essential Air Service subsidies.

Of the big \$754 million appropriation for Corps of Engineers Flood Control and Coastal Emergencies, \$315 million is for any eligible project and the other \$439 million is specifically for “barrier island restoration and ecosystem restoration to restore historic levels of storm damage reduction to the Mississippi Gulf Coast” at a 100 percent federal share. (Ed. Note: It’s good to be Senate Appropriations ranking member Thad Cochran (R-MS).)

The \$13 million for EAS subsidies at the Department of Transportation is fully offset by a (meaningless) rescission of unusable Airport Improvement Program contract authority, so there is no net cost scored to the appropriation.

Two transportation-related general provisions proposed by the Senate survived in the conference agreement. One is a provision specific to North Dakota relating to how much emergency relief highway funding can be spent on one particular project in a given year.

The other is a provision that will allow local transit agencies to use up to ten percent of their transit formula apportionment provided by the economic stimulus law for operational costs — instead of for capital purchases, which are supposed to be the only thing that the money can go towards under current law.

The argument made by this provision’s proponents is roughly this: “What good does it do to buy a bus for a local transit agency if they are so broke that they can’t afford to hire someone to drive the bus?”

Opponents cite the original agreement by which transit funding was given permanent funding from the Highway Trust Fund back in 1982

— namely, that Trust Fund spending should only be reserved for capital expenditures. Rep. Tom Latham (R-IA) and others worried that once the precedent for using any federal funds (even from the general fund) for operating assistance was set, it would be tough to stop the practice.

However, over 70 House members wrote to the Transportation and Infrastructure Committee on May 18 to ask support for legislation (H.R. 2746) that would permanently allow Trust Fund transit formula grants to be used for operating assistance.

The text of the proviso in the supplemental conference report follows.

SEC. 1202. A recipient and subrecipient of funds appropriated in Public Law 111-5 and apportioned pursuant to section 5311 and section 5336 (other than subsection (i) (1) and (j)) of title 49, United States Code, may use up to 10 percent of the amount apportioned for the operating costs of equipment and facilities for use in public transportation or for eligible activities under section 5311(f): Provided, That a grant obligating such funds on or after February 17, 2009, may be amended to allow a recipient and subrecipient to use the funds made available for operating assistance: Provided further, That applicable chapter 53 requirements apply, except for the Federal share which shall be, at the option of the recipient, up to 100 percent.

TRANSPORTATION AND PUBLIC WORKS-RELATED SPENDING IN THE FY 2009 SUPPLEMENTAL APPROPRIATIONS CONFERENCE REPORT

	<u>Request</u>	<u>House</u>	<u>Senate</u>	<u>Final</u>
U.S. Army Corps of Engineers - Civil				
Operation and Maintenance	\$ -	\$ -	\$ 38,375,000	\$ 42,875,000
Flood Control and Coastal Emergencies	\$ -	\$ -	\$ 804,290,000	\$ 754,290,000
Total, USACE-Civil	\$ -	\$ -	\$ 842,665,000	\$ 797,165,000
U.S. Coast Guard				
Operating Expenses	\$ -	\$ 129,503,000	\$ 139,503,000	\$ 139,503,000
Total, U.S. Coast Guard	\$ -	\$ 129,503,000	\$ 139,503,000	\$ 139,503,000
U.S. Department of Transportation				
OST - Essential Air Service	\$ -	\$ -	\$ 13,200,000	\$ 13,200,000
FAA - Rescission of AIP Contract Authority	\$ -	\$ -	\$ (13,200,000)	\$ (13,200,000)
Net Total, USDOT	\$ -	\$ -	\$ -	\$ -

Details of \$8.7 Billion SAFETEA-LU Highway Rescission Become Clearer

Representatives of the Federal Highway Administration have begun to brief Capitol Hill offices on how the agency intends to implement a troublesome provision of the 2005 surface transportation authorization law.

Section 10212 of the SAFETEA-LU law (P.L. 109-59), was an attempt to meet a Bush Administration requirement that the total budget authority in the law be the same as the total obligational authority in the bill. Accordingly, that provision originally called for an \$8.5 billion rescission of unobligated highway contract authority formula apportionments to take effect on September 30, 2009. That section has since been amended to increase the amount of the rescission to \$8.708 billion.

As originally written, the provision allowed states to decide how to implement their share of the rescission. But Congressional dissatisfaction with the way that states implemented previous rescissions (namely, by singling out programs like CMAQ and enhancements, which are Democratic priorities) led to a December 2007 provision (sec. 1132 of P.L. 110-140, a.k.a. EISA) that requires future rescissions to be applied proportionately across all formula programs (with states able to shift ten percent of the burden between programs).

The table at right was provided to Congressional offices and indicates in the leftmost numerical column how the total amount of the rescission will be distributed amongst the states. It also shows how much unobligated formula contract authority each state had on hand as of May 31, along with the amount of unused formula obligation limitation left as of June 10 (which is the upper bound of how much formula contract authority can be used under the "use it or lose it" system by the end of this fiscal year on September 30).

	ESTIMATED STATE-BY-STATE DISTRIBUTION OF THE SAFETEA-LU 9-30-09 RESCISSION					Resc. As % Of Unob.
	Amount to be Rescinded	Unobligated CA As of 5-31-09	Formula Limit As of 6-10-09	Unobligated CA End-of-FY09		
Alabama	175,658,230	614,547,264	204,999,551	409,547,713	42.9%	
Alaska	80,725,725	379,996,622	253,600,258	126,396,365	63.9%	
Arizona	170,397,812	1,111,808,220	515,418,491	596,389,729	28.6%	
Arkansas	109,107,350	498,473,924	165,417,756	333,056,168	32.8%	
California	793,526,560	4,110,701,453	1,645,218,357	2,465,483,096	32.2%	
Colorado	114,784,438	468,439,104	209,175,582	259,263,522	44.3%	
Connecticut	119,388,506	543,326,485	237,061,814	306,264,672	39.0%	
Delaware	34,614,861	163,454,345	39,260,912	124,193,433	27.9%	
Dist. Of Col.	34,587,678	270,652,296	48,655,551	221,996,745	15.6%	
Florida	442,827,807	1,895,353,816	896,847,191	998,506,625	44.3%	
Georgia	316,157,952	1,546,612,442	481,922,543	1,064,689,899	29.7%	
Hawaii	38,545,580	309,906,531	112,847,856	197,058,675	19.6%	
Idaho	65,317,676	279,946,598	122,333,265	157,613,333	41.4%	
Illinois	289,873,076	1,292,642,362	487,066,385	805,575,977	36.0%	
Indiana	218,016,543	1,076,973,698	483,204,848	593,768,849	36.7%	
Iowa	97,577,974	366,736,099	137,250,095	229,486,004	42.5%	
Kansas	91,823,985	449,274,056	196,661,909	252,612,146	36.3%	
Kentucky	150,736,542	826,493,432	289,515,660	536,977,772	28.1%	
Louisiana	134,934,784	611,812,363	151,662,239	460,150,124	29.3%	
Maine	40,189,081	206,403,412	97,573,204	108,830,208	36.9%	
Maryland	140,442,307	655,959,770	243,156,292	412,803,477	34.0%	
Massachusetts	147,138,560	1,038,150,600	178,589,257	859,561,344	17.1%	
Michigan	262,670,676	1,020,356,877	328,972,424	691,384,453	38.0%	
Minnesota	132,770,081	429,770,998	115,921,219	313,849,779	42.3%	
Mississippi	102,697,564	331,283,581	122,059,708	209,223,873	49.1%	
Missouri	201,726,486	836,351,462	352,396,635	483,954,828	41.7%	
Montana	83,765,218	273,634,312	113,515,902	160,118,409	52.3%	
Nebraska	64,640,690	288,827,573	116,953,326	171,874,247	37.6%	
Nevada	61,448,961	193,765,888	101,249,722	92,516,166	66.4%	
New Hampshire	41,101,151	167,335,237	70,506,503	96,828,734	42.4%	
New Jersey	232,776,241	842,857,472	300,262,533	542,594,939	42.9%	
New Mexico	82,316,699	380,367,118	189,192,161	191,174,957	43.1%	
New York	406,948,120	1,679,591,033	381,569,737	1,298,021,295	31.4%	
North Carolina	249,211,919	995,454,394	323,664,700	671,789,694	37.1%	
North Dakota	54,387,396	224,244,096	79,678,486	144,565,610	37.6%	
Ohio	307,252,078	1,872,723,083	710,461,396	1,162,261,687	26.4%	
Oklahoma	135,809,645	511,228,132	178,487,623	332,740,509	40.8%	
Oregon	98,454,104	425,958,573	140,697,291	285,261,282	34.5%	
Pennsylvania	404,753,382	1,703,055,944	595,068,878	1,107,987,067	36.5%	
Rhode Island	44,427,716	257,589,520	35,790,304	221,799,216	20.0%	
South Carolina	145,342,588	534,068,465	235,867,565	298,200,900	48.7%	
South Dakota	57,759,508	267,339,248	141,708,551	125,630,697	46.0%	
Tennessee	190,140,890	1,120,164,844	322,912,214	797,252,630	23.8%	
Texas	740,299,753	3,300,770,530	1,599,332,229	1,701,438,301	43.5%	
Utah	64,892,558	338,001,054	46,825,418	291,175,635	22.3%	
Vermont	36,506,882	220,804,256	86,129,226	134,675,030	27.1%	
Virginia	229,883,137	1,168,678,733	572,316,138	596,362,596	38.5%	
Washington	147,675,877	710,918,487	251,885,077	459,033,409	32.2%	
West Virginia	93,626,324	482,762,490	155,049,756	327,712,734	28.6%	
Wisconsin	171,469,862	617,172,309	231,918,643	385,253,666	44.5%	
Wyoming	56,871,467	305,526,374	114,259,065	191,267,309	29.7%	
Total	8,708,000,000	40,218,266,975	15,212,091,446	25,006,175,528	34.8%	

CONTINUED ON NEXT PAGE

\$8.7B Rescission

CONTINUED FROM PAGE 12

If all states use all of their formula limitation, the \$8.708 billion rescission would be almost 35 percent of the remaining \$25.0 billion in unobligated formula contract authority. (It will probably be a little higher because states will get to obligate a little bit more contract authority following the August redistribution of unused allocated ob limit).

But this percentage varies widely by state. Nevada's \$61.5 million rescission would be about 66 percent of its remaining formula CA. Alaska's rescission would be 64 percent of its remainder, while Montana would see 52 percent of its remainder rescinded.

Whenever that high a percentage of a state's remaining formula money gets rescinded, if the rescission is applied proportionately (as sec. 1132 requires — see below), it becomes likely that some of the formula programs won't have enough money left over to fulfill their share of the rescission.

However, FHWA reports that it is impossible to tell how the rescission will be applied proportionately, as required by law, before the end of the year. This raises a contradiction that is addressed in a FHWA briefing document (set box above at

FISCAL YEAR FOR HIGHWAYS TO END SEPT. 25...

Excerpt from FHWA Briefing Document Sent to Capitol Hill

The September 30, 2009 Implementation Date

- It is impossible to wait until the last day of the fiscal year to implement the language of the rescission.
 - ⇒ Timing: FHWA must wait until our Western-most State/Territory closes for business on September 30, 2009 [10:15 pm EST] before we can even begin to determine the programmatic split of the rescission.
 - ⇒ If the rescission is to occur on September 30, 2009, that only leaves 1 hour and 45 minutes to make our final computations and to pull the funds from our accounting system.
 - ⇒ A September 30, 2009 implementation date will make it impossible to follow the EISA Adjustment Proviso.
- In order to allow ample time to implement the rescission and close out the fiscal year, the FHWA has set a date of September 25, 2009 as the last day for States to obligate funds.
 - ⇒ Locking down the data will allow time to make the computations and begin withdrawing the funds from the accounting system; but will cause the States to shut their books slightly earlier than they would in most fiscal years.

right). To apply the rescission proportionately, as sec. 1132 requires, and to apply the rescission after the close of business on September 30, as the original SAFETEA-LU law requires, would require FHWA to see the future (and all of their crystal balls got left behind in the old Nassif building during the recent move because the new building just didn't have enough room.)

Since there is a rule of statutory construction that says that when two laws are in conflict, the more

recently enacted law should prevail, FHWA is interpreting the proportionality provision as taking precedence over the enactment date. Accordingly, as the document suggests, states will have to close their books on FY 2009 early this year, on Friday, September 25.

This will give FHWA time to calculate and implement the rescission in the following three business days leading up to September 30.

State DOTs have long been complaining that the end-of-FY09 rescission, when added to the fact that there may not be complete year-long apportionments of new contract authority going out on October 1, will destroy the flexibility that states have to move funds from one formula program to another.

However, due to Congressional budget rules, if the rescission is repealed, this will be scored by the Congressional Budget Office as increasing federal spending by \$8.7 billion, and Congress's pay-as-you-go internal budget rules require an equivalent \$8.7 billion spending cut elsewhere, or a tax increase, to offset the cost fully.

SEC. 1132 OF PUBLIC LAW 110-140

SEC. 1132. DISTRIBUTION OF RESCISSIONS.

(a) In General.--Any unobligated balances of amounts that are appropriated from the Highway Trust Fund for a fiscal year, and apportioned under chapter 1 of title 23, United States Code, before, on, or after the date of enactment of this Act and that are rescinded in fiscal year 2008 or fiscal year 2009 shall be distributed by the Secretary of Transportation within each State (as defined in section 101 of such title) among all programs for which funds are apportioned under such chapter for such fiscal year, to the extent sufficient funds remain available for obligation, in the ratio that the amount of funds apportioned for each program under such chapter for such fiscal year, bears to the amount of funds apportioned for all such programs under such chapter for such fiscal year.

(b) Adjustments.--A State may make adjustments to the distribution of a rescission within the State for a fiscal year under subsection (a) by transferring the amounts to be rescinded among the programs for which funds are apportioned under chapter 1 of title 23, United States Code, for such fiscal year, except that in making such adjustments the State may not rescind from any such program more than 110 percent of the funds to be rescinded from the program for the fiscal year as determined by the Secretary of Transportation under subsection (a).

(c) Treatment of Transportation Enhancement Set-Aside and Funds Suballocated to Substate Areas.--Funds set aside under sections 133(d)(2) and 133(d)(3) of title 23, United States Code, shall be treated as being apportioned under chapter 1 of such title for purposes of subsection (a).

Senate Committee Holds Aviation Safety Oversight Hearing

The Senate Commerce, Science and Transportation Committee held the first of two hearings last week on aviation safety issues prompted by the Colgan Air crash.

At the June 10 hearing, testimony was heard from Randy Babbitt, the new FAA Administrator, Mark Rosenker, the acting head of the National Transportation Safety Board, Calvin Scovel, the DOT Inspector General, and John O'Brien of the Flight Safety Foundation.

Rosenker's testimony (excerpted in the box below at right) gave an update of the NTSB's findings to date from the Colgan crash and then outlined the two longstanding NTSB recommendations (not as yet adopted by the FAA) that might be relevant to the crash — relating to icing conditions and pilot fatigue.

Subcommittee member Johnny Isakson (R-GA) noted that the NTSB has an open recommendation that all turboprop planes be flown by hand (as opposed to autopilot) during icing conditions and asked Babbitt how the FAA responds to recommendations by the NTSB.

Babbitt responded: "We certainly evaluate every single one, and I don't think, honestly, that there's an expectation on behalf of NTSB that we should adopt every single one of these that they make. I've actually had discussions with former [NTSB] chairmen to that effect. What I have suggested I will do going forward, in my opinion, one of three things should happen to an NTSB recommendation to the FAA: Number one, we should either adopt it as they have suggested it; number two, modify it, because of reasonableness or otherwise, and explain why; or third, we don't adopt it - I think we have an obligation to the public and the NTSB to explain why we didn't adopt it."

Sen. Nick Begich (D-AK) then asked Babbitt to clarify, at which point Babbitt pointed out that the FAA adopts over 80 percent of

NTSB recommendations but that others prove impractical or uneconomical. (Rosenker clarified that the NTSB of course wants all its recommendations adopted.)

Aviation Subcommittee chairman Byron Dorgan (D-ND) asked Babbitt about the long distances that many pilots commute to work and asked if there should be a requirement that pilots live within x miles of their home base.

Babbitt pointed out that commuter air carriers shift affiliations regularly, and that if all the Colgan pilots had moved close to Newark because Colgan was affiliated with Continental, and Colgan six months later re-affiliated with Northwest and based their pilots out of Memphis, it would be very disruptive.

Babbitt said several times that pilots are professionals and that they have a duty to show up to work fully rested. He said that while the FAA has rules on how much rest pilots must get while on the clock, there is no way for the FAA to know how much rest pilots are getting while on vacation.

Sen. Frank Lautenberg (D-NJ) asked if there should be a limit to the number of times that a pilot can fail a check ride before being permanently disqualified. Babbitt indicated that a hard limit with a low number would put a great deal of peer pressure on the pilots overseeing the check ride not to end the career of a colleague.

Statement of Acting NTSB Chairman Mark Rosenker (Excerpt)

As you may know, the NTSB maintains a list of Most Wanted Transportation Safety Improvements. Issues on this list are selected for follow-up and heightened awareness because the Board believes they will significantly enhance the safety of the nation's transportation system, have a high level of public visibility and interest, and will otherwise benefit from being highlighted on the Most Wanted List. Of the six aviation issues currently on the Most Wanted List, two issue areas are in some manner related to the Colgan investigation. I would like to briefly explain the two issue areas, and recent FAA activities in response.

1. Reduce dangers to aircraft flying in icing conditions
2. Reduce accidents and incidents caused by human fatigue

Both of these issue areas currently have a red timeliness classification indicating that the FAA's response has not been acceptable from the NTSB's perspective. In many cases, the FAA's response has been slow in coming, allowing important safety issues that the NTSB has identified to remain unresolved for a lengthy period of time. The FAA has recently indicated that actions are being taken in response to some of these recommendations, and the NTSB is currently reviewing this information. Some of the details, and recent FAA actions for each area are:

- **Flight in Icing Conditions:** These recommendations date back to 1996, and ask that aircraft approved to fly in icing conditions be certified in icing conditions that represent the most serious threats. In the 13 years since these recommendations were issued, the FAA has not yet taken the requested action. Recent staff level discussions with the FAA revealed that they soon plan to propose changes to the certification regulations that include revised icing conditions that are more representative of the icing conditions that pose the greatest aviation safety risk. In 2007, the FAA issued an NPRM calling for activation and continuous operation of de-icing boots at the first signs of icing. The NTSB is still awaiting a final rule mandating this needed change.
- **Human Fatigue:** Human fatigue is another issue that has been on the Most Wanted List since it was created 19 years ago. In 1995, the FAA issued a notice of proposed rulemaking (NPRM) that addressed many of the issues identified by the NTSB. That NPRM was controversial and encountered considerable opposition. The FAA later withdrew the NPRM and has not proposed any further revisions to existing flight and duty time regulations. The regulations have not been significantly revised in over 50 years, although there has been substantial scientific-based research over that time frame that the NTSB believes supports changes in the existing flight and duty time regulations. Throughout the 19-year period that this issue has been on the Most Wanted List, right up through today, the NTSB has continued to investigate accidents where flight crew fatigue was a significant issue.

NEW AND NOTABLE ON THE INTERNET

House Appropriations 302(b) Allocations

The House's 302(b) allocations, with outlays, for each subcommittee is here:

<http://appropriations.house.gov/pdf/2010-302B.PDF>

House Appropriations Committee Schedule

The full (albeit tentative) schedule for House Appropriations Committee action on FY 2010 bills is here:

http://appropriations.house.gov/pdf/Tentative_2010_Schedule-06-09-2009.pdf

House Aviation Safety Hearing

The prepared testimony from, and an archived webcast of, the June 11 House Transportation and Infrastructure Committee hearing on aviation safety are here:

<http://transportation.house.gov/hearings/hearingDetail.aspx?NewsID=932>

Senate Aviation Safety Hearing (Part 1)

The prepared testimony from, and an archived webcast of, the June 10 Senate Commerce, Science and Transportation Committee hearing on aviation safety are here:

http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=cc446b7c-6542-456f-b5de-240395189da6

House TSA Budget Hearing

Archived video of the House Homeland Security Committee's June 10 hearing on the TSA budget is here:

<http://homeland.house.gov/Hearings/index.asp?ID=197>

Supplemental Appropriations Bill for FY 2009

The text of the conference report on the supplemental appropriations bill (H.R. 2346) is here:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_record&docid=cr12jn09-102.pdf

STATUS OF PENDING TRANSPORTATION-RELATED NOMINATIONS

Agency	Nominee	Position	Senate Committee	Latest Action
Department of Transportation	Polly Trottenberg	Assistant Secretary for Transportation Policy	Commerce, Science and Transportation	Nomination transmitted 6/8/09
DOT-Federal Highway Administration	Victor Mendez	Administrator	Environment and Public Works	Nomination reported 6/10/09
DOT-Federal Motor Carrier Safety Admin.	Anne Ferro	Administrator	Commerce, Science and Transportation	Nomination announced 6/4/09
DOT-National Highway Traffic Safety Admin.	Charles Hurley	Administrator	Commerce, Science and Transportation	Nomination reportedly will be withdrawn
Federal Maritime Commission	Richard Lidinsky, Jr.	Commissioner	Commerce, Science and Transportation	Nomination announced 6/9/09
National Transport. Safety Board	Deborah Hersman	Chairman	Commerce, Science and Transportation	Nomination announced 6/9/09
Department of the Army	Jo-Ellen Darcy	Assistant Secretary for Civil Works	Armed Services <i>and</i> Enviro. & Public Works	EPW hearing held on 5/12/09

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THIS WEEK IN COMMITTEE

Tuesday, June 16, 2009 - House Appropriations - Subcommittee on Transportation-HUD - subcommittee hearing on the FY 2010 FAA budget and NextGen funding needs - *9:30 a.m., 2358-A Rayburn.*

Senate Banking, Housing, and Urban Affairs - full committee hearing on sustainable development and "green communities" - Secretaries LaHood and Donovan to testify - *9:30 a.m., SD-538 Dirksen.*

House Transportation and Infrastructure - Subcommittee on Water Resources and Environment - subcommittee hearing on agency budgets and priorities for FY 2010 - *2:00 p.m., 2167 Rayburn.*

Senate Environment and Public Works - full committee hearing on New Orleans hurricane and flood prevention - *2:30 p.m., SD-406 Dirksen.*

Wednesday, June 17, 2009 - Senate Commerce, Science and Transportation - Subcommittee on Aviation Operations, Safety, and Security - subcommittee hearing on aviation safety, focusing on the roles of airlines and employees - *10:00 a.m., SR-253 Russell.*

Thursday, June 18, 2009 - Senate Appropriations - Subcommittee on Transportation-HUD - subcommittee hearing on the FY 2010 Department of Transportation budget - *9:30 a.m., SD-138 Dirksen.*

House Transportation and Infrastructure - Subcommittee on Coast Guard and Maritime Transportation - subcommittee hearing on civil rights and diversity in the Coast Guard - *10:00 a.m., 2167 Rayburn.*

Senate Appropriations - Subcommittee on Energy and Water - subcommittee hearing on the FY 2010 Corps of Engineers budget - *10:15 a.m., SD-102 Dirksen.*

House Transportation and Infrastructure - Subcommittee on Economic Development, Public Buildings, and Emergency Management - subcommittee on GSA's capital investment and leasing program - *2:00 p.m., 2167 Rayburn.*

Senate Commerce, Science and Transportation - Subcommittee on Surface Transportation and Merchant Marine - subcommittee hearing on freight transportation in America - *2:30 p.m., SR-253 Russell.*

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	Subcommittee markup scheduled for 7/15/09		
FY 2010 Energy and Water Appropriations	Subcommittee markup scheduled for 6/25/09		
FY 2010 Homeland Security Appropriations	Ordered reported by full committee on 6/12/09		
Federal Aviation Admin. Reauthorization Bill	H.R. 915 passed House 5/22/09 by a vote of 277-136		
Surface Transportation Reauthorization Bill			
Water Resources Development Act			
FY 2010 Coast Guard Authorization			
Transportation Security Admin. Reauthorization	H.R. 2200 passed House 6/4/09 by a vote of 397-25		