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Legislative Schedules
Week of June 15, 2009

House

Thursday — meets at 10 a.m. — complete consideration of H.R. 2847, Commerce-Justice-Science appropriations, and H. Res. 520, impeaching Judge Samuel Kent.

Friday — meets at 9 a.m. — H.R. 2918, Legislative Branch appropriations.

Senate

The Senate will convene at 9:45 a.m. today for morning business and thereafter begin consideration of S. Con. Res. 26, apology for slavery.

Oberstar To Unveil Blueprint For $450 Billion Surface Bill Today; Obama Administration Instead Asks For An 18-Month Extension

At 11 a.m. yesterday, a room full of reporters waited on House Transportation and Infrastructure chairman James Oberstar (D-MN) to come in and give them an advance briefing on the six-year, $450 billion surface transportation reauthorization legislation that Oberstar and colleagues will outline in a public press conference today and plan to mark up in subcommittee next week.

But, unknown to the ink-stained wretches of the Fourth Estate at that time, the reason that Oberstar was late to his own briefing was because he was next door meeting with U.S. Transportation Secretary Ray LaHood, who was surprising Oberstar by informing him that the Obama Administration did not want him to move ahead with his bill at this time and would instead prefer the quick enactment of an 18-month extension of these programs, with a few policy changes. Such action would effectively postpone the reauthorization debate deadline past the 2010 elections, into the 112th Congress.

Oberstar, according to multiple legislators with whom he discussed the meeting later yesterday, was "floored", "really upset", and "thrown for a loop" by LaHood's news. He declined to sign on to the 18-month extension proposal, instead walking back into the room full of reporters, where he and his Highways and Transit Subcommittee chairman Peter DeFazio (D-OR) described their bill, which they (in concert with full committee ranking member John Mica (R-FL) and subcommittee ranker Jimmy Duncan (R-TN)) still intend to mark up in DeFazio's subcommittee on June 24.

Oberstar and DeFazio both spoke against the concept of short-term program extensions, with Oberstar calling an extension "unacceptable" and DeFazio saying that a short-term extension would have the effect of shutting down large multi-year construction projects.

But DOT issued a press release from LaHood a

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SIX-YEAR FUNDING OBLIGATIONS FOR SURFACE TRANSPORTATION
(Dollar amounts in billions)

	2004-2009 Promised By SAFETEA-LU		2010-2015 CBO Baseline Assumptions		2010-2015 House T&I Proposal	
Highways (HTF)	$ 227.6	*79.4%*	$ 255.1	*78.2%*	$ 337.4	*75.0%*
Safety (HTF)	$ 6.5	*2.3%*	$ 7.9	*2.4%*	$ 12.6	*2.8%*
Transit (HTF)	$ 43.6	*15.2%*	$ 51.9	*15.9%*	$ 87.6	*19.5%*
Transit (GF)	$ 9.0	*3.1%*	$ 11.1	*3.4%*	$ 12.2	*2.7%*
Total Obligations	**$ 286.6**	*100.0%*	**$ 326.0**	*100.0%*	**$ 450.0**	*100.0%*
Increase Over 6-yr SAFETEA-LU Total			**+39.4**	*+13.7%*	**+163.4**	*+57.0%*

Reauthorization Bill

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little after 3:30 p.m. making a public call for the 18-month extension, and Oberstar's Senate counterpart, Environment and Public Works chairman Barbara Boxer (D-CA), issued a statement in support of the 18-month extension idea shortly thereafter, putting Oberstar in a difficult position.

The Obama Administration's leverage on this issue comes principally from the need (acknowledged by Oberstar and DeFazio yesterday) for Congress to pass a cash infusion of $5 to $7 billion for the Highway Trust Fund before July 31 in order to prevent a lapse in payments to states during the August recess. As long as the White House wants to link the short-term bailout needed by July 31 to an additional $10 billion to bail out the Trust Fund in 2010 and an 18-month program extension, the next six weeks will be very interesting indeed.

In the past, short-term highway extensions have been almost totally free of substantive policy changes. But LaHood's statement (shown in box at right) talks about significant programmatic reforms being part of the extension, which seems difficult to pull off by September 30, much less by July 31.

And as White House lobbyists fanned out across Capitol Hill yesterday to explain the desire for an 18-month extension, some Hill staff pushed back, saying that if an extension of that length is contemplated, then member earmarks might need to be part of it. (And some in the Senate would prefer a full two-year extension.)

But the details of the Administration's proposal are still pending (all anyone at DOT will say is that the details will be out "soon"). So the remainder of this article discusses the T&I bill, which will be outlined today and hopefully will be introduced in the House on Friday or Monday in order to facilitate a Wednesday markup in subcommittee.

Name. Oberstar said that the bill would be called the Surface Transportation Assistance Act. (STAA). This is going back to the future, since that was the name of the 1978 and 1982 authorization laws. (*Ed. Note:* Citizens Against Cutesy Acronyms applauds this move.)

Numbers. According to a short executive summary of the bill, the $450 billion bill will guarantee $337.4 billion for highways, $98.8 billion for mass transit, and $12.6 billion for highway and motor carrier safety programs over six years. (*Ed. Note*: this only adds up to $499.8 billion, but no one with the committee could or would explain the discrepancy last night.)

This would represent growth in transit's share of the total guaranteed spending pie. When counting FY 2004 enacted spending and the five years of spending written into the SAFETEA-LU law, mass transit obligations totaled 18.3 percent of the total guaranteed spending obligations in the bill. The T&I bill's $98.8 billion for mass transit would be 22.2 percent of $450 billion.

Highway spending advocates usually want to keep transit spending around that level (roughly the share originally promised in the 1982 highway bill that gave transit a permanent sinecure from the Highway Trust Fund for the first time). But from that point of view, the 22.2 percent figure is misleading, because the T&I bill changes the Trust Fund's share of transit spending as well.

In the six-year SAFETEA-LU period mentioned above, the general

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AN 18-MONTH BILL OR A SIX-YEAR BILL? YESTERDAY'S QUOTES

"I am proposing an immediate 18-month highway reauthorization that will replenish the Highway Trust Fund. If this step is not taken the trust fund will run out of money as soon as late August and states will be in danger of losing the vital transportation funding they need and expect.

"As part of this, I am proposing that we enact critical reforms to help us make better investment decisions with cost-benefit analysis, focus on more investments in metropolitan areas and promote the concept of livability to more closely link home and work. The Administration opposes a gas tax increase during this challenging, recessionary period, which has hit consumers and businesses hard across our country.

"I recognize that there will be concerns raised about this approach. However, with the reality of our fiscal environment and the critical demand to address our infrastructure investments in a smarter, more focused approach, we should not rush legislation. We should work together on a full reauthorization that best meets the demands of the country. The first step is making sure that the Highway Trust Fund is solvent. The next step is addressing our transportation priorities over the long term."

-U.S. Secretary of Transportation Ray LaHood

"I am very pleased that the White House is being proactive in working with the Congress to address the shortfall in the Highway Trust Fund. As we work our way out of this recession, the last thing we want to do is to drastically cut back on necessary transportation priorities. The White House proposal to replenish the Trust Fund until 2011 will keep the recovery and job creation moving forward and give us the necessary time to pass a more comprehensive multi-year transportation authorization bill with stable and reliable funding sources."

-Senate Environment and Public Works chairman
Barbara Boxer (D-CA)

"Delay is unacceptable. Extensions of time, extension of current law in unacceptable. This is the moment to move."

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

"Any time you temporarily extend, as we did in the last bill, and I'm asking state DOTs to quantify this, but you see a large drop-off in major projects with temporary extensions. You can't plan a two-year construction project if you've got twelve months guaranteed funding."

-House Highways and Transit subcommittee chairman
Peter DeFazio (D-OR)

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fund was to provide 17.1 percent of the total FTA budget. (Some weird things happened in 2004 and 2005, before SAFETEA-LU was actually signed into law). In FY 2009, the general fund total was 17.5 percent of the FTA total.

Under the T&I bill, the general fund's share of mass transit spending would drop to just 12.3 percent of the FTA total over six years.

In dollar terms, the general fund share of FTA enacted into law for FY 2009 was $1.971 billion (excluding stimulus money). $1.971 billion times six years would be $11.824 billion. Under the T&I bill, the six-year general fund contribution for transit would only be $12.2 billion, -- meaning that almost all of the (significant) program growth for transit would come from the Trust Fund, not the general fund.

(*Ed. Note:* This should come as welcome news to the Appropriations Committees, who would then have more general fund money left to spend on public housing, Amtrak, and pay raises for air traffic controllers.)

And until year-by-year numbers are released, one should remember to watch the trend on the general fund when the numbers come out.

Oberstar and DeFazio emphasized that the final highway-transit split would not be knowable because the bill would give local metropolitan planning organizations (MPOs) greater control over funding assigned them and greater flexibility to shift funds back and forth between highways and transit as necessary — and DeFazio predicted that for most MPOs, the net shift would be from highways to transit and not the other way around.

AASHTO, the association of all state DOTs, has, in the past, been very suspicious of attempts to devolve highway funding decisions from the state level to the MPO level (this played out for a while on the stimulus bill). Rep. Mica said yesterday that some late changes in the bill text had cleared up some of the those problems.

Just how, precisely, are we going to pay for this? The executive summary of the T&I bill rightly points out that while the FY 2010 Congressional budget resolution makes room for a $326 billion six-year bill (in the absence of revenue increases), the receipts projected to flow into the Trust Fund over the next six years will only support outlay payments stemming from $236 billion in new spending commitments over six years.

Oberstar and DeFazio said that after their subcommittee markup of their bill next Wednesday, they would renew their consultations with the Ways and Means Committee on how to raise the revenues for the Highway Trust Fund necessary to support the spending in their bill.

DeFazio said that there would be a joint Ways and Means subcommittee hearing of the Select Revenue Measures and Oversight subcommittees on June 25 to discuss Highway Trust Fund revenue options. (As of last night, the Ways and Means Committee has not yet announced that hearing).

DeFazio then said that Ways and Means would have one or two more hearings on the issue during July and that T&I would work with Ways and Means and the Democratic leadership to try and find a revenue package that would support their legislation.

Oberstar and DeFazio did not concede that an increase in the gasoline and diesel fuel taxes was flatly impossible. DeFazio noted that the President and LaHood had only said that the tax increase was not acceptable "right now, in this economy." DeFazio then floated a trial balloon about something he said was similar to what his home state of Oregon had done—passing a "contingent" tax increase. An example DeFazio gave was to vote on and pass a fuel tax increase that would only take effect once the economy had registered two consecutive quarters of economic growth and reduction in the unemployment rate.

But Ways and Means chairman Charles Rangel (D-NY) has already expressed his reluctance to deal with the difficult revenue problems posed by a $450 billion surface transportation bill at this point in time, and the Administration's proposal to postpone the big debate for almost two years if one can only find $18 billion in spending offsets by September 30 may seem attractive to Ways and Means.

For his part, Mica said that he will put his own financing plan forward next week which does not raise taxes and which would provide financial support for $900 billion in new spending obligations over six years.

Intermodalism. Oberstar said his bill would crate a new Under Secretary of Transportation for Intermodalism who would be responsible for organizing periodic meetings between all USDOT modal administrations (as well as the Amry Corps of Engineers, the Coast Guard and Amtrak).

Highways. The executive summary says that the T&I bill's $337.4 billion in highway spending over six years could be distributed like this:

Capital Asset Improvement	$ 100.0
Metropolitan Mobility	$ 50.0
Projects of National Significance	$ 25.0
Everything else at FHWA	$ 162.4
Total, FHWA (6-year)	**$ 337.4**

It should be noted that the summary only said that the Capital Asset Improvement program (which encompasses most of the current Interstate Maintenance, National Highway System, and Highway Bridge programs) would receive "at least" $100 billion of the $337.4 billion.

As promised in the hand-written two-page outline of the bill drawn up by Oberstar in April (and reprinted in the May 6 issue of *TW*),

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there is significant consolidation of highway programs in the T&I bill.

The bill would condense all of the existing formula programs down to just four (the descriptions are verbatim from the executive summary):

⇒ **Critical Asset Investment** – Consolidates the existing Interstate Maintenance program, National Highway System program, and Highway Bridge program into one streamlined, outcome-based Critical Asset Investment program whose goal is to bring the highways and bridges on the NHS (including the Interstate System) to a state of good repair and maintain that condition.

⇒ **Highway Safety Improvement** – Restructures the Highway Safety Improvement program to focus on reducing motor vehicle crash fatalities and injuries on the nation's highways, grade-crossings, and rural roads by investing in improvements to remove or lessen roadway safety hazards.

⇒ **Surface Transportation** – Provides States with surface transportation funding through a flexible program that enables States and metropolitan regions to address state-specific needs including new highway and transit capacity. Facilitates local decision-making and participation by increasing the role of communities.

⇒ **Congestion Mitigation and Air Quality Improvement (CMAQ)** – Restructures the CMAQ program to fund projects that improve air quality, reduce congestion, and improve public health and the livability of communities.

More significant program consolidation would take place amongst allocated (i.e. non-formula) highway programs, the most significant of which are described in the summary as follows:

⇒ **Metropolitan Mobility and Access** – Provides significant, dedicated funding to help the largest metropolitan regions address congestion. The program requires communities to develop metropolitan mobility plans to articulate each region's comprehensive local strategies for addressing surface transportation congestion and its impacts. To support Metropolitan Mobility and Access, the U.S. Department of Transportation, acting in part through a newly-created National Infrastructure Bank, may provide grants, loans, loan guarantees, lines of credit, private-activity bonds, tax-credit bonds, and other financial tools to help metropolitan regions implement their plans and finance a range of strategies, including improved transit operations, congestion pricing, and expanded highway and transit capacity.

⇒ **Projects of National Significance** – Enhance U.S. global competitiveness by increasing the focus on goods movement and freight mobility. These high-cost projects, which cannot easily be addressed through formula grants of highway or transit funding, have significant national economic benefits, including improving economic productivity by facilitating international trade and relieving congestion at major trade gateways and corridors. To support Projects of National Significance, DOT, acting in part through the National Infrastructure Bank, will provide grants, loans, loan guarantees, lines of credit, private activity bonds, tax-credit bonds, and other financial tools to States to finance the construction of these projects of national significance.

⇒ **Freight Improvement** – Provides state formula grant funding for freight and goods movement projects and for improving States' ability to conduct freight planning. To support Freight Improvement, States will receive formula apportionments funded by contract authority derived from the Trust Fund.

The hand-written outline also indicates an allocated program consolidating all of the highways on federal lands and territories, including Puerto Rico, and a research program. We presume that FHWA overhead will also continue to be a separate program.

The Metropolitan Mobility program is worth commenting on. According to Oberstar, after a review of all eligible areas by the Transportation Research Board of the National Academy of Sciences, the Secretary of Transportation would choose a certain number of metro areas to participate in the program, each of which would be guaranteed $1 billion in federal contract authority over six years for the program.

That $1 billion per metro area would supplement, and leverage, all of the "innovative finance" programs and permissions that are being crowded into this program, including tolling of new capacity, public-private partnerships, congestion pricing, loans and credit assistance, etc.

With the spending numbers outlined in the blueprint, a maximum of 50 metropolitan areas would be eligible for the program.

Some portion of the highway title of the bill will be dedicated to earmarked projects requested by Members of Congress. In response to a question, Oberstar said that the total percentage of the FHWA budget earmarked by his bill would be much less than the all-time highway earmarked by the SAFETEA-LU law.

The executive summary contains a paragraph designed to make every rural, Republican, pavement-loving, car-driving highway spending advocate heartburn:

"The Office of Livability will establish a focal point within FHWA to advance environmentally sustainable modes of transportation, including transit, walking, and bicycling. This Office will encourage

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integrated planning, linking land use and transportation planning, to support the creation of livable communities. To ensure that roadways are built with the needs of all users in mind, the Surface Transportation Authorization Act requires that States and metropolitan regions consider comprehensive street design principles. Comprehensive street design takes into account the needs of all users, including motorists, motorcyclists, transit riders, cyclists, pedestrians, the elderly, and individuals with disabilities. Comprehensive street design principles are not prescriptive, do not mandate any particular design elements, and result in greatly varied facilities depending on the specific needs of the community in which they are located."

Transit. The executive summary released last night did not give nearly as much programmatic detail for the Federal Transit Administration as it did for highways. Earlier versions of the executive summary had blank spaces where transit issues were concerned, and we think that a version of the summary got leaked and the T&I staff responded by releasing the latest version of the executive summary to the press despite it not being 100 percent ready.

However, a separate document circulated by the Committee indicated that significant programmatic restructuring within FTA is forthcoming in the bill. The document said that the Bus and Bus Facilities program would be eliminated and part of the money turned into a formula program with another part consolidated into a new "Intermodal and Energy Efficient Transit Facilities" program (about which no information was given).

The Job Access and Reverse Commute, Elderly/Disabled, and New Freedom programs would be consolidated into a new Coordinated Access and Mobility program.

National Infrastructure Bank. The Obama Administration's 2010 budget proposal included a $5 billion placeholder for funding for a National Infrastructure Bank, which was exceedingly ill-defined in the budget.

The House Appropriations Committee has given its Transportation-HUD subcommittee a budget allocation big enough to fund the full $5 billion, but in the absence of authorizing legislation proposed by the Obama Administration, no one is quite sure what the money is for.

Oberstar said that his legislation will contain authorizing legislation for the NIB, which appears to be exclusively dedicated to transportation infrastructure. (That was an open question based on the limited information in the budget.)

The summary says that:

"Located within DOT's newly-created Office of Intermodalism and working in conjunction with the Metropolitan Mobility and Access, Projects of National Significance, and High-Speed Rail initiatives, the Bank will finance a wide variety of transportation projects, including highway, transit, rail, and intermodal freight projects, with priority given to large capital infrastructure projects that promise significant national or regional economic benefits.

"The Bank will provide grants and credit assistance, including secured loans, loan guarantees, and stand-by lines of credit, as well as allocations of tax-exempt private activity bonding authority and tax-credit bonding authority to projects under the Metropolitan Mobility and Access, Projects of National Significance, and High-Speed Rail initiatives."

High-Speed Rail. In addition to the $450 billion in traditional highway, transit and safety spending, the T&I bill will include an additional $50 billion in non-guaranteed funding authorization, loan guarantees, and guaranteed loans for high-speed rail development focused on the eleven high-speed rail corridors already established by law The summary says that "To support the High-Speed Rail Initiative, DOT, acting in part through the National Infrastructure Bank, may provide grants, loans, loan guarantees, lines of credit, private-activity bonds, tax-credit bonds, and other financial tools to States to invest in construction of these high-speed rail corridors."

Presumably, the future appropriations and the appropriations necessary to pay the subsidy cost of loans and loan guarantees would have to come from the Appropriations Committees.

Streamlining. The T&I bill will contain provisions that its sponsors say are designed to streamline the approval processes for construction projects. Mica referred to a "437-day process" and talked about cutting the project approval process in half. DeFazio talked about expanding the list of "categorical exemptions" from the planning process to include most all variants of road repaving.

The bill would create Offices of Expedited Delivery within FHWA and FTA "to improve the project delivery process by eliminating duplication in documentation and procedures and expedite the development of projects through the environmental review process, design, and construction."

Watch the T&I website on Thursday for more information:

Transportation.house.gov

(*Ed. Note:* The executive summary of the T&I bill raises one other question. Among the programs proposed to be eliminated by the bill are Interstate Maintenance Discretionary, TCSP, and most of the Bus and Bus Facilities programs. If these changes were to take place, what, if anything, would be left for the Appropriations Committees to earmark every year?)

FOUR CONSOLIDATED HIGHWAY FORMULA PROGRAMS UNDER THE T&I BILL

Critical Asset Investment Program

National Highway System (part)
Interstate Maintenance (formula only)
Highway Bridge Program (formula only) (part)

Surface Transportation Program

Surface Transportation Program
Highway Bridge Program (formula only) (part)

Congestion Mitigation and Air Quality

Congestion Mitigation and Air Quality

Highway Safety Improvement Program

Highway Safety Improvement Program
Bicycle and Pedestrian Safety Program
High Risk Rural Roads
National Work Zone Safety Clearinghouse
Operation Lifesaver
Rail-Highway Grade Crossing
Road Safety
Work Zone Safety Program

MAJOR ALLOCATED HIGHWAY PROGRAMS UNDER THE T&I BILL

Projects of National Significance

Coordinated Border Infrastructure
National Corridor Infrastructure Improvement

Freight Improvement

National Highway System (part)
Truck Parking Facilities

Metropolitan Mobility Access

[New program, $50 billion]

Federal/Tribal/P.R./Territory Lands

Federal Lands Highways
Territorial Roads (NHS Set-Aside)
Puerto Rico Highways

SURFACE TRANSPORTATION PROGRAM TERMINATIONS UNDER THE HOUSE T&I PROPOSAL

Terminated Programs - FHWA

Alaska Highway Program
Denali Access System Program
Express Lanes Demonstration program
Freight Intermodal Distribution Pilot Program
Gateway Rural Improvement Pilot Program
Going-to-the-Sun Road program
Great Lakes ITS Implementation program
High-Speed Rail Crossing Hazard Elimination
Highway Bridge discretionary program
Highway Use Tax Evasion
Highways for LIFE
Interstate Maintenance discretionary program
Interstate Oasis program
Interstate System Construction Toll Pilot
Interstate System Reconstruction & Rehab Pilot
Maglev Transportation program
Multimodal Facility Improvements program
National Historic Covered Bridge Preservation
Nonmotorized Transportation pilot
Pavement Marking Systems demonstration
Road User Fees Field Test
Transportation, Community, & System Preservation
Value Pricing Pilot Program

Terminated Programs - FTA

Alternatives Analysis
Growing States/High Density Formula
Bond Proceeds pilot program
Clean Fuels Grant program
Contracted Paratransit pilot
Elderly/Disabled pilot program
Human Resource programs
Medical Transportation demonstration
Over-the-Road Bus Accessability
Program of Interrelated Projects
Public-Private Partnership pilot
Public Transportation Participation pilot
Remote Infrared Audible Signs

Terminated Programs - NHTSA

Innovative Project grants program
Seat Belt Incentive grant program
State Highway Data Improvement Grants

Terminated Programs - FMCSA

MCSAP high priority grants
CDL Information System Modernization grants
Safety Data Improvement grants program

Note: some of the "programs" being consolidated, particularly in FHWA, barely meet the definition of the word, being merely glorified earmarks that happened to occupy their own paragraph in SAFETEA-LU.