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Legislative Schedules Week of July 13, 2009

House

Tuesday — meets at noon for legislative business — 24 measures under suspension of the rules.

Wednesday and the balance of the week — meets at 10 a.m. (9 a.m. Friday) — H.R. 3183, Energy and Water appropriations, and H.R. 3170, Financial Services appropriations (subject to rules).

Senate

The Senate will convene at 10 a.m. today for morning business and thereafter will resume consideration of S. 1390, the national defense authorization bill for fiscal year 2010.

Inside This Issue

<i>Preliminary Funding Table For House USDOT Appropriations</i>	4
<i>House Science Committee to Mark Up Highway R&D Bill.....</i>	6
<i>Sen. USCG/MARAD Markup.....</i>	7
<i>House HSC OKs TSA Unions...</i>	7
<i>New Asst SecDOT/AV-Int Nom.</i>	8
<i>HTF Balance at \$4.4B on 6/30</i>	8
<i>Senate Passes Homeland Security Appropriations Bill.....</i>	9
<i>House, Senate Moving Corps of Engineers Funding Bills.....</i>	10
<i>New/Notable on the Internet....</i>	11
<i>Nominations Calendar.....</i>	11
<i>This Week In Committee.....</i>	12
<i>Status of Major Transportation Bills.....</i>	12

High-Speed Rail Is Big Winner In House DOT Bill Up To \$4 Billion For HSR/IPR In FY 2010 Bill; Nat'l Infra. Bank Gets Zero Unless Authorization Enacted By Sept. 30; Most Other DOT \$\$ Near Budget Request

The House Subcommittee on Transportation and Housing Appropriations last night gave approval by voice vote to a draft bill appropriating about \$75.8 billion in net discretionary funding resources for the U.S. Department of Transportation for fiscal year 2009.

(We say “about” because the text of the bill is not yet available and because the table of dollar amounts given out by the subcommittee last night is incomplete and incorporates some mandatory accounts in the top part that may not be reflected in the net bottom line.)

The full House Appropriations Committee is scheduled to mark up the

bill on Friday, in a session that starts at 9 a.m. with the always-contentious Labor-HHS-Education bill and which will then move to the Transportation-HUD, or “THUD”, bill.

The big winner on the transportation side of the ledger in the House draft is unquestionably high-speed and intercity passenger rail. In the regular fiscal 2009 appropriations process (finalized just four months ago), intercity rail got just \$90 million and high-speed rail got zero. But the economic stimulus legislation that happened just before the FY 2009 omnibus gave HSR/IPR an \$8 billion one-time jumpstart, and the Obama

Administration requested \$1 billion for the program in the regular FY 2010 budget, which the House appropriators have increased to \$4 billion.

How was this possible?

In a nutshell, the Obama Administration requested \$5 billion for a National Infrastructure Bank in the regular FY 2010 budget before the White House was even close to having a plan together. The Appropriations Committees then requested that the Congressional Budget Office place the NIB in the Transportation-HUD bill when scoring the President's budget (even though the budget first proposed the NIB to

CONTINUED ON PAGE 2

Senate EPW Marking Up 18-Month Highway Extension

The Senate Committee on Environment and Public Works is scheduled to meet tomorrow to mark up draft legislation to extend funding for all federal highway programs for eighteen months at the dollar amounts enacted into law for fiscal year 2009.

The draft bill appears to be a “clean” extension, by which it is meant that

the bill does not change existing policies or funding priorities.

With one notable and unavoidable exception: the draft Senate bill does not continue the earmarked highway projects in the 2005 SAFETEA-LU law, instead applying the 2009 share of that money (repeated for 2010 and pro-rated at 50 percent for the first six

months of 2011) toward the core highway formula apportionments.

However, word circulated late last week that even though EPW chairman Barbara Boxer (D-CA) is intent on moving a clean extension through the Senate, her staff were to begin asking Senate offices for possible highway project requests.

CONTINUED ON PAGE 5

DOT Appropriations

CONTINUED FROM FRONT PAGE

be a fully independent agency and classified it in budget function 450 (community development), not function 400 (transportation) or function 370 (housing).

Then, when assigning budget allocations to subcommittees, the House appropriations leaders decided to give the THUD subcommittee enough budget authority to fund the NIB fully, because either (a.) they weren't themselves aware of how far back on the drawing board the NIB plan was at the White House, or (b.) they just wanted the THUD subcommittee to have an extra-good BA allocation. We're not sure.

Three weeks ago, the Office of Management and Budget came to the appropriators and told them that \$5 billion for the NIB was too much and that only \$2 billion was needed and that they weren't anywhere close to having legislative language ready to implement that \$2 billion NIB anytime soon.

So the draft House bill makes the best of this situation (well, "best" if you are a high-speed rail person, not if you are a housing person). The bill quadruples the requested appropriation for HSR/IPR to \$4 billion. However, the bill will also contain language saying that if a separate law enacting a National Infrastructure Bank is signed by September 30, 2009, the Secretary of Transportation may transfer up to half of that \$4 billion to the NIB. (We are told that it is a "may" transfer, not a "shall" transfer, but this clause will bear very close inspection when the actual text of the bill is made public.

In a sense, the THUD subcommittee had an embarrassment of riches this year where budget authority was concerned. While they had an extra \$3+ billion in budget authority on their hands, they were several hundred million dollars short on outlays from the Treasury scheduled to take place in FY 2009,

MAJOR ACCOUNT TOTALS IN THE DRAFT HOUSE BILL

	<u>FY 2009</u>	<u>Request</u>	<u>House Bill</u>
Federal-Aid Highways	\$40.700 billion	\$41.107 billion	\$41.107 billion
FAA Operations	\$9.042 billion	\$9.336 billion	\$9.347 billion
FAA F&E	\$2.742 billion	\$2.925 billion	\$2.925 billion
Airport Improv. Prog.	\$3.515 billion	\$3.515 billion	\$3.515 billion
FTA Formula & Bus	\$8.261 billion	\$8.343 billion	\$8.343 billion
FTA New Starts	\$1.809 billion	\$1.827 billion	\$1.827 billion
Amtrak Oper. Grants	\$550 million	\$572 million	\$553 million
Amtrak Cap. Grants	\$940 million	\$930 million	\$930 million
Hi-Speed/Intercity P.R.	\$90 million	\$1.000 billion	\$4.000 billion
Nat'l Infra. Bank	zero	\$5.000 billion	zero

so they had to spend that extra \$3 billion on something that "spends out" of the Treasury very slowly. And there isn't much that you can appropriate money for in the federal budget next year that will spend out more slowly in its first year than high-speed rail money, because so many of those projects are so far back on the drawing board.

In fact, though the draft House bill fully funds the President's request for most DOT accounts, the bill appears to have shifted \$19 million from Amtrak operating grants (which spend out at 100 percent in the first year because Amtrak is an off-Uncle-Sam's-books entity) to the newly bottomless HSR/IPR account. (The President requested \$572.4 million for operating grants but the table given out by the appropriators last night says that the request was only \$551.4 million, and something the House subcommittee chairman said leads us to believe that the difference (that Amtrak account got \$553.4 million in the bill) was shifted to HSR/IPR.)

Of the \$75.8-ish billion in total budgetary resources for USDOT in the draft House bill, over half (almost \$51 billion) is supposed to come from the Highway Trust Fund in the form of limitations on the obligation of contract authority drawn on the Trust Fund and provided by authorization laws.

There are two problems with this:

1. The Trust Fund is going to go broke (in its Highway Account at least) in three to five weeks unless Congress provides another bailout.
2. No law has yet been passed providing any contract authority for these programs for FY 2010.

The draft House bill basically ignores both of those gigantic problems. Transportation-HUD subcommittee chairman John Olver's (D-MA) opening statement said of the Trust Fund problem that "While it is neither this Committee's making nor this Committee's responsibility to fix, the uncertainty surrounding the solvency of the Trust Fund hinders this bill's ability to provide more than modest increases in many transportation infrastructure programs."

And the draft House bill ignores the Obama Administration's proposal to shift \$39.5 billion in highway and transit spending from Trust Fund obligation limitations to general fund budget authority (as telegraphed when the full committee gave the THUD subcommittee an allocation \$39+ billion too low to allow that course of action) and instead provides all obligation limitations on contract authority that may or many not exist in 2010.

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DOT Appropriations

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After the infrastructure bank/high-speed rail situation, the biggest departure from the President's budget request in the draft House bill is a \$150 million appropriation for the Washington Metropolitan Area Transit Authority (WMATA), pushed fervently by House Majority Leader Steny Hoyer (D-MD) and given new urgency after the recent fatal Metrorail Red Line crash in Northeast D.C. The funding is a new item and was not requested by the President.

Following is an abbreviated summary of the House bill based on the press release and table and a sadly *de minimis* amount of original reporting. The actual text of the draft bill and report should be in the hands of all Committee members by Wednesday morning, and next week's *TW* will contain a much more in-depth write-up of the House bill.

Highways. The draft House bill contains an obligation limitation on federal-aid highways program contract authority (much of which is still hypothetical for FY 2010) of \$41.107 billion, which is the amount that the budget requested if you ignore the Administration's proposed interim Trust Fund solvency fix.

As the table on the following page makes clear, the FY 2009 enacted appropriations law took a total of \$320 million from the general fund of the Treasury for highway projects earmarked by the Appropriations Committees. There is some headroom left in the limited spending table given out last night to include some general fund appropriations in this regard, up to the ballpark of \$150 million (depending on what rescissions of budget authority are used by the bill to offset spending.)

Aviation. The draft bill provides a gross total of \$15.98 billion for the Federal Aviation Administration, which is a 3.3 percent increase over

the FY 2009 regular level and a slight boost (\$26 million) over the budget request.

The budget gives \$9.347 billion to FAA Operations, an increase of \$305 million over last year and \$11 million over the request. Olver said that the \$11 million, combined with another \$6 million from cuts and transfers elsewhere within Ops, would be enough to hire an additional 180 safety inspectors.

The air traffic control capital budget (Facilities and Equipment) gets \$2.925 billion, the requested amount. And the R&D account gets a \$15 million increase over the request, to \$195 million. Olver said \$13 million of that would go towards alternative fuels research.

The obligation limitation on the Airport Improvement Program stays at \$3.515 billion for the fifth year in a row.

The Essential Air Service subsidy program (outside the FAA) gets the \$125 million discretionary appropriation requested by the President, which is a \$52 million over the regular FY 2009 number. In the table given out last night, this was combined with the annual \$50 million in mandatory funding for EAS available outside the appropriations process.

Transit. The draft bill provides a total of \$10.48 billion for the Federal Transit Administration in FY 2010. This is \$148 billion above the budget request, a difference which is entirely made up of the extra \$150 million for WMATA, offset by a reduction of \$2 million in the request for FTA Research and University Research Centers.

The bill provides an obligation limitation of \$8.343 billion for the Formula and Bus Grant account, the same amount as the budget request and an \$82 million increase over last year.

(It should be noted that the "clean" extension of highway programs for FY 2010-2011 to be marked up by the Senate Public Works Committee tomorrow extends all highway programs into 2010 at exactly the 2009

dollar amount. If the Banking Committee's transit title of the bill does the same, and the extension only provides \$8.261 billion in contract authority, then the appropriation bill's \$8.343 billion ob limit will be meaningless and real F&BG funding will only be \$8.261 billion.)

Rail. As mentioned above, the high-speed rail appropriation of \$4 billion warps the whole Federal Railroad Administration bottom line. Total subsidies to Amtrak are at \$1.483 billion in the bill, down slightly from both 2009 (but that excludes the huge stimulus funding that Amtrak got) and the 2010 request (due to the apparent shift of some operations funding to high-speed rail).

Safety. The table given out last night only gives administration-wide totals for the various USDOT safety agencies. Motor carrier safety (FMCSA) gets the requested level (\$550 million) and since that agency is all obligation limitations, the appropriators probably didn't alter the request. Highway safety (NHTSA) also gets the requested level of \$867 million, but within the various NHTSA accounts there may have been some changes from the request that net out to no change. Pipeline and hazmat safety (PHMSA) gets \$190 million, a \$2 million increase over the request.

Other USDOT. The draft House bill meets the exact budget request levels for the Office of Inspector General, the Surface Transportation Board, and the St. Lawrence Seaway Development Commission. The bill appropriates \$334 million for the Maritime Administration, a \$12 million reduction below the budget request that stems primarily from the elimination of MARAD's new Secure and Efficient Intermodal Freight Infrastructure at Coastal and Inland Ports initiative.

The table on the following page shows our slight re-estimation of the table given out by the Appropriations Committee last night. Much more to come next week.

U.S. Department of Transportation Appropriations in the House Draft THUD Bill (Millions of Dollars of Budget Authority)

	FY 2009 Enacted	FY 2010 Request	FY 2010 House	House vs. FY 2009		House vs. Request	
				Dollars	Pct.	Dollars	Pct.
Federal Aviation Administration							
Operations	9,042	9,336	9,347	305	3.4%	11	0.1%
Facilities & Equipment	2,742	2,925	2,925	183	6.7%	-	0.0%
Research, Engineering & Develop.	171	180	195	24	14.0%	15	7.7%
Airport Improvement Program	3,515	3,515	3,515	1	0.0%	-	0.0%
Total, FAA	15,470	15,956	15,982	512	3.3%	26	0.2%
Federal-aid Highways (Total Non-Exempt)	40,700	41,107	41,107	407	1.0%	-	0.0%
FMCSA (Total Agency)	541	550	550	9	1.6%	-	0.0%
NHTSA (Total Agency)	856	867	867	11	1.3%	-	0.0%
Federal Railroad Administration							
Safety and Operations	159	169	173	13	8.2%	4	2.2%
Rail Research and Development	34	34	34	0	0.6%	-	0.0%
Rail Line Relocation and Improvement	25	-	40	15	60.0%	40	100.0%
High-Speed and Intercity Passenger Rail*	90	1,000	4,000	3,910	4344.4%	3,000	75.0%
Amtrak Operating Grants**	550	572	553	3	0.6%	(19)	-3.4%
Amtrak Capital and Debt Service Grants	940	930	930	(10)	-1.1%	0	0.0%
Total, FRA	1,798	2,705	5,730	3,931	218.6%	3,025	52.8%
Federal Transit Administration							
Administrative Expenses	94	97	97	3	3.3%	-	0.0%
Formula and Bus Grants (Total)	8,261	8,343	8,343	82	1.0%	-	0.0%
Capital Investment Grants	1,809	1,827	1,827	18	1.0%	-	0.0%
WMATA Capital Grants	-	-	150	150	#DIV/0!	150	100.0%
Research and URCs	67	68	66	(1)	-2.0%	(2)	-3.0%
Total, FTA	10,232	10,336	10,484	252	2.5%	148	1.4%
St. Lawrence Seaway Development Corp.	32	32	32	0	1.5%	-	0.0%
Maritime Administration	332	346	334	2	0.5%	(12)	-3.6%
PHMSA (Total)	173	188	190	17	10.0%	2	1.1%
RITA (Total)	13	13	13	(0)	-0.5%	(0)	-2.7%
Office of the Inspector General	71	75	75	3	4.8%	-	0.0%
Surface Transportation Board (Gross)	27	27	27	0	0.7%	-	0.0%
National Infrastructure Bank*	-	5,000	-	-	#DIV/0!	(5,000)	#DIV/0!
Essential Air Service (OST-Discr. Only)	73	125	125	52	71.2%	-	0.0%
Gross Totals In Subcommittee Table	70,318	77,327	75,516	5,198	7.4%	(1,811)	-2.4%
Rescissions	(3,519)	-	??				
Offsetting Collections/Scoring Changes	(30)	(30)	(30)	-	0.0%	-	0.0%
Net Totals Deduced From Subc. Table	66,769	77,297	75,486	8,717	13.1%	(1,811)	-2.4%
Net Totals Given In Subcommittee Table	67,212	77,429	75,770	8,558	12.7%	(1,660)	-2.2%
Difference	442	132	284	(158)	-35.8%	152	53.5%
What could the difference between the net totals in the subcommittee's table and the totals we get from adding up be?							
Additional Highway BA for Earmarks	320	-	???????				
Non-EAS Office of the Secretary Accounts	136	132	???????				

*Under the House bill, \$4 billion is appropriated for HSR/IPR. If an authorization law is enacted for a National Infrastructure Bank by September 30, 2009, then the Secretary of Transportation may (but does not appear to be required to) shift up to \$2 billion of that \$4 billion to the Bank.

**It appears that the House bill shifts \$19 billion from Amtrak Operating Grants to HSR/IPR. We'll have to see in the bill.

18-Month Extension

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One aide with knowledge of the situation said that Boxer was only trying to protect her negotiating position in the event (the really, really, really unlikely event) that the House is able to pass a multi-year surface transportation reauthorization bill with projects galore in September and tries to go to House-Senate conference committee with that bill and the Senate's eighteen-month extension. In that case, the Senate might need project requests for Senators to be ready lest the Upper Chamber completely lose out on the potential earmark bonanza that is the highway bill.

But since the House Ways and Means Committee's leaders simply do not have the time or the inclination to deal with the revenue title of a highway bill anytime soon (see the devastating article in the July 8 issue of the Capitol Hill newspaper *The Hill* for more detail), it is extraordinarily unlikely that the House can pass such a bill before September 30.

In which case, Boxer's cattle call for projects would serve more as a distraction from the overall purposes of extending existing programs cleanly and (very importantly) somehow providing a second bailout of the Highway Trust Fund by the general fund, which is necessary to prevent the Federal Highway Administration from shutting down sometime in late August.

The draft bill to be marked up by EPW is summarized in the box at the bottom of the page. But because of Senate rules, the bill is incomplete. In order to prevent program shutdowns, the Banking Committee must add provisions extending transit programs, the Commerce Committee must add provisions extending safety programs, and the all-important Finance Committee must add provisions extending the Highway Trust Fund and (if this is to be dealt with in the extension), transferring billions of dollars from the general fund to the Trust Fund and possibly offsetting that funding with some sort of tax increase over ten years.

As of yesterday, the leaders of Finance and EPW and the Majority Leader had not yet decided how to proceed with the important issue of whether or not the Trust Fund bailout is to be offset with a tax increase, as the White House has insisted. Since the need for a constitutional tax bill as a vehicle will put the Senate at the mercy of the House, and since a tax vehicle could draw every unrelated tax amendment under the sun, the leaders are expected to try to convince the White House that the insistence on a tax offset in this legislation is a very bad idea that would draw amendments that could harm the Obama agenda. But no decisions have yet been made to our knowledge.

It is possible (but not necessary) that any of the other three committees could meet formally to mark up their portions of the extension. But it is more likely that they would just combine their staff drafts into one large substitute along with the EPW provisions that would then be offered on the floor by the Majority Leader.

Finance has not yet announced the amount of the general fund bailout of the Trust Fund to be included in the eighteen-month extension. The White House has requested \$20 billion to get both the Highway Account and the Mass Transit Account of the Trust Fund through March 31, 2011. But only about \$7 billion is truly do-or-die to prevent defaults in Trust Fund programs over the August recess.

House Transportation and Infrastructure chairman James Oberstar (D-MN) told an intrepid *CongressDaily* reporter last week that he and Speaker Pelosi had agreed that the House would move a \$7.3 billion stand-alone general fund bailout of the Trust Fund through the House by July 31 to solve the immediate Trust Fund crisis but that the question of an extension and the fate of his multi-year reauthorization bill would wait until after Labor Day.

SUMMARY OF DRAFT HIGHWAYS EXTENSION BILL TO BE CONSIDERED BY SENATE PUBLIC WORKS COMMITTEE

Sec. 1. Cites the Act as the "Surface Transportation Extension Act of 2009."

Sec. 2. Provides that "requirements, authorities, conditions, eligibilities, limitations, and other provisions authorized under titles I, V, and VI" of SAFETEA-LU "which would otherwise expire on or cease to apply after September 30, 2009, are incorporated by reference and shall continue in effect until March 31, 2011" except as otherwise provided. Provides contract authority for FY 2010 for every expiring program in those titles at the exact 2009 level except as otherwise provided. Provides contract authority for the first six months of FY 2011 at 1/2 of the exact 2009 level except as otherwise provided. Provides that all such funds "shall be distributed, administered, limited, and made available for obligation in the same manner" as in FY 2009. Provides that amounts provided shall be gross 2009 amounts and shall not take into account any rescission of contract authority for FY 2009 under SAFETEA-LU or any other law. Provides that the traditional \$639 million in FY 2010 and \$319.5 million in the first half of FY 2011 shall be exempt from obligation limitation. Provides that notwithstanding any other provision of law, FY 2010 funding shall be governed by the FY 2009 obligation limitation provided under sec. 1102 of SAFETEA-LU (a pro-rated half amount for FY 2011). Provides that the money that would otherwise be provided under the bill for earmarked projects in secs. 1301, 1302, 1307, 1702 and 1934 of SAFETEA-LU shall instead be available to states via formula under 23 U.S.C. 104(b) and 144 in their FY 2009 formula apportionment percentages. Provides that "No additional funds shall be provided for any project or activity...that the Secretary of Transportation determines was sufficiently funded before or during fiscal year 2009 to achieve the authorized purpose of the project or activity" and provides for redistribution of that reserved funding. Provides for an extension of all research activities under title V of SAFETEA-LU at FY 2010 rates, terms and conditions.

Sec. 3. Provides that the amount of contract authority for FHWA administrative expenses (which was \$423.7 million in FY 2009) shall be \$415.4 million in FY 2010 and \$213.4 million (half of \$426.8 million) in FY 2011.

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18-Month Extension

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Oberstar made a reference to the reporter to the Appropriations Committees taking money from the Trust Fund that needed to be repaid, and \$7.3 billion is, conveniently, the amount identified by highway groups as what "needs to be paid back" to replenish the Trust Fund for many years of appropriations for the emergency relief (post-disaster) highway program.

(Ed. Note: Here's the problem with that argument. Chairman Oberstar, like most other House and Senate members, voted in favor of a little old bill back in 1998 called TEA21. Section 1113 of TEA21 said that "...there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to establish the [emergency relief fund] and to replenish it on an annual basis". So

everyone who voted for TEA21, Chairman Oberstar included, basically told the Appropriations Committees, "Why certainly, by all means, go ahead and appropriate money for disaster ER from the Trust Fund. Take all you need. That's what it's there for." To pretend otherwise is disingenuous in the extreme.)

(Further Ed. Note: If we're going to go back in time to 1998 and retroactively and selectively repeal certain sections of TEA21, perhaps we should start with RABA, which more than anything else put the Trust Fund in its current predicament by basing real world spending in the here-and-now on hypothetical and (as it turns out) wildly inaccurate estimates of how much money the gas tax would bring in a year or two from now. In this respect, we urge you to read carefully the GAO testimony from the June 25 House Ways and Means hearing which says that, basically, yes, this whole

problem is RABA's fault. Just a thought.)

In all cases of stubbornness between the two chambers over how to address a time-sensitive bill, the chamber that is leaving first for the upcoming recess has a huge tactical advantage. In this case, the House is scheduled to depart for the August recess on July 31, while the Senate is scheduled to stay in until August 7. In which case, all Oberstar would have to do is (a.) convince Pelosi not to bring up any Senate-passed bill and (b.) just pass his stand-alone bailout on July 30 or 31 and leave town for six weeks.

However, late rumors that the House might stay in session for another week could nullify the House's advantage and turn the situation more into a traditional legislative game of ping-pong (but the need to either get unanimous consent in the Senate or else do a three-day cloture filing limits the speed of the ping-pong game).

House Science Panel To Mark Up Surface Transportation R&D Bill

A subcommittee of the House Science and Technology Committee is scheduled to mark up that panel's contribution to the surface transportation reauthorization bill tomorrow morning.

The Science Committee has partial (but not complete) jurisdiction over the research title of a surface transportation bill (which has been title V of the last several bills). However, that jurisdiction is not complete, and the Science panel has little say over funding levels relating to contract authority and usually gets outvoted in House-Senate conferences on the research title by much more numerous conferees from the Transportation and Infrastructure Committee.

A summary of the bill (H.R. 2569) as introduced in the House follows.

Sec. 2. Strategic plan. Requires the RITA Administrator to develop annually a comprehensive strategic three-year plan for surface trans-

portation R&D and technology transfer activities, to be submitted to Congress. Establishes criteria for the plan.

Sec. 3. UTC program management. Requires RITA to review the performance of each University Technology Center, report to Congress thereon, and make recommendations to Congress on the federal matching share for each UTC.

Sec. 4. Visiting committee on transportation research. Establishes a 15-member visiting committee on surface transportation research to be appointed by the Secretary.

Sec. 5. Office of Climate Change and Environment. Establishes an Office of Climate Change and Environment within DOT.

Sec. 6. Regional green transportation research centers. Adds a new sec. 5505A to title 49 U.S.C. authorizing RITA to make grants to universities or consortia to establish

regional green transportation research centers. To the greatest extent possible, at least one center shall be established in each of the 10 standard federal regions.

Sec. 7. National Research Council review. Requires DOT to contract with the National Research Council to review existing surface transportation R&D programs at the Turner Fairbanks center.

Sec. 8. Pavement research, technology transfer, and education program. Directs RITA to establish a pavement research, deployment and education program to give grants to UTCs and universities to conduct research on paving materials and practices.

Sec. 9. Definitions. Defines terms used in the Act.

Sec. 10. Authorization. Authorizes the appropriation of such sums as necessary for surface transportation R&D and UTC programs.

Senate Panel Approves Coast Guard, Maritime Authorization Bills

The Senate Commerce, Science and Transportation Committee last week approved two significant pieces of maritime-related legislation. S. 1194 is a two-year reauthorization of the programs and policies of the United States Coast Guard, and S. 1308 would authorize the programs of the Maritime Administration for FY 2010.

S. 1194, introduced on June 4 by subcommittee chairman Maria Cantwell (D-WA), would authorize the appropriation of \$9.47 billion per year for each of 2010 and 2011. (*Ed. Note:* the Coast Guard bill is an example of the silliness that is always a potential in funding authorization levels. Sec. 101 of the bill authorizes the same amount to be appropriated for Coast Guard operations (an account that is primarily salaries) for each of FY 2010 and 2011—\$6.556 billion per year. Then sec. 102 of the bill authorizes

an active duty personnel strength of 49,954 in FY 2010 and an increase to 52,452 in FY 2011. In what universe would an extra 2,498 employees not increase the total salary costs, and thus a sensible authorized spending level, at least a little bit?)

The Coast Guard bill is too large and complicated to be summarize in these measly column-inches, but the heart of the bill is procurement reform to remedy some of the many problems faced by the Deepwater program. The House Transportation and Infrastructure Committee, for some reason (possibly jurisdictional) is attempting to solve Coast Guard problems piecemeal rather than through one bill. T&I has approved a stand-alone procurement bill (H.R. 1665) to compare to title V of S. 1194, an organizational bill (H.R. 2650) to compare to title III of S. 1194, and a safety bill (H.R.

2652) to compare to certain other parts of S. 1194.

Three amendments were agreed to in the markup to S. 1194: a Cantwell (D-WA) amendment adding a massive new title increasing the liability of single hull tankers for spills; a Nelson (D-FL) amendment setting a statute of limitations on class action suits for certain wage claims; and a Begich (D-AK) amendment allowing certain foreign-flag vessels to be used for mobile offshore drilling.

S. 1308, sponsored by Sen. Frank Lautenberg (D-NJ), would authorize funds for FY 2010 for MARAD. It would also create two new grant programs under MARAD, one to give grants for port infrastructure development and one for projects that encourage short sea transportation. But the bill does not suggest how funding will be found to support those grant programs.

House Panel Approves Bill Allowing Potential TSA Union Organization

The House Homeland Security Committee last week approved, by a 13 to 6 vote, a bill to eliminate the existing laws that exempt the Transportation Security Administration workforce from the laws and rules that apply to the rest of the (non-military, non-intelligence) federal workforce and which would allow the unionization of, and collective bargaining on behalf of, TSA workers.

The legislation is H.R. 1881, the "Transportation Security Workforce Enhancement Act of 2009" which was introduced on April 2 by Rep. Nita Lowey (D-NY) and which has 135 cosponsors.

The heart of H.R. 1881 is section 3, which repeals section 111(d) of the Aviation and Transportation Security Act and section 114(n) of title 49 U.S.C. Those provisions exempt TSA from the civil service system and instead give TSA the authority to set up its own personnel system.

The bill declares that within 60 days of enactment, all TSA employees shall be fully converted to the regular civil service.

At present, TSA uses a pay-for-performance system called PASS that leaves many workers disgruntled. Homeland chairman Benny Thompson said that "Under PASS, not only do the criteria for evaluation differ from year to year, but so does the passing grade. Under this system, it is possible that a few points separate a poor performer from an exceptional performer. As a result, TSA workers do not know whether to expect a pink slip or a bonus."

Sec. 4 of H.R. 1881 provides the TSA employees who are doing well under PASS with a guarantee that they will keep their existing pay rate and provides that all other rights like leave, time of service, health insurance copay, etc. will be preserved.

Sec. 5 of the bill requires that TSA notify any union which has at least 1,000 covered TSA employees as of the date of enactment as to how TSA will handle the conversion and transition process and is allowed to express its views to TSA during the conversion process.

The *Federal Times* reports that two federal employee unions — the American Federation of Government Employees and the National Treasury Employees Unions — are battling to see which union will be able to organize the TSA once the law is changed.

Section 6 of the bill, however, reaffirms that even under the new system, TSA employees will have no right to go on strike (in other words, 18 U.S.C. 1918 and 5 U.S.C. 7311 will still apply to TSA employees).

It is unclear when and how H.R. 1811 will go to the House floor.

Mendez Confirmed to FHWA; Obama Names Asst SecDOT for Aviation

The United States Senate on July 10 confirmed Victor Mendez, the former head of the Arizona DOT, to be Federal Highway Administrator.

His confirmation means that the four big-money US-DOT modal administrations (highways, aviation, transit, and rail) now have Senate-confirmed administrators.

Also, on July 7, President Obama nominated former FAA employee Susan L. Kurland to be Assistant Secretary of Transportation for Aviation and International Affairs.

Kurland is currently a Managing Director at Jefferies & Company in the areas of airport infrastructure and municipal finance, and heads the firm's municipal finance group in Chicago. Previously, Kurland has served as Associate Administrator for Airports for the FAA, running the AIP program. In addition, she has served as Vice President and Deputy General Counsel of U.S Airways, and has also been Deputy Corporation Counsel for the City of Chicago, serving as general counsel for Chicago's airport system. Kurland earned her undergraduate degree from Brandeis University and her law degree from Boston University School of Law.

DOT Approves STAR Alliance CO Add

The U.S. Department of Transportation on July 10 approved the addition of Continental Airlines to the codesharing STAR alliance, joining Air Canada, Deutsche Lufthansa Airlines, United Air Lines in a four-way venture to combine some of their transatlantic routes into a venture called Atlantic Plus-Plus.

DOT approval was necessary to grant the alliance immunity from the collusion provisions of federal antitrust laws.

"I believe that the Department's decision will benefit consumers, enhance competition, and preserve jobs in the airline industry," said Transportation Secretary Ray LaHood.

DOT's announcement said that granting antitrust immunity to Continental to join the alliance and approving the joint venture was in the public interest because it would support increased levels of service in international markets served by the carriers, give consumers more travel options and shorter travel times, and reduce fares. The United States has open-skies aviation agreements with all of the home countries of the carriers involved in today's decision. Open-skies agreements provide for international market access to all home-country airlines.

HTF Highway Account Balance Drops To \$4.4 Billion As Of June 30

The Federal Highway Administration reported last week that as of June 30, the cash balance in the Highway Account of the Highway Trust Fund had dropped to \$4.39 billion, down from \$5.20 billion at the end of May and \$5.84 billion at the end of April.

Due to the warm weather, FHWA outlays to states for highway projects always accelerate to their peak in the July-August-September period, allowing FHWA to project that the Highway Account's course over those months will be roughly the same as it was in FY 2008 (when the Account ran out of money in the first week of September).

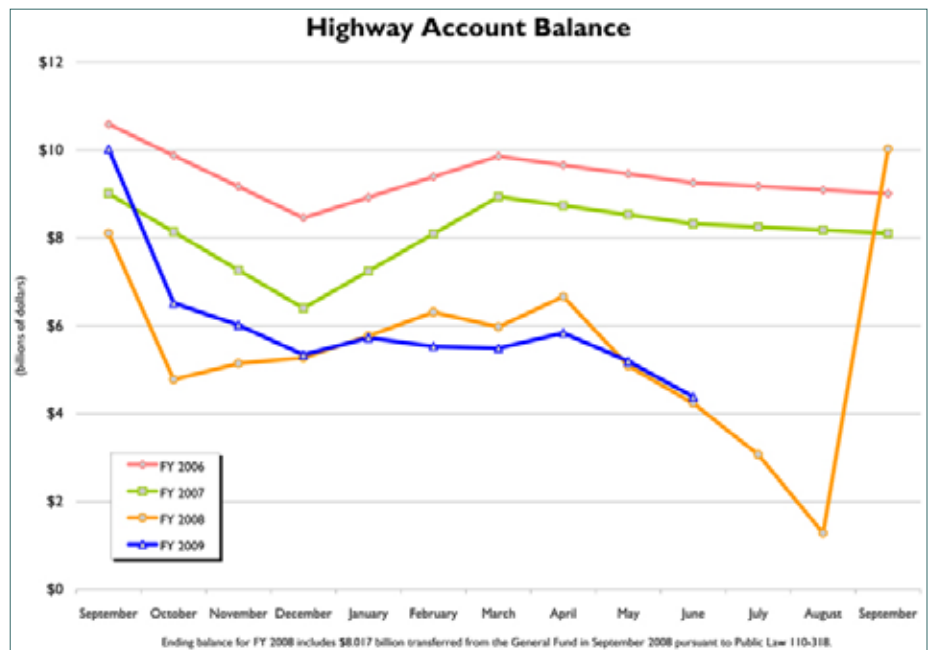
The chart at right shows how the blue line (for FY 2009) has now begun to track the orange (FY 2008) line almost exactly in its downward progression.

The White House has asked for a cash transfer from the general fund

of the Treasury to the Highway Account of \$7 billion before Congress adjourns on July 31.

The Mass Transit Account of the Trust Fund still has \$5.91 billion on

hand (with much smaller daily outlays) and will not reach a cash crisis until late FY 2010 or early in FY 2011.



Senate Passes FY 2010 Homeland Security Appropriations Bill

The U.S. Senate on July 9 passed the bill (H.R. 2892) providing the budget for the Department of Homeland Security for fiscal year 2010 by a vote of 84-6.

The Senate used its own version of the bill (S. 1298) as a vehicle for amendment and then switched the amended bill for the House-passed text of H.R. 2892 and requested a conference with the House to settle the differences.

The absence due to illness of Homeland subcommittee chairman Robert Byrd (D-WV) meant that Sens. Richard Durbin (D-IL) and Patty Murray (D-WA) had to take turns pinch-hitting for Byrd as floor manager of the bill.

While the Homeland bill provides billions of dollars for the Transportation Security Administration, the U.S. Coast Guard, and transportation security grants of the Federal Emergency Management Administration, most of the floor amendments that the bill tends to attract in both chambers deals with the fact that since the bill funds Immi-

gration and Customs Enforcement, all manner of immigration-related amendments are relevant to the bill.

We assembled a long list of all amendments offered to H.R. 2892 on the Senate floor, but after the immigration amendments and other non-transportation issues were removed, the list of amendments got much shorter (reproduced below).

(Ed. Note: now that we read the text of the Cornyn amendment, it's actually straight-up legislation amending the Federal Switchblade Act of 1958 to change the definition of switchblade knife, and has nothing to do with TSA or transportation. But it's too late at night to change page layout, so it stays.)

Sen. Jay Rockefeller (D-WV) successfully offered an amendment to amend 46 U.S.C. 70103 to clarify that port and vessel security plans and vulnerability assessments can be kept secret but also to prevent agencies from classifying information as security sensitive for the wrong reasons.

Murray offered an amendment on contracting rules designed to sap votes from a more restrictive Coburn (R-OK) amendment, and she was successful.

Bernie Sanders (I-VT) successfully offered an amendment to make DHS report to Congress on why the border inspections delay the passenger trains between the U.S. and Ontario and Quebec so much.

And former Homeland subcommittee chairman Judd Gregg (R-NH) successfully offered an amendment that requires any company retaining participant information from the Registered Traveler program to obey all federal guidelines for information security and any new standards set by TSA.

Most of the rejected transportation-related earmarks were Republican attempts to eliminate spending projects or programs that the Obama Administration proposed to be eliminated but which were retained by the Appropriations Committee.

TRANSPORTATION-RELATED AMENDMENTS OFFERED TO THE HOMELAND SECURITY APPROPRIATIONS BILL (H.R. 2892) ON THE SENATE FLOOR

(All amendments were technically offered to Byrd/Inouye amendment #1373 in the nature of a substitute)

Amendments Agreed To:

- **Cornyn** Amendment No. 1447 to clarify the definition of switchblade knives – *agreed to by unanimous consent on July 9, 2009.*
- **Gregg** Amendment No. 1464 to protect the privacy of personal information provided by United States travelers who participated in the Registered Traveler program – *agreed to by unanimous consent on July 9, 2009.*
- **Murray** Amendment No. 1468 requiring that all contracts made by DHS using these funds must be entered into in accordance with the requirements of 41 U.S.C. 253 or 10 U.S.C. 137 unless a statutory exemption from such law already exists – *agreed to by roll call vote of 67 yeas, 24 nays on July 9, 2009.*
- **Rockefeller** Amendment No. 1401 to amend title 46, United States Code, to ensure that the prohibition on disclosure of maritime transportation security information is not used inappropriately to shield certain other information from public disclosure – *agreed to by unanimous consent on July 9, 2009.*
- **Sanders** Modified Amendment No. 1454 to require the Secretary of Homeland Security to submit to Congress a report on reducing the travel time between locations in the United States and locations in Ontario and Quebec by intercity passenger rail – *agreed to by unanimous consent on July 9, 2009.*

Amendments Not Agreed To:

- **Coburn** Amendment No. 1434 to prohibit no bid contracts be requiring the use of competitive procedures to award contracts and grants funded under this Act – *amendment rejected by roll call vote of 31 yeas, 60 nays on July 9, 2009.*
- **Feingold** Amendment No. 1402 to require grants for Emergency Operations Centers and financial assistance for the predisaster mitigation program to be awarded without regard to earmarks – *amendment rejected by roll call vote of 38 yeas, 60 nays on July 8, 2009.*
- **McCain** Amendment No. 1406 to strike the provision relating to the Loran-C signal, as recommended by the Administration – *amendment rejected by roll call vote of 37 yeas, 61 nays.*
- **McCain** Amendment No. 1400 to eliminate the appropriation for the Over-the-Road Bus Security Assistance, as recommended by the Administration – *amendment rejected by roll call vote of 47 yeas, 51 nays on July 7, 2009.*

House, Senate Moving Corps of Engineers Water Funding Bills

The House of Representatives is scheduled to consider legislation this week appropriating money for the U.S. Army Corps of Engineers civil works (a.k.a. water resources) program for fiscal year 2010. Meanwhile, the Senate Appropriations Committee approved its version of that legislation last week, though the Senate floor is currently tied up with the defense authorization bill.

The House Rules Committee is scheduled to meet at 3:00 p.m. today to consider a rule restricting which amendments can be offered to the House bill. (The House Democratic leadership has chosen to consider all general appropriations bills this year under a restrictive amendment process, ending a 220-year tradition of having most, if not all, of the general appropriations bills considered by the House under an open amendment process to give all members a chance to participate in what is, after all, the most important thing that Congress does, year-in, year-out.)

A variety of House members filed 103 amendments to the bill, all of which are posted on the Rules website (there is a link to the list on the following page). If Rules follows the practice it has followed so far this year, the number of amendments allowed will be in the teens.

As befits a project-based bill, most of the amendments filed with Rules seem to be the elimination of particular projects or the reduction of funds for one project or program to increase funds for another under the zero-sum 302(b) budget ceiling.

(*Ed. Note:* twelve of the 103 amendments filed are from Rep. Paul Broun (R-GA), the man who moved that the House adjourn ahead of schedule yesterday afternoon and caused the entire day's worth of planned legislative business to collapse. We wonder if this will affect the number of his amendments that are made in order by the Rules Committee.)

The Senate bill (S. 1436) appropriates \$5.405 billion for the Corps of Engineers civil works program for fiscal 2010, \$136 million more than the House bill and \$280 million above the budget request.

The table below shows how the Senate bill differs from the House bill, the budget request, and last year. (Bear in mind that the Brobdignagian amount of off-budget emergency funding made available to the Corps in 2009 by a variety of supplemental and stimulus spending bills renders any comparisons to the non-emergency 2009 funding levels silly.)

The Senate bill gives significant increases for three accounts while

holding back or reducing the rest. The smallest percentage increase goes to the biggest of the three accounts, Construction, which gets a twelve percent increase over the budget. This is fairly transparent.

The Mississippi Valley system gets a much larger (37 percent) increase over the budget.

But the real significance is in the Investigations account, which the Obama Administration (like the Bush Administration before it) sought to slash. Because "investigations" means the feasibility studies without which a project cannot get underway. So a few hundred thousand dollars to a million and change for a feasibility study is a necessary prerequisite for what would eventually be a \$30 million project. So increasing the Investigations budget by 70 percent over the budget request is a sure sign of differing long-term priorities between the Administration and Congress.

The Senate bill holds general expenses to \$186 million, \$2 million above the request, but clarifies that any unused money in the huge prior year Flood Control and Coastal Emergencies account can be used to supplement that funding to help run an actual emergency response.

U.S. ARMY CORPS OF ENGINEERS (CIVIL WORKS) FUNDING (Millions of Dollars)

	FY 2009	FY 2010	FY 2010	FY 2010	Senate vs FY 2009		Senate vs Request	
	<u>Enacted</u>	<u>Request</u>	<u>House</u>	<u>Senate</u>	<u>Mil. \$</u>	<u>Pct.</u>	<u>Mil. \$</u>	<u>Pct.</u>
Investigations	168	100	142	170	2	1.2%	70	70.0%
Construction	2,142	1,718	2,123	1,924	(218)	-10.2%	206	12.0%
Mississippi River & Tributaries	384	248	251	340	(44)	-11.5%	92	37.1%
Operations & Maintenance	2,202	2,504	2,511	2,450	248	11.3%	(54)	-2.2%
Regulatory Program	183	190	190	190	7	3.8%	-	0.0%
FUSRAP	140	134	134	140	-	0.0%	6	4.5%
Flood Control & Coastal Emergencies	-	41	-	-	-	n/a	(41)	-100.0%
Expenses	179	184	184	186	7	3.9%	2	1.1%
Assistant Sec. of the Army	5	6	6	5	-	0.0%	(1)	-16.7%
Total, USACE (Civil Works) regular	5,402	5,125	5,541	5,405	3	0.1%	280	5.5%
Plus FY 2009 Emergency Approps.:	10,361	-	-	-	(10,361)	-100.0%	-	n/a
Total, USACE With Emergencies	15,763	5,125	5,541	5,405	(10,358)	-65.7%	280	5.5%

NEW AND NOTABLE ON THE INTERNET

Energy and Water Appropriations Bill, 2010

The text of the H.R. 3183, the House FY 2010 Energy and Water appropriations bill is here:

http://www.rules.house.gov/111/LegText/111_energy_txt.pdf

The House bill's committee report is here:

http://www.rules.house.gov/111/CommJurRpt/111_energywater_rpt.pdf

And the text of all amendments filed with the Rules Committee to the House bill are here:

http://rules.house.gov/amendment_details.aspx?NewsID=4376

The text of the Senate Energy and Water appropriations bill for FY 2010 (S. 1436) is here:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1436pcs.txt.pdf

And the accompanying committee report is here:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:sr045.111.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
Department of Transportation	Chris Bertram	Assistant Secretary for Budget and Programs	Commerce, Science and Transportation	Nomination transmitted 7/9/09
Department of Transportation	Susan Kurland	Assistant Secretary for Aviation and Int'l Affairs	Commerce, Science and Transportation	Nomination transmitted 7/7/09
DOT-Federal Highway Administration	Victor Mendez	Administrator	Environment and Public Works	Nomination confirmed 7/10/09
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 for a term expiring 6/30/2012	Commerce, Science and Transportation	Nomination transmitted 6/18/09
National Transport. Safety Board	Deborah Hersman	Chairman (for a term of two years)	Commerce, Science and Transportation	Nomination transmitted 6/18/09
National Transport. Safety Board	Christopher Hart	Member for a term expiring 12/31/2012	Commerce, Science and Transportation	Nomination transmitted 6/25/09
Surface Transportation Board	Daniel Elliott	Chairman	Commerce, Science and Transportation	Nomination announced 7/6/09
Department of the Army	Jo-Ellen Darcy	Assistant Secretary for Civil Works	Armed Services <i>and</i> Enviro. & Public Works	Nomination placed on the calendar 6/16/09

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THIS WEEK IN COMMITTEE

Tuesday, July 14, 2009 – House Transportation and Infrastructure – Subcommittee on Economic Development, Public Buildings, and Emergency Management – subcommittee hearing on GSA’s experience with national broker contracts – 10:00 a.m., 2167 Rayburn. House Oversight and Government Reform - Subcommittee on Federal Workforce, Postal Service and the District of Columbia – subcommittee hearing on the WMATA Red Line accident and continual WMATA funding challenges – 2:00 p.m., 2247 Rayburn. Senate Environment and Public Works – full committee hearing on transportation’s role in climate change and reducing greenhouse gases – 2:30 p.m., SD-406 Dirksen. House Rules – full committee hearing on a special rule for consideration of H.R. ____, energy and water development appropriations for FY 2010 – 3:00 p.m., H-313, *The Capitol*.

Wednesday, July 15, 2009 – House Science and Technology - Subcommittee on Technology and Innovation – subcommittee markup of H.R. 2569, to authorize surface transportation research and development activities – 10:00 a.m., 2318 Rayburn. Senate Environment and Public Works – full committee markup of a draft 18-month extension of federal highway programs and any other items cleared for action – 10:30 a.m., SD-406 Dirksen. House Homeland Security – Subcommittee on Transportation Security and Infrastructure Protection – subcommittee hearing on general aviation security – 2:00 p.m., 311 Cannon. House Transportation and Infrastructure – Subcommittee on Water Resources and Development – subcommittee hearing on the creation of a Clean Water Trust Fund – 2:00 p.m., 2167 Rayburn.

Thursday, July 16, 2009 – House Transportation and Infrastructure – Subcommittee on Highways and Transit – subcommittee hearing on the importance of long-term surface transportation reauthorization in an economic recovery – 10:00 a.m., 2167 Rayburn. House Small Business – Subcommittee on Investigations and Oversight – subcommittee hearing on the upcoming highway bill and the needs of small business – 1:00 p.m., 2360 Rayburn. House Transportation and Infrastructure – Subcommittee on Economic Development, Public Buildings, and Emergency Management – subcommittee on green buildings – 2:00 p.m., 2167 Rayburn.

Friday, July 17, 2009 – House Appropriations – full committee markup of the draft Labor-HHS-Education and Transportation-HUD appropriations bills for FY 2010 (in that order) – 9:00 a.m., 2359 Rayburn.

STATUS OF MAJOR TRANSPORTATION BILLS — 111th CONGRESS

BILL	HOUSE ACTION	SENATE ACTION	RESOLUTION
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 approved draft bill on 7/13/09	Subcommittee markup scheduled for 7/21/09	
FY 2010 Energy and Water Appropriations	H.R. 3183 reported 7/13/09 H. Rept. 111-203	S. 1436 reported 7/9/09 S. Rept. 111-45	
FY 2010 Homeland Security Appropriations	H.R. 2892 passed House 6/24/09 by a vote of 389-37	H.R. 2892 passed Senate amended 7/9/09 by a vote of 84-6	
Federal Aviation Admin. Reauthorization Bill	H.R. 915 passed House 5/22/09 by a vote of 277-136	Draft bill may be introduced in the Senate this week	
Surface Transportation Reauthorization Bill	Subcommittee marked up draft bill on 6/24/09		
Short-Term Extension of Surface Transportation Laws		Senate Public Works to mark up draft bill on 7/15/09	
Water Resources Development Act			
FY 2010 Coast Guard Authorization		S. 1194 ordered reported 7/8/09 by Senate Commerce Committee	
Transportation Security Admin. Reauthorization	H.R. 2200 passed House 6/4/09 by a vote of 397-25		