

TRANSPORTATION WEEKLY

UPDATE – SENATE LEADERS EXPLORE POSSIBLE 3-MONTH SURFACE EXTENSION

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The chairman and ranking Republican on the Senate Environment and Public Works Committee are exploring the possibility of dropping their insistence on the eighteen-month extension of federal surface transportation programs requested by the White House and agreeing to the three-month timetable proposed in legislation passed by the House last week (H.R. 3617). There is not a deal in place yet.

However, the Senate would likely insist on using the same legislative language from the Senate eighteen-month bill (S. 1498 et al), shortened in duration to three months, instead of using the language in H.R. 3617. This would include the repeal of the \$8.708 billion rescission of highway contract authority scheduled to take effect tomorrow by section 10212 of the SAFETEA-LU law. The rescission would be repealed by the Senate bill but not by the House bill.

Scheduling any such measure for a vote between now and midnight tomorrow night will require the unanimous consent of all 100 Senators. As of this writing, the EPW Committee has not given any legislative language to the Democratic and Republican leadership offices for leadership to shop around to their membership to see if there are any objections (the “hotlining” process which is necessary before they can begin to negotiate a time agreement).

House Democratic leaders have indicated that they will not bring up any Senate extension that repeals the \$8.7 billion rescission unless it also contains \$490 million in offsetting mandatory spending cuts or tax increases to make the measure deficit-neutral over a ten-year window to satisfy the House PAYGO rule. A press secretary for Sen. James Inhofe (R-OK) was quoted earlier this afternoon as suggesting that unobligated stimulus funds be rescinded to pay for the cost of repealing the highway rescission, but this would have trouble getting unanimous consent on the Democratic side of the aisle and also would not technically meet the PAYGO rule requirement (the stimulus was emergency spending, and budget rules prohibit rescinding emergency spending to pay for non-emergency spending).

Without an offset, opponents of the bill will say that the rescission repeal increases the federal deficit by \$490 million and will be a non-starter in the House. But any offsetting spending cut will upset somebody, somewhere, and make it difficult for the legislation to get the unanimous consent of all

100 Senators needed to schedule the legislation for a vote before tomorrow night.

The use of an abbreviated version of S. 1498 rather than H.R. 3617 for the base bill language would also highlight another key difference between the House and Senate extensions. The Senate bill would take all of the money allocated to states in FY 2009 from earmarked high priority projects and from the major "above the line" earmarked accounts from SAFETEA-LU (secs. 1301, 1302, 1307, 1934, and the bridge set-aside in title 23) and give states a pro-rated amount of that money in FY 2010 for the length of the extension (in the case of a three-month extension, one-fourth of the FY 2009 total) for use as STP formula money. But the House bill would take the money from sections 1301 and 1302 and give it to DOT for use as discretionary grants. This makes a big difference for California and Illinois, which got disproportionately large shares of the 1301 and 1302 earmarks in SAFETEA-LU. Over three months, the Senate language guarantees California \$55.5 million more than does the House language (the comparable number for Illinois is \$30.2 million).

If the Senate can garner unanimous consent to bring up H.R. 3617 (with the shortened Senate language substituted for the House language) by tomorrow, and can pass the bill without offsetting the cost of the rescission repeal, the House Democratic leadership has vowed not to bring up the legislation (unless someone in the House can find a PAYGO offset, which Transportation and Infrastructure chairman James Oberstar (D-MN) has to this point been unwilling to do). The Senate leaders are very aware of this, so it is not known how much of today's efforts are a serious attempt to extend the surface transportation programs and repeal the rescission and how much is an attempt to make it look like the House, and not the Senate, is at fault for letting the rescission take place.