

TRANSPORTATION WEEKLY
UPDATE - STAGE SET FOR PASSAGE OF CR, NO DEAL YET ON
SURFACE EXTENSION
WEDNESDAY, SEPTEMBER 30, 2009 - 10:40 A.M.

Yesterday evening, the Senate entered into a unanimous consent agreement that could bring about a vote on final passage of the continuing resolution (CR) funding the federal government for fiscal year 2010 (which starts tomorrow) by 5:30 p.m. today.

Under the agreement, the Senate will debate the measure (which is attached to the conference report on the legislative branch appropriations bill) all day today. If any Senator raises a point of order against the measure, the Senate will hold roll call votes on the motions to waive the points of order starting at 4:30 p.m. Immediately following the votes on the motions to waive points of order, the Senate will then vote on adoption of the conference report.

At least one point of order, and possibly a second, are expected to be made. Senator John McCain (R-AZ) is expected to make a point of order that the CR was not contained in either the House or Senate versions of the legislative branch bill and was instead "airdropped" into the conference report, which violates a recently adopted Senate rule enforcing older rules on the "scope" of House-Senate conferences. And another Senator may make a point of order that the conference report when combined with the CR violates the Budget Act in some way (but it is not certain that any such Budget Act point of order will be raised).

Both these points of order can be waived by the affirmative vote of 60 or more Senators. If all 60 Democratic Senators show up for the votes, this could be done on a party-line basis; if there are any Democratic absentees, a few Republicans would be necessary.

If the motion to waive the McCain scope point of order is not agreed to, the effect would be to separate the CR from the leg branch conference report, which would then require separate Senate consideration of the CR and would allow amendments to the CR. The House would then have to vote again to ratify whatever the Senate passes before midnight tonight. If the motion to waive a Budget Act point of order is not agreed to, the conference report would be defeated and the House and Senate would be in for an even later night.

The unanimous consent agreement does not cover H. Con. Res. 191, the

House-passed resolution amending an error in the CR related to the extension of highway funding. The Senate must pass H. Con. Res. 191 before sending the conference report to the White House in order to make the change, without which new contract authority for federal surface transportation programs may be cut off as of tomorrow. Any consideration of H. Con. Res. 191 in the Senate must be by unanimous consent.

Senate leaders are still trying to negotiate a unanimous consent agreement to allow a vote on a separate bill extending surface transportation programs for three months later this afternoon. The Senate holds its weekly party policy luncheons from 12:30 to 2:15 p.m. today, and it is unlikely that anyone will go to the floor and attempt to get an agreement before the issues are hashed out at lunch at the party caucuses.

It is still unclear if the Senate is capable of passing an extension bill today that will contain a \$490 million offsetting spending reduction to pay for the cost of repealing the \$8.7 billion rescission of highway contract authority scheduled to take place today. Without the offsetting spending reduction, House leaders have indicated that they will not bring up any Senate legislation that repeals the rescission.