

THE LEGISLATIVE SERVICES GROUP'S

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Legislative Schedules Week of October 5, 2009

House

Tuesday — meets at 2 p.m. for legislative business — 8 measures under suspension of the rules and a motion to go to conference on H.R. 2647, defense authorization.

Wednesday and Thursday — meets at 10 a.m. — 8 suspensions plus conference report on H.R. 2997, agriculture appropriations, and possible conference reports on H.R. 2892, homeland security appropriations, and H.R. 2647, defense authorization.

Friday — no votes.

Senate

The Senate convenes at 9:30 a.m. today for a period of morning business. At 10:30 a.m. the Senate will resume consideration of H.R. 2847, Commerce-Justice-State appropriations.

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Surface Transportation Programs Default To One-Month Extension In Continuing Resolution

No Action Likely On Separate Extension Until CR Nears Expiration

Disagreements between House and Senate transportation leaders, and the failure of those leaders or transportation stakeholders to find a viable solution to budget problems, prevented Congress from acting on any legislation extending federal surface transportation spending programs before the expiration of the authorization law for those programs at the end of fiscal year 2009 on September 30.

As a result, funding for those programs defaults to the fallback position in the continuing resolution (CR) authored by the Appropriations Committees

and enacted early on the morning of October 1 as Public Law 111-68.

The surface transportation extension provision in the CR only last as long as the CR itself provides funds for other unfunded government programs (at present, until midnight on October 31). So, rather than three months worth of funding, as proposed by the House, or eighteen months worth of funding, as proposed by the Senate, states and transit agencies will receive just one month's worth of funding this week.

States normally receive a full fiscal year's appor-

tionment of new contract authority on the first day of the new fiscal year, so this represents a cash flow problem for many states.

But to make matters worse, because of Congressional budget rules, the CR is only able to dispense contract authority to states at an annualized rate based on the final FY 2009 amounts — after the highway formula apportionments to states had been reduced by about a third by two large rescissions of contract authority (the last of which did not take effect until September 30). Both the House and Senate versions of

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\$56.6 B In Applications For \$1.5B In Discretionary Grants

The U.S. Department of Transportation announced last week that a total of \$56.6 billion in applications for assistance were received for the \$1.5 billion in multimodal discretionary grants to be given out next year by USDOT under the stimulus act.

The deadline for the applications was September 15. USDOT, by law, has until February 17, 2010 to

announce the grant recipients but the Secretary has stated that the target for announcing the winners will be January 2010.

Transportation Secretary Ray LaHood said that "We have received an outpouring of creative and innovative transportation project proposals from across the country and we are excited to get started. Through the [Transpor-

tation Investment Generating Economic Recovery] grants we will begin to seriously address the 21st century transportation challenges of improving our environment, the livability of our communities, enhancing safety while strengthening our economy."

The stimulus act (Public Law 111-5) appropriated \$1.5 billion to the Secre-

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Extensions...

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freestanding extension legislation would have provided highway funding at an annualized pre-rescissions rate.

The difference is vast. The annualized rate for the House and Senate authorizing committee extensions would have worked out to \$3.04 billion per month in highway formula funding. The rate under the CR is only \$2.03 billion per month. (This assumes a 31-day month because the actual CR calculating mechanism is daily and October is a 31-day month.)

However, as the table on page 5 of this issue shows, that \$2.03 billion in highway formula funding expected to be apportioned to states this week under the CR will be augmented by what *TW* estimates to be about \$392 million in funding that represents the major highway accounts that were completely earmarked by the 2005 SAFETEA-LU law. Under the CR, the amount that each state received in earmarked funding under those accounts in FY 2009 will be multiplied by 31/365ths and then “made available to the State for purposes described in section 133(b) of title 23, United States Code” (which is the Surface Transportation Program) except that the transportation enhancement set-aside and the sub-allocation of a percentage of funds to MPOs shall not apply.

(That \$392 million per month would have been given out in a similar fashion under the Senate’s extension, and most (but not all) of it would have been given out under the House extension as well.)

Under the terms of the CR, if a separate extension law is signed into law at any time while the CR is in effect, the separate extension will supplant and supersede the funding provided in the CR. According to most interpretations, funding to states would then take place at a higher level to make up for the lower levels provided by the

CR so that the final total apportioned over the life of the separate extension equals the annualized amount at the gross (pre-rescissions) rate.

But that does not appear to be in the immediate future. In the several weeks leading up to September 30, the House and Senate were stymied by House Transportation and Infrastructure Committee chairman Jim Oberstar’s (D-MN) rigid adherence to a maximum extension length of three months on the one hand and bipartisan Senate acceptance of the White House’s proposal for a eighteen-month extension on the other hand.

Sen. George Voinovich (R-OH), who is retiring in less than eighteen months and who is working very closely with Oberstar on reauthorization issues (Oberstar’s now-famous hand-written diagram of his reauthorization bill was actually first drawn so Oberstar could show it to Voinovich), placed an unyielding filibuster threat on an extension of eighteen months, which brought matters to a standstill.

However, on September 29, the urgency of another issue — the \$8.708 billion cut in highway contract authority set to take place the following day by section 10212 of the 2005 SAFETEA-LU law — broke the Senate logjam. Environment and Public Works chairman Barbara Boxer (D-CA) and her ranking minority member Jim Inhofe (R-OK) decided reluctantly to accept an extension of the duration of the House’s bill (three months) with some changes in language — on the condition that the legislation also prevent the \$8.7 billion rescission from taking place.

In order to repeal the rescission, budget laws required that the deficit reduction that would have been caused by the rescission (because of a scoring change mandated by Oberstar in 2007) be continued by an offsetting spending cut in whatever legislation repealed the rescission. For several days, Inhofe had proposed a corresponding cut in

unobligated stimulus funding, which faced both technical hurdles and a large political hurdle (Democrats are not allowed to admit that any of the \$787 billion in stimulus funding was not needed and can be rescinded, for that way lies madness).

But late on the afternoon of September 30 as the number of hours until the rescission took effect were in the dwindling single digits, Boxer and Inhofe reached agreement on an unexpected offset — they decided to take the money out of unexpended TARP financial system bailout balances.

The Boxer-Inhofe language would have rescinded \$8.708 billion from the TARP program. However, this would have produced far more savings than actually needed to meet the deficit-neutrality test. Using the scoring available at the time, the offset needed to reduce the deficit by \$490 million over ten years. Estimates of the outlay savings from an \$8.708 billion cut in TARP fundings differ, but they would have been between \$3 billion and \$4 billion, far more than needed.

Also, Boxer may have neglected to inform both (a.) the Treasury Department and (b.) the Senate Banking Committee that she had settled on TARP as an offset. (Not to mention failing to notify the appropriate parties in the House.)

Oberstar was not eager to deal with the Senate alternative to his extension bill (H.R. 3617) anyway, and the decision to use TARP as an offset rendered the legislation a non-starter with the House and the White House. It thus raises the question of how much of the subsequent attempt to pass legislation was a serious attempt to get a bill enacted into law and how much was an attempt to affix a greater share of blame for the rescission on the House rather than the Senate. (In the Senate, sending a pass-the-buck bill to an obviously unreceptive House is referred to as “leaving a dead cat on their doorstep.”)

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Extensions...

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After taking to the floor briefly just after 5:30 p.m. on the 30th to announce that they were in the process of drafting and vetting their offset amendment, Boxer and Inhofe sought agreement from their respective leaderships. Although Majority Leader Reid signed off on the use of TARP funds (possibly because he knew the bill was a dead letter), there were at least three unnamed Republican Senators (according to Inhofe) who issued private objections to the whole scheme. And since the scheme had to be executed by the unanimous consent of all 100 Senators, that killed the plan.

After the Senate came back from an unrelated recess for a 6:30 p.m. vote on a defense amendment, after which Inhofe left the Capitol when it became clear that the extension and its accompanying rescission repeal were not going to pass. Boxer stayed around and formally raised the unanimous consent re-

quest, which was objected to pro forma by the GOP, at which point Boxer and Minority Whip Richard Durbin (D-IL) took turns expressing their deep shock that any Republican would hate construction jobs.

It is now clear that Boxer and Inhofe's decision on the 29th to accept the three-month extension length was an offer that was good for less than 48 hours and was completely contingent on the rescission being repealed by midnight on the 30th. Now that the rescission has taken effect and has no easy way to be undone, the Senate has returned to its pre-September-29th position of insisting on the Administration's eighteen-month extension duration.

This week, there have been no noticeable actions or discussions on this issue in the House or Senate (hence the short length of this issue of TW).

The question then becomes: when is the next logical deadline to provide some impetus for House-Senate talks on a surface transportation extension law?

The next logical deadline appears to

be the final expiration of the CR. That may not be October 31. If Congress does not have the omnibus appropriations bill ready for White House signature by the 31st, it is a simple matter to extend the CR by passing a simple joint resolution striking the date "October 31, 2009" in section 106 of the CR and inserting a later date. This would also extend the current CR surface transportation extension.

But any extension of the CR is likely to last just a week or two. By mid-November at the latest, the omnibus appropriations bill should be finalized, and then Congressional leaders must decide how to proceed for the remainder of fiscal year 2010. If separate extension legislation is enacted apart from the omnibus (or any other bill from the Appropriations Committees), it can provide funding for three months (or six, or nine, or twelve, or eighteen months) at the higher pre-rescissions FY 2009 rate.

But if a multi-month extension is enacted as an add-on to the omnibus appropriations bill, under the current budget scoring rules, that extension would have to provide funding at the lower (\$1 billion per month lower) post-rescissions rate.

For this reason, it is very unlikely that a surface transportation extension lasting past mid-November will be carried on the omnibus appropriations bill or any other legislation produced by the Appropriations Committees.

In the meantime, Oberstar's stated reason for pursuing a short-term an extension as possible is so his committee can report, and the House can pass, a comprehensive six-year bill. But this requires agreement on a revenue title for the legislation increasing taxes or fees (or the national debt) by around \$100 billion in total in order to pay for the bill Oberstar wants. And over the last two weeks there appears to have been no motion in the House on the revenue front. The outlook for T&I action on Oberstar's six-year bill is still quite unclear.

Highway Account of HTF Ends FY09 With \$8.0 Billion On-Hand

The Highway Account of the Highway Trust Fund finished fiscal year 2009 with \$7.995 billion in balances. However, this was due to a \$7.0 billion bailout from the general fund of the Treasury that was transferred to the Trust Fund in early August (following another \$8.0 billion bailout in September 2008). If the August bailout had not taken place, the Highway Account would likely have run out of cash on a day-to-day basis in late September. An estimated \$2 billion will be deposited in the Highway Account this week and retroactively credited to FY 2009 reflecting fuel tax payments made in the last two weeks of September but not processed through the Treasury and transferred to the HTF before September 30.

HIGHWAY ACCOUNT OF THE HIGHWAY TRUST FUND

(Dollar amounts in millions)

Period Ending	Begin. Balance	Tax Receipts	Dollars Out	Ending Balance
9/4/2009	8,853	1	(1,188)	7,666
9/11/2009	7,666	1,269	(542)	8,394
9/18/2009	8,394	-	(816)	7,577
9/25/2009	7,577	1,401	(590)	8,388
9/30/2009	8,388	146	(539)	7,995

FHWA Giveth, and FHWA Taketh Away...

GROSS (PRE-RESCISSION) AND NET (POST-RESCISSION) FY 2009 HIGHWAY APPORTIONMENTS

	Actual FY 2009 Highway Formula Apportionments	Minus Rescission In Omnibus Appropriations	Minus Final Rescission in Sec. 10212 of SAFETEA-LU As Amended:		Equals: Net FY 2009 Highway Formula Apportionments	Net Percent Decrease
	Pre-Rescissions		"Real Money" (Equity Bonus)	Other CA Subj. to Limit		
Alabama	720,167,779	(52,584,977)	(6,788,901)	(169,302,093)	491,491,808	-30.81%
Alaska	334,714,920	(33,964,710)	(15,544,451)	(65,395,000)	219,810,759	-29.68%
Arizona	734,702,687	(64,592,477)	(19,527,220)	(151,318,268)	499,264,723	-29.39%
Arkansas	456,112,213	(39,535,907)	(4,431,950)	(104,965,353)	307,179,003	-31.68%
California	3,310,972,003	(293,253,191)	(1)	(795,619,594)	2,222,099,218	-32.89%
Colorado	488,420,872	(43,583,148)	-	(114,985,999)	329,851,725	-32.47%
Connecticut	466,061,951	(44,603,309)	-	(119,705,144)	301,753,498	-35.25%
Delaware	143,687,127	(12,296,263)	(1,998,708)	(32,707,796)	96,684,360	-31.32%
Dist. of Col.	136,069,626	(12,181,744)	(362,121)	(34,318,130)	89,207,631	-34.17%
Florida	1,853,266,783	(161,117,494)	(0)	(444,003,590)	1,248,145,699	-32.65%
Georgia	1,251,860,739	(109,107,524)	(1,266,489)	(315,719,092)	825,767,634	-33.94%
Hawaii	146,371,519	(15,345,464)	(813,047)	(37,834,470)	92,378,538	-36.33%
Idaho	267,386,444	(24,384,215)	-	(65,490,357)	177,511,872	-33.61%
Illinois	1,219,875,275	(109,421,749)	(80,845,691)	(209,796,787)	819,811,048	-26.17%
Indiana	933,607,823	(84,117,973)	-	(218,595,722)	630,894,128	-32.42%
Iowa	415,284,967	(36,532,869)	-	(97,803,350)	280,948,748	-32.35%
Kansas	352,297,846	(29,565,954)	(3,251)	(92,064,359)	230,664,282	-34.52%
Kentucky	617,843,673	(52,476,786)	(6,497,927)	(144,596,754)	414,272,206	-31.90%
Louisiana	622,363,573	(55,768,892)	(951,305)	(134,341,934)	431,301,442	-30.55%
Maine	152,035,403	(12,576,262)	-	(40,356,371)	99,102,770	-34.82%
Maryland	560,270,302	(50,679,943)	(29,547)	(140,779,934)	368,780,877	-34.17%
Massachusetts	572,403,291	(54,647,719)	(3,398,181)	(144,130,415)	370,226,975	-34.73%
Michigan	1,005,579,924	(85,406,835)	(3,900)	(263,350,445)	656,818,744	-34.68%
Minnesota	581,459,128	(47,733,647)	-	(133,119,494)	400,605,987	-31.10%
Mississippi	430,486,681	(36,108,932)	(4,781,582)	(98,185,054)	291,411,113	-31.20%
Missouri	846,329,512	(74,160,262)	-	(202,262,565)	569,906,685	-32.66%
Montana	345,429,222	(31,910,049)	-	(83,984,190)	229,534,983	-33.55%
Nebraska	263,961,548	(22,978,046)	-	(64,812,320)	176,171,182	-33.26%
Nevada	278,790,512	(25,261,881)	-	(38,993,297)	214,535,335	-23.05%
New Hampshire	158,183,641	(14,211,378)	(119,563)	(41,090,159)	102,762,541	-34.96%
New Jersey	934,996,954	(88,242,502)	(12,423,685)	(220,970,448)	613,360,319	-33.07%
New Mexico	345,328,513	(30,509,789)	(6,015,150)	(76,519,366)	232,284,208	-30.99%
New York	1,566,754,887	(145,830,156)	-	(408,000,474)	1,012,924,257	-35.35%
North Carolina	1,013,850,615	(88,067,164)	(0)	(249,848,311)	675,935,139	-33.33%
North Dakota	223,812,211	(19,443,205)	-	(54,526,923)	149,842,083	-33.05%
Ohio	1,271,966,664	(111,197,305)	-	(308,052,912)	852,716,447	-32.96%
Oklahoma	547,146,429	(47,627,650)	(4,571,526)	(131,599,059)	363,348,194	-32.76%
Oregon	410,254,119	(36,305,573)	-	(98,715,618)	275,232,928	-32.91%
Pennsylvania	1,561,501,663	(138,715,427)	(21,014,166)	(384,735,688)	1,017,036,382	-33.52%
Rhode Island	178,249,629	(16,610,343)	-	(44,547,755)	117,091,531	-34.31%
South Carolina	598,929,553	(50,911,437)	-	(145,726,201)	402,291,915	-32.83%
South Dakota	241,550,301	(21,082,534)	(36,367)	(57,876,403)	162,554,997	-32.69%
Tennessee	783,559,768	(65,679,045)	(13,350,493)	(177,269,181)	527,261,049	-31.01%
Texas	3,137,306,196	(272,403,085)	(102,709,364)	(639,531,051)	2,122,662,696	-29.07%
Utah	281,631,755	(25,531,368)	(4,433,674)	(60,631,020)	191,035,694	-30.59%
Vermont	146,537,637	(12,128,206)	(211,059)	(36,388,451)	97,809,921	-33.11%
Virginia	953,848,252	(80,340,594)	(17,600,940)	(212,871,450)	643,035,268	-30.74%
Washington	599,085,428	(53,772,670)	(1)	(148,061,996)	397,250,761	-33.69%
West Virginia	388,585,722	(31,926,094)	(34,812)	(93,786,972)	262,837,845	-32.35%
Wisconsin	703,347,039	(61,015,614)	(4,566,838)	(167,358,481)	470,406,105	-32.47%
Wyoming	245,264,943	(22,550,639)	(1)	(57,022,295)	165,692,008	-32.44%
Total	35,799,505,262	(3,150,000,000)	(334,331,909)	(8,373,668,091)	23,941,505,262	-32.19%

The totals represent actual FY 2009 apportionments from FHWA Notices N.4510.684 through N.4510.696, which differ somewhat from the totals predicted in the original August 2005 formula run on the FHWA website. Below-the-line High Priority Project funding is not included.

...And Then FHWA Giveth Again (A Little, At Least...)

ESTIMATED HIGHWAY APPORTIONMENTS GOING OUT TO STATES THIS WEEK UNDER THE "CR"

State	31/365ths of	31/365ths of Certain FY 2009 Allocations Under Earmarked Programs, To Be Apportioned Under					Equals: Total	
	Total FY 2009 Net Formula Apportionments	Section 157(d) of the CR to States For the Same Purposes As STP Apportionments:					Est. CR Highway Formula Apportionments	
		HPP (sec. 1702)	TriIMP (sec. 1934)	PNRS (sec. 1301)	Corridor (sec. 1302)	Bridge (sec. 1114)	MAGLEV (sec. 1307)	
Alabama	41,743,140	4,676,961	1,019,178	-	-	-	-	47,439,279
Alaska	18,668,859	10,135,726	1,273,973	-	509,589	1,592,466	-	32,180,612
Arizona	42,403,305	2,028,844	-	-	50,959	-	-	44,483,108
Arkansas	26,089,176	4,364,800	220,822	-	2,434,703	-	-	33,109,501
California	188,726,235	19,644,684	2,191,233	7,643,836	11,210,959	1,061,644	-	230,478,590
Colorado	28,014,804	4,114,082	628,493	849,315	50,959	-	-	33,657,653
Connecticut	25,628,379	3,148,717	934,247	-	594,521	-	-	30,305,863
Delaware	8,211,548	2,109,699	594,521	-	-	-	-	10,915,768
Dist. of Col.	7,576,539	1,231,167	-	-	1,273,973	-	-	10,081,678
Florida	106,006,895	8,875,139	866,301	-	-	-	-	115,748,335
Georgia	70,133,689	5,947,393	934,247	-	-	-	-	77,015,329
Hawaii	7,845,848	2,133,479	339,726	-	-	-	-	10,319,054
Idaho	15,076,351	2,327,123	169,863	-	-	-	-	17,573,337
Illinois	69,627,788	10,116,226	849,315	6,624,658	3,643,562	-	-	90,861,548
Indiana	53,582,789	4,218,514	169,863	-	311,416	-	-	58,282,581
Iowa	23,861,400	4,300,932	2,038,356	-	127,397	743,151	-	31,071,236
Kansas	19,590,665	3,040,548	339,726	-	-	-	-	22,970,939
Kentucky	35,184,763	4,770,161	1,189,041	-	141,553	-	-	41,285,517
Louisiana	36,631,081	4,796,932	169,863	-	3,906,849	-	-	45,504,725
Maine	8,416,948	3,046,663	339,726	-	-	-	-	11,803,337
Maryland	31,321,116	4,768,395	288,767	-	169,863	-	-	36,548,140
Massachusetts	31,443,935	4,226,192	679,452	-	-	-	-	36,349,579
Michigan	55,784,606	5,338,251	1,698,630	339,726	-	-	-	63,161,213
Minnesota	34,024,070	5,496,467	271,781	849,315	849,315	-	-	41,490,949
Mississippi	24,749,985	4,326,071	1,715,616	-	141,553	-	-	30,933,225
Missouri	48,403,034	6,135,452	3,821,918	-	-	1,061,644	-	59,422,047
Montana	19,494,752	2,795,945	2,609,521	-	-	-	-	24,900,218
Nebraska	14,962,484	2,714,411	339,726	-	-	-	-	18,016,621
Nevada	18,220,809	3,652,055	1,698,630	-	-	1,061,644	1,910,959	26,544,097
New Hampshire	8,727,777	1,125,173	-	-	-	-	-	9,852,950
New Jersey	52,093,616	5,862,992	594,521	1,698,630	-	-	-	60,249,759
New Mexico	19,728,248	2,626,082	169,863	237,808	-	-	-	22,762,001
New York	86,029,183	12,133,512	1,019,178	1,698,630	-	-	-	100,880,504
North Carolina	57,408,190	5,124,726	424,658	-	-	-	-	62,957,574
North Dakota	12,726,314	2,191,233	679,452	-	-	-	-	15,596,999
Ohio	72,422,493	7,872,745	1,817,534	509,589	-	-	-	82,622,361
Oklahoma	30,859,710	3,604,493	2,293,151	-	2,463,014	1,061,644	-	40,282,011
Oregon	23,375,947	5,214,237	339,726	2,717,808	-	849,315	-	32,497,034
Pennsylvania	86,378,432	9,367,463	339,726	849,315	-	-	-	96,934,936
Rhode Island	9,944,760	2,860,493	1,273,973	-	-	-	-	14,079,226
South Carolina	34,167,259	3,611,288	-	679,452	169,863	-	-	38,627,861
South Dakota	13,806,041	3,064,139	1,273,973	-	-	-	-	18,144,153
Tennessee	44,781,075	5,804,899	254,795	-	1,840,183	-	-	52,680,951
Texas	180,280,941	11,528,093	-	-	141,553	-	-	191,950,587
Utah	16,224,949	3,624,027	849,315	-	-	-	-	20,698,292
Vermont	8,307,144	2,340,712	2,072,329	-	-	1,061,644	-	13,781,829
Virginia	54,613,954	4,676,818	1,494,795	764,384	1,698,630	-	-	63,248,580
Washington	33,739,106	4,700,449	-	3,736,986	-	-	-	42,176,541
West Virginia	22,323,214	3,556,932	594,521	509,589	849,315	-	-	27,833,570
Wisconsin	39,952,299	4,683,973	-	509,589	509,589	-	-	45,655,450
Wyoming	14,072,472	1,746,192	-	-	-	-	-	15,818,664
Total	2,033,388,118	251,801,698	42,884,041	30,218,630	56,549,096	8,493,151	1,910,959	2,425,245,693

These are NOT official estimates from FHWA. These are simply the total apportionments for all FY 2009 formula programs from the official FHWA Notices (pre-penalty but after the \$3.15 billion and \$8.708 billion rescissions) and the state by state totals of all earmarks in FY 2009 that are treated as STP formula money under section 157(d) of the CR, multiplied by 31 and then divided by 365. NOTE: if any money actually went to non-Nevada states under the MAGLEV program in FY 2009 it would be added to that state's total under the CR at the same rate.

\$8.7 Billion Cut In Highway Contract Authority Takes Place

Congress's failure to take action to repeal a provision of the 2005 SAFETEA-LU law by the close of business on September 30 led to a cut of \$8.708 billion in highway contract authority previously apportioned to state departments of transportation.

\$8.374 billion of the dollars rescinded were only "potential dollars" which could not be obligated and spent without the exercise of corresponding dollar amounts of obligation limitation provided in the annual appropriations bills.

However, the other \$334 million rescinded was "real money" — dollars of equity bonus contract authority that are either exempt from obligation or else were apportioned along with special dedicated obligation limitation on a dollar-for-dollar basis.

As a result, the Congressional Budget Office scored the rescission as cutting budget authority (potential spending commitments) by \$8.708 billion in FY 2009 but only scored it as reducing outlays (eventual dollars leaving the Treasury) as \$334 million over the ten-year deficit window.

(The \$334 million number was not known until September 30. Earlier estimates totaled \$490 million, some of which was from Appalachian highways money, but states were able to spend down all their above-limitation ADHS money and enough of the equity bonus money to get the outlay number down.)

Language put into law by House Transportation and Infrastructure chairman James Oberstar (D-MN) in 2007 was designed to protect the transportation enhancements and CMAQ programs from taking disproportionate hits in a rescission. But the table below shows that those programs still wound up taking disproportionate hits. CMAQ, for example, was only 6.1 percent of total FY 2009 formula apportionments but represented 10.4 percent of the total amount rescinded last week.

	FY2009 Formula \$	9/30/2009 Rescission
Enhancements	2.33%	5.44%
CMAQ	6.12%	10.44%
"Real Money"	7.39%	3.84%

Program	Amount	Percentage
Interstate Maintenance	\$ 1,108,327,578	12.73%
National Highway System	\$ 909,911,186	10.45%
STP - enhancements	\$ 473,973,333	5.44%
STP - over 200K	\$ 1,377,742,561	15.82%
STP - 5K-200K	\$ 407,736,365	4.68%
STP - under 5K	\$ 114,779,051	1.32%
STP - any area	\$ 604,739,988	6.94%
Bridge - off-system	\$ 325,509,873	3.74%
Bridge - on or off-system	\$ 1,092,568,453	12.55%
CMAQ	\$ 909,130,193	10.44%
HSIP	\$ 604,121,189	6.94%
RHC - devices	\$ 43,610,608	0.50%
RHC - hazard elimination	\$ 48,938,000	0.56%
High Risk Rural Roads	\$ 50,889,317	0.58%
Recreational Trails	\$ 31,593,872	0.36%
Metro Planning	\$ 77,426,295	0.89%
EB - Exempt	\$ 119,957,045	1.38%
EB - Special No-Year	\$ 214,374,864	2.46%
Safe Routes To Schools	\$ 38,715,788	0.44%
Border Infrastructure	\$ 36,084,601	0.41%
Appalachian Highways	\$ 117,869,842	1.35%
TOTAL C.A. RESCIENDED	\$ 8,708,000,000	100.00%

The bulk of the rescission of real money was felt by a very few states — 85 percent of the \$334 million came from just eight states (almost \$184 million of the \$334 million came just from Texas and Illinois), which failed to plan ahead for the rescission by obligating their equity bonus funding before the end of the month as many other states did.

See table on page 4 for more info.

"REAL MONEY" HIGHWAY APPORTIONMENTS LOST BY STATES IN THE 9-30-09 RESCISSION

Represents rescinded amounts of mandatory and special (no-year) equity bonus contract authority which had corresponding dollars of obligation authority (in the case of the special money) attached or which were not subject to limitation at all (the mandatory money).

State	Amount	State	Amount	State	Amount
Texas	-\$102,709,363.57	Delaware	-\$1,998,708.40	Colorado	\$0.00
Illinois	-\$80,845,690.89	Georgia	-\$1,266,488.93	Connecticut	\$0.00
Pennsylvania	-\$21,014,165.61	Louisiana	-\$951,304.69	Idaho	\$0.00
Arizona	-\$19,527,219.86	Hawaii	-\$813,047.38	Indiana	\$0.00
Virginia	-\$17,600,939.62	Dist. of Col.	-\$362,120.83	Iowa	\$0.00
Alaska	-\$15,544,451.17	Vermont	-\$211,058.56	Maine	\$0.00
Tennessee	-\$13,350,493.30	New Hampshire	-\$119,562.75	Minnesota	\$0.00
New Jersey	-\$12,423,685.02	South Dakota	-\$36,367.32	Missouri	\$0.00
Alabama	-\$6,788,901.48	West Virginia	-\$34,811.64	Montana	\$0.00
Kentucky	-\$6,497,927.00	Maryland	-\$29,547.10	Nebraska	\$0.00
New Mexico	-\$6,015,149.99	Michigan	-\$3,899.76	Nevada	\$0.00
Mississippi	-\$4,781,582.37	Kansas	-\$3,250.58	New York	\$0.00
Oklahoma	-\$4,571,525.99	Washington	-\$0.69	North Dakota	\$0.00
Wisconsin	-\$4,566,838.42	California	-\$0.56	Ohio	\$0.00
Utah	-\$4,433,673.65	Wyoming	-\$0.51	Oregon	\$0.00
Arkansas	-\$4,431,949.65	North Carolina	-\$0.33	Rhode Island	\$0.00
Massachusetts	-\$3,398,181.47	Florida	-\$0.04	South Carolina	\$0.00

Discr. Grants

CONTINUED FROM PAGE ONE

tary for “discretionary grants to be awarded to State and local governments or transit agencies on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region...”

The grants can be used for projects listed in the box at right. In addition, up to \$200 million of the \$1.5 billion can be used for the TIFIA credit assistance program, to leverage much larger amounts of private equity for surface transportation projects.

The table and chart below break down the types of project requests submitted to USDOT before the deadline. The limited data released by the department so far (more detail is supposedly forthcoming) allows several tentative conclusions to be drawn.

Size does matter. The discretionary grant program first showed up in the Senate version of the stimulus bill, not the House’s. In the original Senate version, a minimum grant size of \$20 million and a maximum grant size of \$500 million were established (the total program size was \$5.5 billion in that version of the bill). After negotiat-

USDOT Discretionary Grants—Eligible Purposes

Grant purposes “shall include, but not be limited to”:

*Highway or bridge projects eligible under title 23, United States Code, including:

- ⇒ interstate rehabilitation,
- ⇒ improvements to the rural collector road system,
- ⇒ reconstruction of overpasses and interchanges,
- ⇒ bridge replacements,
- ⇒ seismic retrofit projects for bridges, and
- ⇒ road realignments;

*Public transportation projects eligible under chapter 53 of title 49, United States Code, including investments in projects participating in the New Starts or Small Starts programs that will expedite the completion of those projects and their entry into revenue service;

*Passenger and freight rail transportation projects; and

*Port infrastructure investments, including projects that connect ports to other modes of transportation and improve the efficiency of freight movement.

ing with the House, the final version of the law set grant sizes between \$20 million and \$300 million, but allowed DOT a loophole on the minimum: “...the Secretary may waive the minimum grant size cited in the preceding proviso for the purpose of funding significant projects in smaller cities, regions, or States...”

The *Federal Register* notice of June 17, 2009 setting out the rules for the program made it clear that DOT was not averse to waiving the \$20 million minimum grant size for smaller projects. And the grant-seekers listened — over one-third of the 1,380 project requests were un-

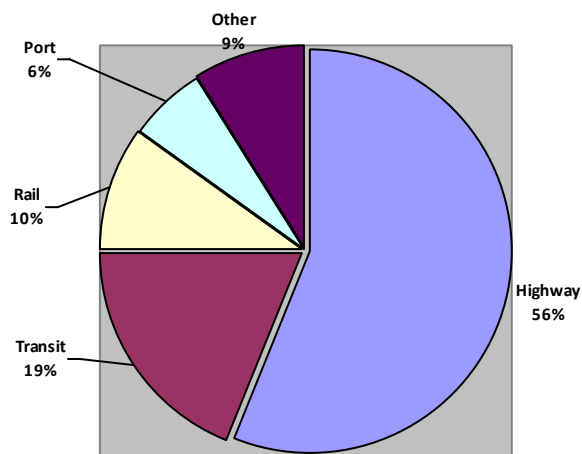
der \$20 million. These 514 projects totaled \$5.5 billion, or almost ten percent of the total dollar value of all project requests.

While the law gives DOT discretion to waive the \$20 million minimum, it was the clear intention of Congress to give preference to larger projects, so the number of waivers granted by the end of the grant process will be interesting. (And it will also be interesting to see how small the smallest grant requests are once USDOT releases the full list.)

Just 81 of the 1,380 grant requests were for real “megaprojects” over

CONTINUED ON NEXT PAGE

WHAT PERCENTAGE OF THE \$56.56 BILLION IN GRANT REQUESTS ARE FOR EACH MODE?



HOW DO THE GRANT REQUESTS BREAK DOWN BY MODE AND BY PROJECT SIZE?

Type or Size of Project Request	# of Req.	Total Amount Of Requests	Percent of...	
			Total #	Total \$\$
Highway	781	\$31.79 billion	56.6%	56.2%
Transit	221	\$10.59 billion	16.0%	18.7%
Rail	127	\$5.78 billion	9.2%	10.2%
Port	95	\$3.32 billion	6.9%	5.9%
Other	156	\$5.08 billion	11.3%	9.0%
Total	1380	\$56.56 billion	100.0%	100.0%
Under \$20 million	514	\$5.5 billion	37.2%	9.7%
\$20-\$100 million	785	\$35.2 billion	56.9%	62.2%
Over \$100 million	81	\$15.8 billion	5.9%	27.9%
Total	1380	\$56.56 billion	100.0%	100.0%

Discr. Grants

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\$100 million. Those, however, accounted for 28 percent of the total value requested (\$15.8 billion of the total \$55.6 billion).

The bulk of the requests were in the \$20 million to \$100 million range.

Highways are still the dominant mode. Highway projects counted for 56 percent of the total requests (both in aggregate dollar terms and in number of projects). Transit projects were nineteen percent of the dollar total. Intercity rail projects represented \$5.78 billion, or ten percent of the total.

However, it will be interesting to see how many rail projects applied both for these discretionary grants and for the \$8 billion in high-speed and intercity passenger rail grants

provided by the stimulus act under a different program.

It is not clear from the limited information released by DOT whether the "other" category constitutes multi-modal projects, credit assistance projects, or something else.

Some states ask more than others. Surprisingly, California (which has the largest highway program in the country and transit needs far higher than its rival in size Texas), only finished third in the total amount of projects requested, with \$3.2 billion.

Texas was first with \$5.1 billion and Florida was second with \$4.2 billion. In all, seven states had request totals that exceeded the entire size of the grant program.

And U.S. territories got into the act. Even tiny Guam had more requests (in dollars) than North and South Dakota combined.

(Guam's \$123.7 million in requests makes about \$700 for each of Guam's estimated 178,000 residents. Texas's \$5.1 billion would be about \$210 per resident. North Dakota requested just \$56 per resident.)

People tried to get while the getting was good. A big reason for the large number of applications is that the program, as enacted, was intended as a one-time-only thing. However:

The Senate's version of the fiscal 2010 transportation appropriations bill (H.R. 3288) appropriates an additional \$1.1 billion for a discretionary surface transportation grant program that is very similar (but not quite identical) to the program appropriated under the stimulus act. Whether or not to accept the Senate proposal is one of the last outstanding issues in House-Senate negotiations.

APPLICATIONS FILED FOR \$1.5 BILLION IN DISCRETIONARY SURFACE TRANSPORTATION GRANTS

State	# of Requests	Total \$\$ Amount of Requests	Average Request Size	State	# of Requests	Total \$\$ Amount of Requests	Average Request Size
Alabama	36	\$ 1,999,960,890	\$ 55,554,469	Nebraska	7	\$ 321,416,725	\$ 45,916,675
Alaska	11	\$ 570,175,288	\$ 51,834,117	Nevada	14	\$ 778,704,388	\$ 55,621,742
Arizona	38	\$ 1,785,213,690	\$ 46,979,308	New Hampshire	2	\$ 124,428,516	\$ 62,214,258
Arkansas	3	\$ 185,400,000	\$ 61,800,000	New Jersey	31	\$ 1,292,067,074	\$ 41,679,583
California	117	\$ 3,245,011,036	\$ 27,735,137	New Mexico	17	\$ 830,255,382	\$ 48,838,552
Colorado	30	\$ 1,100,492,135	\$ 36,683,071	New York	76	\$ 2,983,485,079	\$ 39,256,383
Connecticut	23	\$ 630,282,554	\$ 27,403,589	North Carolina	10	\$ 845,466,056	\$ 84,546,606
Delaware	4	\$ 181,340,000	\$ 45,335,000	North Dakota	2	\$ 35,960,125	\$ 17,980,063
Dist. of Col.	8	\$ 956,523,500	\$ 119,565,438	Ohio	48	\$ 2,344,379,192	\$ 48,841,233
Florida	115	\$ 4,211,853,349	\$ 36,624,812	Oklahoma	27	\$ 956,137,967	\$ 35,412,517
Georgia	32	\$ 1,664,435,343	\$ 52,013,604	Oregon	21	\$ 848,971,440	\$ 40,427,211
Guam	4	\$ 123,713,000	\$ 30,928,250	Pennsylvania	40	\$ 2,124,102,600	\$ 53,102,565
Hawaii	1	\$ 95,000,000	\$ 95,000,000	Puerto Rico	22	\$ 522,851,612	\$ 23,765,982
Idaho	8	\$ 301,623,252	\$ 37,702,907	Rhode Island	4	\$ 166,400,000	\$ 41,600,000
Illinois	49	\$ 2,344,011,460	\$ 47,836,969	South Carolina	19	\$ 1,299,840,001	\$ 68,412,632
Indiana	50	\$ 1,373,011,197	\$ 27,460,224	South Dakota	2	\$ 74,643,554	\$ 37,321,777
Iowa	28	\$ 993,543,422	\$ 35,483,694	Tennessee	15	\$ 657,360,347	\$ 43,824,023
Kansas	7	\$ 416,772,415	\$ 59,538,916	Texas	125	\$ 5,112,780,975	\$ 40,902,248
Kentucky	8	\$ 253,044,408	\$ 31,630,551	Utah	5	\$ 164,400,017	\$ 32,880,003
Louisiana	27	\$ 1,445,137,195	\$ 53,523,600	Vermont	4	\$ 112,284,936	\$ 28,071,234
Maine	6	\$ 174,540,000	\$ 29,090,000	Virgin Islands	3	\$ 155,975,000	\$ 51,991,667
Maryland	10	\$ 314,930,787	\$ 31,493,079	Virginia	26	\$ 1,267,691,159	\$ 48,757,352
Massachusetts	20	\$ 817,005,315	\$ 40,850,266	Washington	49	\$ 1,658,874,584	\$ 33,854,583
Michigan	45	\$ 1,139,498,162	\$ 25,322,181	West Virginia	23	\$ 956,993,446	\$ 41,608,411
Minnesota	35	\$ 1,417,778,576	\$ 40,507,959	Wisconsin	13	\$ 434,266,910	\$ 33,405,147
Mississippi	11	\$ 719,412,602	\$ 65,401,146	Wyoming	6	\$ 355,011,760	\$ 59,168,627
Missouri	21	\$ 889,628,211	\$ 42,363,248	TOTAL	1380	\$ 56,558,510,774	\$ 40,984,428
Montana	22	\$ 784,424,142	\$ 35,655,643				

NEW AND NOTABLE ON THE INTERNET

Discretionary Surface Transportation Grants

The Federal Register notice laying out the terms of the \$1.5 billion discretionary surface transportation grant program under the stimulus law is here:

<http://edocket.access.gpo.gov/2009/pdf/E9-14262.pdf>

FAA Reauthorization

The text of S. 1451, the Senate FAA bill, as reported in the Senate is here:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1451rs.txt.pdf

And the Commerce Committee's report on the bill is here:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:sr082.111.pdf

FTA Urbanized Area Formula Grants

FTA has prepared a new draft version of Circular 9030 (version 1D) telling transit agencies how to apply for Urbanized Area Formula Grants incorporating the changes in law made by SAFETEA-LU. Four years ago. The draft is here:

http://www.fta.dot.gov/documents/Proposed_FTA_Circular_9030_1D_9-24-09.pdf

STATUS OF PENDING TRANSPORTATION-RELATED NOMINATIONS

Agency	Nominee	Position	Senate Committee	Latest Action
Department of Transportation	Chris Bertram	Assistant Secretary for Budget and Programs	Commerce, Science and Transportation	Nomination confirmed 8/7/09
Department of Transportation	Susan Kurland	Assistant Secretary for Aviation and Int'l Affairs	Commerce, Science and Transportation	Nomination confirmed 8/7/09
DOT-Federal Motor Carrier Safety Admin.	Anne Ferro	Administrator	Commerce, Science and Transportation	Hearing held on 9/23/09
DOT-National Highway Traffic Safety Admin.	Charles Hurley	Administrator	Commerce, Science and Transportation	Nomination reportedly will be withdrawn
DOT—Pipeline and Hazard. Materials Adm.	Cynthia Quarterman	Administrator	Commerce, Science and Transportation	Hearing held on 9/23/09
National Transport. Safety Board	Christopher Hart	Member for a term expiring 12/31/2012	Commerce, Science and Transportation	Nomination confirmed 8/7/09
National Transport. Safety Board	Mark R. Rosekind	Member for a term expiring 12/31/2014	Commerce, Science and Transportation	Nomination transmitted 10/1/09
Surface Transportation Board	Daniel Elliott	Chairman	Commerce, Science and Transportation	Nomination confirmed 8/7/09
Department of the Army	Jo-Ellen Darcy	Assistant Secretary for Civil Works	Armed Services <i>and</i> Enviro. & Public Works	Nomination confirmed 8/7/09

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THIS WEEK IN COMMITTEE

Tuesday, October 6, 2009 — House Transportation and Infrastructure — Subcommittee on Water Resources and Environment — subcommittee hearing on protecting Long Island Sound — *11:00 a.m., 2167 Rayburn.*

Wednesday, October 7, 2009 — House Transportation and Infrastructure — Subcommittee on Coast Guard and Maritime Transportation — subcommittee hearing on the credentialing of mariners — *1:00 p.m., 2167 Rayburn.*

NEXT WEEK IN COMMITTEE

Wednesday, October 14, 2009 — House Transportation and Infrastructure — Subcommittee on Railroads, Pipelines and Hazardous Materials — subcommittee hearing on high-speed rail in the United States — *2:00 p.m., 2167 Rayburn.*

Thursday, October 15, 2009 — House Transportation and Infrastructure — Subcommittee on Water Resources and Environment — subcommittee hearing on the 37th anniversary of the Clean Water Act — *10:00 a.m., 2167 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	H.R. 3288 passed House 7/23/09 by a vote of 256-168	H.R. 3288 passed Senate amended 9/17/09 by vote of 73-25	
FY 2010 Energy and Water Appropriations	H.R. 3183 passed House 7/17/09 by a vote of 320-97	H.R. 3183 passed Senate amended 7/29/09 by vote of 85-9	Conference report (H. Rept. 111-278) passed House 10/1/09
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	Conference committee meeting may be held this week
Federal Aviation Admin. Reauthorization Bill	H.R. 915 passed House 5/22/09 by a vote of 277-136	S. 1451 reported 9/29/09 S. Rept. 111-82	
Surface Transportation Reauthorization Bill	Subcommittee marked up draft bill on 6/24/09		
Short-Term Extension of Surface Transportation Laws	H.R. 3617 passed House 9/23/09 by a vote of 335-85	S. 1498 reported 7/22/09 S. Rept. 111-59	
Water Resources Development Act			
FY 2010 Coast Guard Authorization	H.R. 3619 ordered reported 9/24/09 by House T&I	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		