

## TRANSPORTATION WEEKLY

### UPDATE – SENATE MAY MOVE SIX-MONTH SURFACE TRANSPORTATION EXTENSION

FRIDAY, OCTOBER 23, 2009 – 10:10 A.M.

Leaders of the Senate Environment and Public Works Committee have backed off their previous insistence on an eighteen-month extension of federal surface transportation programs (a duration first advocated by the White House) and are instead preparing to bring a “clean” six-month extension of those programs to the Senate floor as early as Monday. (The Senate is not in session today.)

The leaders hope to “hotline” a six-month extension of contract authority for surface transportation programs and expenditure authority from the Highway Trust Fund at gross FY 2009 levels (gross meaning before the \$11.9 billion in FY 2009 contract authority rescissions) as an amendment to the House-passed three-month extension bill (H.R. 3617). Hotlining is an email request to all 100 Senate offices to see if they have any objection to the legislation being considered and passed by unanimous consent at the close of the day’s business.

Senate EPW chairman Barbara Boxer (D-CA) and ranking member Jim Inhofe (R-OK) hope to hotline the bill on Monday if they can get House Transportation and Infrastructure chairman Jim Oberstar (D-MN) to agree in advance to accept their six-month legislation as is. The Senate legislation does not simply have a different expiration date than the House bill; it also has two substantive differences.

First, the Senate bill would treat the projects of national and regional significance program under section 1301 of SAFETEA-LU and the national corridor infrastructure program under section 1302 of SAFETEA-LU the same way the House and Senate extensions treat all other major earmarked project accounts – by giving each state the dollar amount of the earmarks it received from those accounts in FY 2009 for use as formula money as if under the STP program. The House extension would let DOT give out the PNRs and corridor money as discretionary grants. This makes a big difference to the states of California and Illinois, who made out very well under the PNRs and corridor earmarks in SAFETEA-LU.

Second, the Senate bill would add an extra \$8.7 billion in highway contract authority formula apportionments to states to “make them whole” from the effect of the rescission of contract authority that took place on September 30, 2009 under section 10212 of SAFETEA-LU. However, this additional contract authority would all be subject to the overall annual obligation limitation on the program – the Senate provision would not restore the

\$334 million in obligation authority (i.e. “real money”) that was also rescinded on September 30 (though perhaps there is a way to restore that funding in the future as well). The House bill did not address the rescission issue.

Sen. George Voinovich (R-OH), a senior EPW member who has been working closely with Oberstar on reauthorization issues (much to the chagrin of his fellow Senators) is said to be trying to convince Oberstar to accept the Senate’s “last, best” offer as state DOTs begin to shut off all new contract bidding for lack of sufficient contract authority. Voinovich has had a “hold” on the previous eighteen-month version of the Senate extension on the grounds that it was too long.

The six-month duration of the revised Senate extension solves several other problems. Under the latest projections from the Federal Highway Administration, the Highway Account of the Highway Trust Fund should have enough cash to remain solvent until around Memorial Day 2010 (eight months into fiscal year 2010). Any extension lasting longer than that would have to include another transfer of funds from the general fund to the Trust Fund, and the \$19.8 billion in such transfers in the eighteen-month extension had drawn several Republican objections. But those Senators are not expected to raise objections to a six-month version that does not contain any transfers to the Trust Fund.

There is one other potential objection – a Budget Act point of order that might be raised by Budget Committee ranking member Judd Gregg (R-NH) on the grounds that the extension violates the budget authority allocations to the EPW, Banking, and Commerce Committees in the FY 2010 budget resolution because the extension restores contract authority for all agencies (FHWA, FTA, FMCSA and NHTSA) to pre-rescission levels and adds the extra \$8.7 billion in budget authority to restore rescinded funds. But it is not certain that Gregg will insist on the point of order (since the six-month bill contains no transfers of money from the general fund to the Trust Fund and is scored as deficit-neutral), and if he does, it is hoped that he could be mollified by being allowed to make the point of order, at which Boxer would move to waive the Budget Act and the waiver motion would surely get more than the necessary 60 votes, at which point the Senate would then vote to pass the bill.

The Senate extension should provide a total of \$24.6 billion in highway formula contract authority apportionments to states (when added to the \$2 billion apportioned last week under the continuing resolution, the total would be \$26.6 billion).