

# THE LEGISLATIVE SERVICES GROUP'S

## *Transportation Weekly*

MONITORING AND ANALYZING DEVELOPMENTS IN FEDERAL TRANSPORTATION AND PUBLIC WORKS POLICY

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Tuesday, October 27, 2009

### *Legislative Schedules* *Week of October 26, 2009*

#### House

**Tuesday** — four measures under suspension of the rules plus motion to instruct conferees on Interior-Environment appropriations.

**Wednesday and the balance of the week** — six measures under suspension of the rules plus a conference report on Interior-Environment appropriations, and H.R. 3854 (small business financing).

#### Senate

The Senate convenes at 10 a.m. today for morning business. At 11 a.m. the Senate will consider the Berger judicial nomination, with a vote at 2:20 p.m. The Senate will recess from 12:30 to 2:15 p.m. for the weekly policy luncheons. At 6 p.m. the Senate will vote on a motion to invoke cloture on the motion to proceed to H.R. 3548, the unemployment extension bill.

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## Senate Leaders Trying To Pass \$39.5 Billion Surface Transportation Extension To April 30, 2010

So Far, Oberstar Opposing Senate Move; White House May Need To Break Impasse

Senate leaders are attempting to move a bill extending funding for federal surface transportation programs for six additional months (through April 30, 2010) as early as today.

Yesterday, both parties "hotlined" draft legislation proposed by Senate Public Works chairman Barbara Boxer (D-CA) and others, a process that involves asking all 100 Senate offices if they would object to the legislation passing the Senate by unanimous consent.

The legislation, which would consist of an amendment in the nature of a substitute to a House

-passed bill (H.R. 3617) that would extend such programs through December 31, 2009, drew one objection on the Republican side of the aisle. Two other GOP staffers believed the objector to be Sen. Jim DeMint (R-SC), though each party's leadership does not reveal the name of objectors during the hotlining process. DeMint's press secretary did not respond to an emailed request for comment by press time.

If DeMint is indeed the lone objector, Public Works ranking member Jim Inhofe (R-OK) will attempt to negotiate with him and ask his objections today.

If all 100 Senators agree to the hotlining process, the bill would be passed by the Senate this evening by unanimous consent as part of the body of "wrapup" business handled by the Senate by "UC" at the end of each business day.

The Senate's passage of a bill funding these programs for an additional six months from the end of the continuing resolution currently funding these programs through October 31 (seven months into fiscal 2010) would put the onus for action back on House Transportation and Infrastructure chairman James Oberstar (D-MN),

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## House Passes Coast Guard Authorization By Wide Margin

The House of Representatives last week passed a \$9.99 billion fiscal 2010 Coast Guard authorization bill, 385 to 11.

The bill (H.R. 3619) now goes to the Senate, which has struggled to pass Coast Guard authorization legislation in recent Congresses, though the Commerce, Science and Transportation Committee has ordered a bill (S. 1194) reported this year.

House Transportation and Infrastructure Committee chairman James Oberstar (D-MN), the bill manager, said that "Our bill authorizes \$10 billion for the Coast Guard for fiscal 2010. It will increase the total end strength of the Coast Guard by 1,500 service personnel to a level of 47,000. Now that, I just have to point out, that compares to 39,000 au-

thorized personnel in 1975, my first year in Congress, my first year in which I also served on the then-Merchant Marine and Fisheries Committee and on the Coast Guard Subcommittee. But since that time, Congress has added 27 new missions and responsibilities for the Coast Guard without substantially increasing the personnel or the fund-

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## Surface Extension

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who long opposed any extension of these programs past September 30, 2010 and only signed onto a three-month extension with great reluctance.

Aside from the duration (which Oberstar's staff say is somewhat negotiable), there are three substantive differences between the House bill and the Senate bill:

- Rescission.** The Senate bill restores \$8.708 billion in contract authority to states to replace amounts rescinded on September 30 under sec. 10212 of the SAFETEA-LU law; the House bill does not. The Senate bill does not restore \$334 million in obligation authority also lost in the rescission, so the Senate bill is now deficit-neutral and does not violate the PAYGO rule. However, it does add a large degree of Budget Act violation to the bill by breaching the Public Works Committee's budget authority allocation for FY 2010 in a big way, and this may be the reason that a conservative like DeMint would put a "hold" on the bill. (Though the seven-month bill does not contain any more transfers of money from the general fund to the Highway Trust Fund, which fall under a loophole in the Budget Act but which have much more serious real-world fiscal consequences that does the rescission restoration.)
- PNRS and Corridors.** The Senate bill treats all the major earmarked accounts in SAFETEA-LU equally — each state would get 7/12ths of the total FY 2009 amount the state received in earmarks in each account, to be added to the "core" formula programs. The House bill would take the PNRS and Corridor accounts and make them discretionary grant programs. This could cost California up to \$129.5 million over

### CONTRACT AUTHORITY PROVIDED BY THE SENATE BILL

| <u>Mode/Purpose</u>                   | <u>Total CA Provided</u>  |
|---------------------------------------|---------------------------|
| FAHP CA Subject to Limitation         | \$ 24,760,273,943         |
| Equity Bonus (exempt)                 | \$ 372,750,000            |
| Restoration of 9-30-09 Rescission     | \$ 8,708,000,000          |
| Total, FHWA                           | \$ 33,841,023,943         |
| Total NHTSA                           | \$ 428,329,507            |
| Total FMCSA                           | \$ 317,609,690            |
| Total FTA                             | \$ 4,876,996,250          |
| <b>Seven-Month Total, Senate Bill</b> | <b>\$ 39,463,959,390</b>  |
| <b>Minus Funds From CR to Oct. 31</b> | <b>\$ (3,447,292,946)</b> |
| <b>Net Total, Senate Bill</b>         | <b>\$ 36,016,666,444</b>  |

seven months and Illinois \$70.5 million over the same period, since those two states did very well in getting those earmarks.

- Firewalls.** The House bill extends the budget "firewalls" in section 8003 of the SAFETEA-LU law for the duration of the extension while the Senate bill does not (since in the Senate, that issue is in the jurisdiction of the Budget Committee). Though the firewalls have been mostly meaningless since the Budget Enforcement Act expired in FY 2003, this is a matter of principle with Oberstar, especially since all twelve extensions between the TEA21 and SAFETEA-LU laws extended the firewalls.

The U.S. Chamber of Commerce, the American Road and Transportation Builders Association, the National Stone, Sand, and Gravel Association, the National Asphalt Pavement Association, the American Automobile Association, and other groups were sending letters to Capitol Hill last night and this morning in support of the six-month extension idea.

Oberstar told Senators last Friday that he was not willing to accept a Senate-passed six-month extension simply because the Senate deigned to pass it and would keep his op-

tions open if the upper chamber passed a bill.

In discussions on Friday and yesterday, Oberstar aides indicated that they wanted to fight for the issues of the budget firewalls and the PNRS/Corridor funding being made discretionary (restoration of the rescinded funding does not appear to be objectionable to the House).

Moreover, there is a larger issue at work — namely the question of "six more months, and then what?"

House Highways and Transit Subcommittee chairman Peter DeFazio (D-OR) told *CQ* on Friday that House approval of an extension of six months duration would be contingent on the Senate leadership's agreeing to mark up and move through the Senate floor the full multi-year surface transportation reauthorization bill in that period of time.

This is very problematic. In the first place, it is not sure who in the Senate has the power to make such a commitment, since moving a bill takes major action by four committees and Herculean efforts by the Majority Leader.

Second, despite *TW* shorthand, Boxer's Senate panel is named the Environment and Public Works

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## Surface Extension

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Committee, and in the 111th Congress it is clear that environment comes first. Boxer's priority is the climate change bill and it is obvious that the surface bill will have to wait until that is done.

But finally, the biggest reason that the House and Senate have been at this impasse for the last few months is the insistence by the White House on an eighteen-month extension (through March 31, 2011) that would punt the whole issue into the next (112th) Congress. Senate leaders only backed this

duration after Obama Administration pressure, and eighteen months is still the White House's official position.

Because of the political need to "move the needle downwards" on unemployment between now and the November 2010 mid-term elections, Democratic leaders in Congress have put much pressure on the White House to move the reauthorization bill sooner — to get a bill signed into law by spring or summer 2010.

According to several off-the-record conversations with Obama Administration officials, the White House is contemplating backing off its eighteen-month timetable and mov-

ing a full surface bill sooner in the interests of job creation, but no final decisions have been reached.

In the meantime, however, states are feeling the effects of a lack of contract authority (see pages 8-9 of this issue) which will eventually lead to job losses if surface programs stay funded under the CR. Since it was the White House's insistence on an eighteen-month extension that, more than anything else, led to the current impasse, it would seem to behoove the Obama Administration to speak up quickly and say what duration of surface transportation extension it now prefers and whether or not they support moving the big bill in 2010.

## SUMMARY OF SENATE SURFACE TRANSPORTATION EXTENSION BEING "HOTLINED"

### TITLE I—FEDERAL-AID HIGHWAYS

**Sec. 101. In general.** Extends all requirements, authorities, conditions, eligibilities, limitations, and other provisions in titles I, V, and VI of SAFETEA-LU and other highway-related legislation that would expire on September 30, 2009 or the expiration date of the continuing resolution until April 30, 2010. Authorizes the appropriation from the Highway Trust Fund as contract authority of 7/12ths of the amount authorized in FY 2009 (without regard to any rescissions of contract authority that occurred in FY 2009) for all highway programs under SAFETEA-LU and title 23 U.S.C. for the period of October 1, 2009 through April 30, 2010. Clarifies that such contract authority shall be subject to an obligation limitation under a DOT appropriations act for FY 2010 enacted after September 30, 2009 except that the limitation shall not apply to emergency relief funding or to \$273.75 million of equity bonus funding. Provides that 7/12ths of the amount allocated to states under sections 1301, 1302, 1307, 1702 and 1934 of SAFETEA-LU and 23 U.S.C. 144(f)(1) in FY 2009 be made available to states for apportioned "core" formula programs. Gives the Secretary the option to cancel funding for any other allocated program he deems to be fully funded and provides for the redistribution of that money to states.

**Sec. 102. Administrative expenses.** Provides \$246.4 million in contract authority for FHWA administrative expenses for the October 1, 2009 – April 30, 2010 period.

**Sec. 103. Rescission of unobligated balances.** Directs DOT to restore the \$8.708 billion in rescinded contract authority taken away from states on September 30, 2009 to states but does not provide any new obligation authority and clarifies that such restored funds are subject to normal future obligation limitations.

**Sec. 104. Reconciliation of funds.** Directs DOT to deduct the all contract authority amounts made available for highway programs under the continuing resolution from the sums provided in this title.

### TITLE II—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, AND ADDITIONAL PROGRAMS

**Sec. 201. Extension of National Highway Traffic Safety Administration highway safety programs.** Provides a total of \$428.3 million in contract authority for the programs of NHTSA during the seven-month period to April 30, 2010.

**Sec. 202. Extension of Federal Motor Carrier Safety Administration programs.** Provides a total of \$317.6 million in contract authority for the programs of FMCSA during the seven-month period to April 30, 2010.

**Sec. 203. Additional programs.** Extends funding authorizations for hazardous materials research projects and the Dingell-Johnson Sport Fish Restoration Act through April 30, 2010.

### TITLE III—PUBLIC TRANSPORTATION PROGRAMS

**Sec. 301. Allocation of funds for planning programs.** Extends the rule under 49 U.S.C. 5305(g) through April 30, 2010.

**Sec. 302. Special rule for urbanized area formula grants.** Extends the rule under 49 U.S.C. 5307(b)(2) through April 30, 2010.

**Sec. 303. Allocating amounts for capital investment grants.** Extends set-asides under 49 U.S.C. 5309(m) at a pro-rated amount through April 30, 2010.

**Sec. 304. Apportionment of formula grants for other than urbanized areas.** Extends the set-aside under 49 U.S.C. 5311(c)(1) at a pro-rated amount through April 30, 2010.

**Sec. 305. Apportionment based on fixed guideway factors.** Adds a new 49 U.S.C. 5337(g) directing DOT to apportion fixed guideway modernization for the seven-month period ending April 30, 2010 at 7/12ths of the 2009 amounts.

**Sec. 306. Authorizations for public transportation.** Authorizes the appropriation of \$4.877 billion in contract authority from the Mass Transit Account of the Highway Trust Fund for the Formula and Bus Grant programs, with all set-asides and sub-allocations pro-rated at 7/12ths of the FY 2009 amounts. Authorizes general fund appropriations for other FTA accounts.

**Sec. 307. Amendments to SAFETEA-LU.** Extends several expiring authorizations in title III of SAFETEA-LU through April 30, 2010.

### TITLE IV—REVENUE PROVISIONS RELATING TO HIGHWAY TRUST FUND

**Sec. 401. Extension of authority for expenditures from Highway Trust Fund.** Extends expenditure authority under section 9503(c) of the tax code through April 30, 2010.



## DOT Appropriations Conference Still On Hold, But OMB Gives Views

The legislation that will fund the U.S. Department of Transportation for fiscal year 2010 is still waiting to be sent to a House-Senate conference committee, and action this week on the Interior-Environment bill (see box below) and reports that the Defense bill will move separately and will carry an increase in the public debt ceiling indicate that the Transportation-HUD bill might be delayed further. If both Interior and Defense are allowed to go separately, and if the Senate does not have time to pass any more bills on their own, this would make the "THUD" bill the vehicle for the eventual omnibus appropriations bill and could delay a THUD conference until December.

While most minor differences between the House and Senate versions of the THUD bill (H.R. 3288) have been settled, a few major "member-level" differences remain, and so far, Senators have shown little interest in settling the differences until they are given a firm deadline for the completion of the negotiations.

In the meantime, last week, the White House sent its views on the bill to the conferees. Transportation-related excerpts follow.

### ***October 21, 2009 letter to conferees from OMB Director Orszag***

This letter provides the Administration's views on H.R. 3288, the FY 2010 Departments of Transportation, and Housing and Urban Development, and Related Agencies Appropriations Act, as passed by both the House and the Senate.

The Administration strongly supports passage of H.R. 3288. The President believes that America's economic success in the 21st Century depends significantly on a modernized infrastructure — from roads and highways to high-speed rail, inland waterways, and housing. These infrastructure investments will help to build a new foundation for long-term economic growth to benefit the American people.

The President requested significant new resources for the Nation's rail and air transportation systems. The legislation takes an important step toward modernizing what has become an over-stressed transportation network. Importantly, the legislation not only invests in new systems, but also works to improve the safety of those systems already in place. Increased funding for transit and air travel safety will result in fewer accidents and more lives saved.

The Administration is firmly committed to working with the Congress to develop surface transportation reauthorization legislation. The Administration looks forward to working with all the affected Committees to

develop an approach that combines critically needed funding for the Nation's roads, bridges, mass transit systems, and safety agencies; enhances the livability of communities; and restores the programs to a fiscally responsible funding path...

### Administration Priorities

*National Infrastructure Bank.* The Administration encourages conferees to support the creation of a National Infrastructure Bank and not substitute in its place a national infrastructure grant program in conjunction with increases for transportation infrastructure credit. Once established, a Bank will help forge a new path forward in infrastructure sponsorship and cross-jurisdictional partnership. The Administration looks forward to working with the Congress to authorize, as soon as possible, a National Infrastructure Bank which could blend grant and credit financing in a variety of infrastructure sectors, not just transportation, over time. The Bank will play a key role in supporting regionally and nationally significant, high-value, multi-modal projects selected on the basis of merit.

*High-Speed Rail.* The Administration appreciates the strong support that both the House and Senate have provided for high-speed rail. The conferees are urged not to adopt the Senate provision prohibiting funds from being used for planning purposes. Planning support is crucial if regions across the Nation are to develop viable proposals for high-speed corridors...

### Department of Transportation

The Administration recognizes the need for independence by the Amtrak Inspector General, but urges the conferees not to adopt the Senate approach that treats the office as if it were an independent Federal agency...

### Constitutional Concerns

The Administration recommends revising section 167 of the Senate bill to require that the Secretary of Transportation provide recommendations to the Congress "if appropriate" to avoid conflict with the Recommendations Clause of the Constitution.

### **Second Continuing Resolution Through Mid-December Could Be Passed On Interior-Environment Bill This Week**

House and Senate conferees on the Interior-Environment appropriations bill (H.R. 2996) are expected to meet today to finalize the conference agreement on that bill. That conference agreement may include a six-week extension of the stopgap continuing resolution currently funding federal agencies (Division B of Public Law 111-68).

The existing CR expires at midnight on October 31, making some kind of action necessary this week. A final decision on whether to put the CR in the Interior conference report had not been reached as of last night. If House Democratic leaders decide to move the CR separately, the Rules Committee could meet on the resolution tomorrow and have it on the floor Thursday.

House leaders have not revealed the exact expiration date of the new CR, saying only that it is some time in mid-December. The actual date of December 15 might be problematic, since that date falls on a Tuesday and would not allow the usual last-minute brinksmanship in case the CR needs to be extended again at that point (which would be woeful).

## Coast Guard Bill

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ing for the Coast Guard to carry out those missions.

“Now, the men and women who wear that unique color of blue uniform have prided themselves on being a multi-mission agency, and they have prided themselves on being able to carry out all these many responsibilities. But they are working shorthanded, they are working underfunded and they need this authorization bill, and they need this increased service personnel strength that we provide in the bill before us.”

Because the T&I Committee retains jurisdiction over the Coast Guard while the House Homeland Security Committee has jurisdiction over the rest of DHS, there is always potential for friction between the two panels on this bill. However, no such friction was in evidence, as Oberstar and Homeland chairman Bennie Thompson (D-MS) and their staffs appeared to work well together on issues of overlapping jurisdiction.

Many such issues were addressed in a 50-page manager's amendment offered to the bill by Oberstar at the start of debate. And in particu-

lar, the Oberstar amendment accommodated the House Judiciary Committee, which objected to language approved in by the T&I Committee to indemnify U.S.-flagged mariners from liability for their actions taken while fighting off pirates. Rep. Frank LoBiondo (R-NJ) objected to this part of the Oberstar amendment, saying that “Do we really want future mariners to hesitate in the face of a pirate armed with automatic weapons while they determine whether or not their actions will be deemed by a court reasonable with a check-off list in their minds as an attack is taking place? I don't think so.”

Later, however, LoBiondo was allowed to offer an amendment (#13) to restore the original T&I language on liability relief for ship crews. Rep. Bobby Scott (D-VA) on behalf of the Judiciary Committee opposed LoBiondo's amendment, saying that “...this amendment, unfortunately, goes too far. It grants absolute immunity within the United States on our lakes and rivers to violence against our own citizens. Now, the difference in the two provision, one carefully crafted by the Judiciary Committee and now the one being offered on the floor, is not about enabling ship's crews to respond to piracy. Both do that fine. The difference is that this amendment would

eliminate all legal restraints. There will be no legal accountability, not even under criminal law. When they say no liability, the way the bill is drafted, it would be you could commit crimes against people and still be exempt.”

LoBiondo and Scott discussed the matter in a colloquy and agreed that the intention of LoBiondo's amendment was to limit liability relief to (a.) acts of piracy on the high seas and (b.) civil liability, not criminal liability under U.S. law. They agreed that after the amendment was agreed to, the language would be refined in conference, and the LoBiondo amendment was agreed to by voice vote.

All amendments offered to H.R. 3619 (see list below) were either agreed to or rejected on a voice vote except for amendment #10 offered by Rep. Frank Kratovil (D-MD) which would require the Coast Guard to conduct a national study on the facility infrastructure requirements needed to fulfill the Coast Guard's prescribed missions and capabilities, and ensure that the department in which the Coast Guard is operating maintains the ability to utilize the latest technologies. That amendment was agreed to by a vote of 398-0.

### Amendments Offered During House Consideration of H.R. 3619, Coast Guard Authorization

**Oberstar manager's amendment #1** to (1) make a number of technical corrections to the bill; (2) add language regarding the delegation of authority by the Coast Guard to classification societies; (3) clarify language regarding the enforcement of Coast Guard-imposed security zones around hazardous materials terminals and tankers; and (4) address discharges incidental to the normal operation of vessels; (5) would provide for an alternative licensing program for operators of uninspected passenger vessels on Lake Texoma in Texas and Oklahoma upon request of the Texas or Oklahoma Governors; (6) would require the Coast Guard's study of biometric identification to include facial and iris scan technology, would require the Homeland Security Secretary to study the Coast Guard's use of the combination of facial and iris recognition to rapidly identify individuals for security purposes, and would state the purpose of the study is to facilitate the use of a combination of facial and iris recognition; (7) would require the secretary of the Department the Coast Guard is operating to report to Congress on the most common types of human errors that have led to oil spills from vessels, the most common types of “near miss” oil spill incidents, and includes recommendations to address these errors, and also require the secretary to use the findings of the report to take appropriate action domestically and at the International Maritime Organization to reduce the risk of oil spills caused by human error; (8) would provide that, in conducting mission analysis along the Rio Grande under section 1324, the Secretary shall work with all appropriate entities, as needed, to facilitate the collection of information; (9) would require the Great Lakes Maritime Institute to evaluate the employment base supported by the Great Lakes marine transportation system, including the number and types of jobs, and general demographics about the employees holding those jobs, such as their gender and age; (10) would require the secretary of the Department the Coast Guard is operating to assess whether the use of transponders or RFIDs can be used to mitigate the threat of small boat attacks in major ports; would encourage the Secretary of State to enter into negotiations with Canada to ensure

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**Amendments Offered During House Consideration of H.R. 3619, Coast Guard Authorization, Continued**

that tugboat escorts are required for certain tank ships in the Strait of Juan de Fuca, Strait of Georgia, and in Haro Strait. The Secretary would consult with the Coast Guard, which shall consult with the State of Washington and affected tribal governments; (11) would require that the GAO report to Congress on the Coast Guard's efforts to recruit minority candidates to the Coast Guard Academy, which would include recommendations for enhancing such efforts; (12) would extend for two years, through December 31, 2011, an authorization to complete an in-kind exchange of certain Coast Guard property in Portland, Maine, to the Gulf of Maine Aquarium Development Corporation. It also would provide that a new building adjacent to the pier and bulkhead must comply with the waterfront provisions of the City of Portland Code of Ordinances; (13) would require the Secretary to allow any individual with a pending application for a transportation security card, who needs to work in secure area, to have access to such area for that purpose through an escort by another individual with a security card. It also contains timelines for reviews of transportation security card applications. The Secretary shall develop a process for individuals to receive the cards at their residence. The Secretary shall establish procedures for individuals who are to be fingerprinted for transportation security cards to be fingerprinted at facilities operated by or under contract with the relevant Federal agency that engages in fingerprinting the public for transportation security or other security purposes; (14) would direct the Secretary of the department in which the Coast Guard is operating to prohibit states or political subdivision thereof from requiring separate security background checks for transportation security cards. It also permits the Secretary to waive the application of the prohibition if a compelling homeland security reason necessitates a separate security background check — *agreed to by voice vote*.

**Mica amendment #2** that sought to require a GAO report on (1) the background checks and forms of identification required under state and local transportation security programs; (2) a determination of whether those requirements conflict with Federal programs; (3) a determination of whether those requirements assist in carrying out state and local government safety, security and law enforcement responsibilities; and (4) recommendations on ways to minimize redundant background checks and facilitate the sharing of data with state and local governments. It would have also prohibited the secretary of the Department the Coast Guard is in from preventing a state or local government from requiring a separate background check for entry into any area covered by a vessel or facility security plan — *amendment failed by voice vote*.

**Oberstar amendment #3** that requests a study and report examining the Coast Guard's ability to respond to effects resulting from changes in U.S. immigration policy toward Haiti — *agreed to by voice vote*.

**LoBiondo amendment #4** that requires the secretary of the Department the Coast Guard is operating in to study military family housing and military unaccompanied housing available to members and officers of the Coast Guard, authorizes the Coast Guard to spend funds on child development services, authorizes the Navy Secretary to provide support services to chaplain-led programs for Coast Guard members, and authorizes the President to award a Coast Guard cross and silver star when a Coast Guard member distinguishes himself or herself in armed conflict — *agreed to by voice vote*.

**LoBiondo amendment #5** that requires the Secretary of Homeland Security, in consultation with the Transportation Secretary, to study whether there is a continued need for a supplemental air and maritime navigation system as a backup to GPS — *agreed to by voice vote*.

**Himes amendment #6** that establishes within the Department of Homeland Security the America's Waterway Watch Program, a citizen watch program that promotes voluntary reporting of suspected terrorist activity and suspicious behavior along our waterways. It authorizes \$3 million over the course of six years for the program. The Secretary will coordinate with other watch programs. The Secretary may also develop instructional materials on potential threats and to promote voluntary reporting of potential violations of law, and may distribute such materials—*agreed to by voice vote*.

**Flake amendment #7** that prohibits earmarking the Fishing Safety Training Grants Program — *agreed to by voice vote*.

**Flake amendment #8** that prohibits earmarking the Fishing Safety Research Training Grants Program — *agreed to by voice vote*.

**Kirkpatrick (AZ) amendment #9** that requires that the Secretary of the department in which the Coast Guard is operating to develop a comprehensive strategy to combat the illicit flow of narcotics, weapons, bulk cash, and other contraband through the use of submersible and semi-submersible vessels — *agreed to by voice vote*.

**Kratovil amendment #10** that requires the Coast Guard to study the facility infrastructure requirements needed to fulfill the Coast Guard's missions and capabilities, and ensure that the department in which the Coast Guard is operating maintains the ability to utilize the latest technologies — *agreed to by roll call vote of 398 yeas, no nays*.

**Nye amendment #11** that states that the marine safety provisions of the bill shall not impair the Coast Guard's homeland security missions — *agreed to by voice vote*.

**Oberstar amendment #12** that requires the Coast Guard to modify the 2004 Agreement for Outgoing Loans with Presque Isle Township, Michigan, in order to provide for the return of the Historic Fresnel Lens to the lantern room atop the Presque Isle Light Station Lighthouse, Michigan — *agreed to by voice vote*.

**LoBiondo amendment #13** that grants limits on liability for actions taken by an owner, operator, time charterer, master or mariner to defend a flagged vessel against attack by pirates. It also requires the secretary to work through the International Maritime Organization to establish agreements to promote coordinated action among flag-and port-states to protect against piracy — *agreed to by voice vote*.

# 118 House Members Ask Obama To Oppose New Aviation User Fees

Last week, 118 members of the House of Representatives, led by three of the four House committee leaders on aviation issues, wrote to President Obama to ask him not to include assumptions of a large new aviation user fee as part of the financing of the Federal Aviation Administration in his fiscal year 2011 budget request (which is currently being formulated at the agencies and the White House's Office of Management and Budget).

President Obama's FY 2010 budget surprised some observers when it continued the Bush Administration's budget assumptions of a repeal of most existing aviation taxes and replacement of those taxes by user fees, resulting in a net tax/fee increase on the aviation sector of \$2.4 billion per year (increasing every year, as shown in the table below). Some aviation stakeholders are pressing the Senate not to take up the pending FAA reauthorization bill until the Obama White House submits a new budget in February without the new fee proposal.

## Aviation User Fees / Aviation Tax Reductions in the Obama FY 2010 Budget Request

| <i>Millions of dollars</i> | <u>FY 2011</u> | <u>FY 2012</u> | <u>FY 2013</u> | <u>FY 2014</u> | <u>FY 2015</u> | <u>FY 2016</u> | <u>FY 2017</u> | <u>FY 2018</u> | <u>FY 2019</u> |
|----------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| New Aviation User Fees     | 9,634          | 10,131         | 10,639         | 11,013         | 11,410         | 11,824         | 12,254         | 12,700         | 13,165         |
| Aviation Taxes Reduced     | -7,225         | -7,599         | -7,980         | -8,260         | -8,559         | -8,869         | -9,190         | -9,527         | -9,873         |
| Net Revenue Increase       | 2,409          | 2,532          | 2,659          | 2,753          | 2,851          | 2,955          | 3,064          | 3,173          | 3,292          |

October 20, 2009

Dear President Obama:

As you prepare your budget request for Fiscal Year 2011, we urge you not to propose a user fee as a means of funding the Federal Aviation Administration (FAA) in your proposal.

User fees are not needed to raise revenue for the Trust Fund. The current system of aviation excise taxes has proven to be a stable and efficient source of funding for our aviation system. Furthermore, we believe that user fees will place an undue administrative burden, and associated costs, on system users — particularly small business and general aviation users. In addition, we are concerned that allowing the FAA to independently raise revenue through a fee will result in inadequate incentives for the FAA to control its costs.

Aviation user fees have been proposed several times by past Administrations, and the House has opposed this approach in legislation to reauthorize the FAA in both the 110th and 111th Congresses. Therefore, proposing user fees to finance the FAA would be a non-starter in the House and a major distraction from the number one priority, the Next Generation Air Transportation System (NextGen), to ensure our nation's air traffic control infrastructure is robust for the future. A consensus was reached on financing issues last year and we need to move forward quickly to pass an FAA reauthorization bill.

Thank you for your consideration and we look forward to an open dialogue with you and your Administration on the best way to finance the modernization of our air traffic control system and the FAA's continued operations.

Sincerely,

|                    |                       |                        |                         |                    |
|--------------------|-----------------------|------------------------|-------------------------|--------------------|
| Costello, Jerry    | Burton, Dan           | Gerlach, Jim           | Luetkemeyer, Blaine     | Rahall, Nick       |
| Petri, Thomas      | Buyer, Steve          | Gingrey, Phil          | Lummis, Cynthia         | Richardson, Laura  |
| Oberstar, James    | Campbell, John        | Graves, Sam            | Lungren, Daniel         | Rogers, Harold     |
| Aderholt, Robert   | Capito, Shelley Moore | Griffith, Parker       | Lynch, Stephen          | Rogers, Mike (AL)  |
| Alexander, Rodney  | Capuano, Michael      | Guthrie, Brett         | Mack, Connie            | Rooney, Thomas     |
| Altmire, Jason     | Carnahan, Russ        | Hall, John             | Manzullo, Donald        | Ross, Mike         |
| Arcuri, Michael    | Carney, Christopher   | Hare, Phil             | Markey, Betsey          | Schauer, Mark      |
| Baird, Brian       | Chaffetz, Jason       | Herse, Stephanie       | McCotter, Thaddeus      | Schmidt, Jean      |
| Barrow, John       | Childers, Travis      | Hirono, Mazie          | McMahon, Michael        | Schock, Aaron      |
| Bartlett, Roscoe   | Clay, William Lacy    | Holden, Tim            | McMorris Rodgers, Cathy | Shimkus, John      |
| Berkley, Shelley   | Cleaver, Emanuel      | Inglis, Bob            | Miller, Candice         | Smith, Adrian      |
| Berry, Marion      | Coble, Howard         | Johnson, Eddie Bernice | Mitchell, Harry         | Smith, Chris       |
| Bishop, Timothy    | Cohen, Steve          | Johnson, Timothy       | Moran, James            | Smith, Lamar       |
| Blackburn, Marsha  | Culberson, John Abney | Jones, Walter          | Norton, Eleanor Holmes  | Spratt, John       |
| Bocciare, John     | Cummings, Elijah      | Kingston, Jack         | Olson, Pete             | Terry, Lee         |
| Bono Mack, Mary    | DeFazio, Peter        | Klein, Ron             | Ortiz, Solomon          | Tiahrt, Todd       |
| Boozman, John      | Delahunt, William     | Kline, John            | Pastor, Ed              | Tiberi, Patrick    |
| Boswell, Leonard   | Dent, Charles         | Kosmas, Suzanne        | Paulsen, Erik           | Tierney, John      |
| Boyd, Allen        | Doggett, Lloyd        | Larsen, Rick           | Perriello, Thomas       | Upton, Fred        |
| Brown, Corrine     | Duncan, John          | Latham, Tom            | Peterson, Collin        | Westmoreland, Lynn |
| Brown, Henry       | Ehlers, Vern          | Latta, Robert          | Pingree, Chellie        | Wilson, Joe        |
| Brown-Waite, Ginny | Ellsworth, Brad       | Lipinski, Daniel       | Platts, Todd            | Young, Don         |
| Buchanan, Vern     | Fallin, Mary          | LoBiondo, Frank        | Poe, Ted                |                    |
| Burgess, Michael   | Filner, Bob           | Loeb, David            | Posey, Bill             |                    |



### Rescissions of Contract Authority Left Nevada Penniless; Affect Other States Differently

The massive \$8.708 billion rescission of unobligated highway contract authority balances held by states that took effect on September 30 affected all states differently. Now that individual and aggregate data has become available, a few conclusions can be made.

**Nevada was wiped out.** Under the original shares of the \$8.708 billion rescission prescribed by section 10212 of the SAFTEA-LU law, Nevada was due to have \$61.4 million rescinded. However, Nevada had obligated so much of its contract authority that they only had \$39.0 million left, so they lost every dime they had on-hand on September 30 and the other \$22.4 million of their rescission got distributed to the other 49 states plus D.C. As a result, even with new partial apportionments under the continuing resolution, Nevada now is one of

only two states with more obligation limitation than it has contract authority available to be obligated. (Alaska is a special case — the rescission took all but their last \$558 thousand, but Don Young put a loophole in SAFETEA-LU that lets Alaska move money around in a way that no other state can.)

**Balances can be misleading.** The rescission left states with a total of \$7.45 billion in unobligated formula balances (see below). But not all of that money is easy to use. \$1.37 billion is sub-allocated to metropolitan planning organizations of areas over 200,000 in population and is outside the state DOT control and cannot be transferred elsewhere. Another \$1 billion is for transportation enhancements, and very little of that can be transferred to other programs. \$617 million in the CMAQ program and also has limited transferability.

The problem hits some states harder than others. Illinois, for example, had \$268 million left after the rescission, but nearly \$237 million of that is just in the enhancements and CMAQ programs. Likewise, Virginia had \$246 million left post-rescission, but \$142 million of that belongs to the MPOs and another \$72.5 million is locked up in the off-system bridge program and cannot be used for any other purpose.

**The CR didn't add that much.** The table on the following page shows how much each state had left after the rescission and the shares that each state received of the \$2.03 billion in formula apportionments on October 9 and the \$369 million of earmarks-as-STP funding given out on October 15. But those totals still don't help states put large contracts up for bid if the law requires them to have all the money on-hand at the time.

#### How Much Unobligated Highway Formula Contract Authority Was Left Held By States After the \$8.7 Billion Rescission on September 30, 2009, By Program?

| <u>Program</u>                          | <u>Amount Left</u>      |
|---|-------------------------|
| STP to Areas Over 200K Population       | \$ 1,369,579,051        |
| Transportation Enhancements (STP)       | \$ 1,007,153,031        |
| STP for Any Area                        | \$ 810,060,220          |
| Highway Safety Improvement              | \$ 704,050,491          |
| CMAQ                                    | \$ 616,773,477          |
| Highway Bridge - On-or-Off-System       | \$ 496,533,831          |
| Highway Bridge - Off-System             | \$ 412,905,214          |
| Coordinated Border Infra.               | \$ 392,176,324          |
| STP to Areas 5K to 200K Population      | \$ 373,098,782          |
| Safe Routes to School                   | \$ 340,822,853          |
| Interstate Maintenance                  | \$ 179,158,473          |
| High Risk Rural Roads                   | \$ 173,628,627          |
| National Highway System                 | \$ 142,068,485          |
| Rail-Highway Crossings (Hazards)        | \$ 124,013,667          |
| STP to Areas Under 5K Population        | \$ 113,489,045          |
| Rail-Highway Crossings (Devices)        | \$ 107,088,924          |
| Metropolitan Planning                   | \$ 42,641,827           |
| Recreational Trails                     | \$ 41,400,831           |
| <b>Total Carryover After Rescission</b> | <b>\$ 7,446,643,154</b> |

#### How Much Unobligated Highway Formula Contract Authority Was Held By Each State Immediately After the \$8.7 Billion Rescission on September 30, 2009 (By State)?

|                |                |               |                         |
|----------------|----------------|---------------|-------------------------|
| Texas          | \$ 529,227,527 | Iowa          | \$ 99,177,549           |
| Massachusetts  | \$ 516,749,256 | Arkansas      | \$ 98,389,426           |
| California     | \$ 516,713,747 | Hawaii        | \$ 92,206,052           |
| New York       | \$ 377,179,593 | Colorado      | \$ 89,884,268           |
| Pennsylvania   | \$ 369,662,434 | West Virginia | \$ 87,899,846           |
| Illinois       | \$ 267,586,044 | Nebraska      | \$ 81,811,841           |
| Ohio           | \$ 253,566,138 | Delaware      | \$ 80,526,346           |
| Virginia       | \$ 245,552,641 | Washington    | \$ 79,772,512           |
| Michigan       | \$ 229,488,359 | New Mexico    | \$ 79,717,063           |
| New Jersey     | \$ 223,722,125 | Utah          | \$ 78,145,067           |
| Georgia        | \$ 212,669,546 | Mississippi   | \$ 76,473,574           |
| Tennessee      | \$ 211,963,983 | Oregon        | \$ 71,938,189           |
| Louisiana      | \$ 197,422,049 | Connecticut   | \$ 70,170,748           |
| Florida        | \$ 181,458,260 | Dist. of Col. | \$ 59,826,350           |
| Missouri       | \$ 170,259,129 | Montana       | \$ 58,597,621           |
| Minnesota      | \$ 147,901,741 | Vermont       | \$ 58,066,023           |
| Wisconsin      | \$ 136,930,373 | South Dakota  | \$ 55,678,563           |
| North Carolina | \$ 133,948,919 | North Dakota  | \$ 54,468,226           |
| Kansas         | \$ 126,970,070 | Wyoming       | \$ 51,913,117           |
| Maryland       | \$ 123,183,885 | Rhode Island  | \$ 49,617,212           |
| South Carolina | \$ 119,772,259 | Maine         | \$ 45,799,695           |
| Kentucky       | \$ 115,351,867 | New Hampshire | \$ 45,534,262           |
| Indiana        | \$ 115,003,031 | Idaho         | \$ 37,806,838           |
| Arizona        | \$ 114,427,875 | Alaska        | \$ 558,192              |
| Oklahoma       | \$ 106,213,606 | Nevada        | \$ -                    |
| Alabama        | \$ 99,740,114  | <b>Total</b>  | <b>\$ 7,446,643,154</b> |

CONTINUED ON NEXT PAGE



## UNOBLIGATED HIGHWAY FORMULA CONTRACT AUTHORITY BALANCES HELD BY STATES AT VARIOUS TIMES

(FHWA Notice N.4510.713 was dated October 9 and Notice N.4510.714 was dated October 15.)

|                | Formula Balances<br>On the Morning<br>Of 9-30-09 | Minus<br>\$8.708 Billion<br>Rescission | Formula Balances<br>Left After<br>9-30-09 Rescission | New Formula<br>Apportionments<br>N.4510.713 | SAFETEA-LU<br>Earmark \$ as STP<br>N.4510.714 | Total<br>Formula CA<br>On-Hand Oct. 15 |
|----------------|--|--|--|---|---|--|
| Alabama        | \$ 275,831,108                                   | \$ (176,090,994)                       | \$ 99,740,114  | \$ 40,905,049                               | \$ 5,696,139                                  | \$ 146,341,302                         |
| Alaska         | \$ 81,497,643                                    | \$ (80,939,451)                        | \$ 558,192   | \$ 19,011,585                               | \$ 13,511,753                                 | \$ 33,081,530                          |
| Arizona        | \$ 285,273,362                                   | \$ (170,845,487)                       | \$ 114,427,875                                       | \$ 41,730,624                               | \$ 2,079,803                                  | \$ 158,238,302                         |
| Arkansas       | \$ 207,786,729                                   | \$ (109,397,303)                       | \$ 98,389,426  | \$ 25,906,873                               | \$ 6,889,692                                  | \$ 131,185,991                         |
| California     | \$ 1,312,333,341                                 | \$ (795,619,594)                       | \$ 516,713,747                                       | \$ 188,061,010                              | \$ 41,208,793                                 | \$ 745,983,550                         |
| Colorado       | \$ 204,870,267                                   | \$ (114,985,999)                       | \$ 89,884,268  | \$ 27,741,981                               | \$ 5,642,849                                  | \$ 123,269,098                         |
| Connecticut    | \$ 189,875,892                                   | \$ (119,705,144)                       | \$ 70,170,748  | \$ 26,472,007                               | \$ 4,677,484                                  | \$ 101,320,239                         |
| Delaware       | \$ 115,232,851                                   | \$ (34,706,504)                        | \$ 80,526,346  | \$ 8,161,333                                | \$ 2,704,219                                  | \$ 91,391,898                          |
| Dist. of Col.  | \$ 94,506,601                                    | \$ (34,680,251)                        | \$ 59,826,350  | \$ 7,728,664                                | \$ 2,505,140                                  | \$ 70,060,154                          |
| Florida        | \$ 625,461,850                                   | \$ (444,003,590)                       | \$ 181,458,260                                       | \$ 105,264,322                              | \$ 9,571,577                                  | \$ 296,294,159                         |
| Georgia        | \$ 529,655,127                                   | \$ (316,985,581)                       | \$ 212,669,546                                       | \$ 71,104,860                               | \$ 7,268,011                                  | \$ 291,042,417                         |
| Hawaii         | \$ 130,853,569                                   | \$ (38,647,517)                        | \$ 92,206,052  | \$ 8,313,804                                | \$ 2,473,206                                  | \$ 102,993,062                         |
| Idaho          | \$ 103,297,195                                   | \$ (65,490,357)                        | \$ 37,806,838  | \$ 15,187,373                               | \$ 2,496,986                                  | \$ 55,491,197                          |
| Illinois       | \$ 558,228,522                                   | \$ (290,642,478)                       | \$ 267,586,044                                       | \$ 69,288,107                               | \$ 21,605,335                                 | \$ 358,479,486                         |
| Indiana        | \$ 333,598,753                                   | \$ (218,595,722)                       | \$ 115,003,031                                       | \$ 53,028,303                               | \$ 4,679,571                                  | \$ 172,710,905                         |
| Iowa           | \$ 196,980,899                                   | \$ (97,803,350)                        | \$ 99,177,549  | \$ 23,587,910                               | \$ 6,838,260                                  | \$ 129,603,719                         |
| Kansas         | \$ 219,037,680                                   | \$ (92,067,610)                        | \$ 126,970,070                                       | \$ 20,010,283                               | \$ 3,380,274                                  | \$ 150,360,627                         |
| Kentucky       | \$ 266,446,549                                   | \$ (151,094,681)                       | \$ 115,351,867                                       | \$ 35,093,110                               | \$ 6,080,533                                  | \$ 156,525,510                         |
| Louisiana      | \$ 332,715,287                                   | \$ (135,293,239)                       | \$ 197,422,049                                       | \$ 35,349,836                               | \$ 8,994,975                                  | \$ 241,766,860                         |
| Maine          | \$ 86,156,066                                    | \$ (40,356,371)                        | \$ 45,799,695  | \$ 8,635,510                                | \$ 3,386,389                                  | \$ 57,821,594                          |
| Maryland       | \$ 263,993,367                                   | \$ (140,809,482)                       | \$ 123,183,885                                       | \$ 31,822,981                               | \$ 5,227,025                                  | \$ 160,233,891                         |
| Massachusetts  | \$ 664,277,853                                   | \$ (147,528,597)                       | \$ 516,749,256                                       | \$ 32,512,125                               | \$ 4,905,644                                  | \$ 554,167,025                         |
| Michigan       | \$ 492,842,704                                   | \$ (263,354,345)                       | \$ 229,488,359                                       | \$ 57,116,271                               | \$ 7,376,607                                  | \$ 293,981,237                         |
| Minnesota      | \$ 281,021,235                                   | \$ (133,119,494)                       | \$ 147,901,741                                       | \$ 33,026,493                               | \$ 7,466,878                                  | \$ 188,395,112                         |
| Mississippi    | \$ 179,440,210                                   | \$ (102,966,636)                       | \$ 76,473,574  | \$ 24,451,359                               | \$ 6,061,101                                  | \$ 106,986,034                         |
| Missouri       | \$ 372,521,694                                   | \$ (202,262,565)                       | \$ 170,259,129                                       | \$ 48,070,953                               | \$ 11,019,014                                 | \$ 229,349,096                         |
| Montana        | \$ 142,581,811                                   | \$ (83,984,190)                        | \$ 58,597,621  | \$ 19,620,150                               | \$ 5,405,466                                  | \$ 83,623,237                          |
| Nebraska       | \$ 146,624,161                                   | \$ (64,812,320)                        | \$ 81,811,841  | \$ 14,992,843                               | \$ 3,054,137                                  | \$ 99,858,821                          |
| Nevada         | \$ 38,993,297                                    | \$ (38,993,297)                        | \$ -   | \$ 15,835,115                               | \$ 8,200,986                                  | \$ 24,036,101                          |
| New Hampshire  | \$ 86,743,984                                    | \$ (41,209,722)                        | \$ 45,534,262  | \$ 8,984,725                                | \$ 1,125,173                                  | \$ 55,644,160                          |
| New Jersey     | \$ 457,116,257                                   | \$ (233,394,133)                       | \$ 223,722,125                                       | \$ 53,107,206                               | \$ 8,156,142                                  | \$ 284,985,473                         |
| New Mexico     | \$ 162,251,579                                   | \$ (82,534,516)                        | \$ 79,717,063  | \$ 19,614,433                               | \$ 3,033,753                                  | \$ 102,365,249                         |
| New York       | \$ 785,180,067                                   | \$ (408,000,474)                       | \$ 377,179,593                                       | \$ 88,990,639                               | \$ 14,851,320                                 | \$ 481,021,552                         |
| North Carolina | \$ 383,797,231                                   | \$ (249,848,312)                       | \$ 133,948,919                                       | \$ 57,586,041                               | \$ 5,464,452                                  | \$ 196,999,412                         |
| North Dakota   | \$ 108,995,149                                   | \$ (54,526,923)                        | \$ 54,468,226  | \$ 12,712,386                               | \$ 2,870,685                                  | \$ 70,051,297                          |
| Ohio           | \$ 561,619,051                                   | \$ (308,052,912)                       | \$ 253,566,138                                       | \$ 72,246,861                               | \$ 10,097,951                                 | \$ 335,910,950                         |
| Oklahoma       | \$ 242,384,191                                   | \$ (136,170,585)                       | \$ 106,213,606                                       | \$ 31,077,553                               | \$ 9,422,301                                  | \$ 146,713,460                         |
| Oregon         | \$ 170,653,808                                   | \$ (98,715,618)                        | \$ 71,938,189  | \$ 23,302,160                               | \$ 9,121,087                                  | \$ 104,361,436                         |
| Pennsylvania   | \$ 775,412,288                                   | \$ (405,749,854)                       | \$ 369,662,434                                       | \$ 88,692,256                               | \$ 11,642,208                                 | \$ 469,996,898                         |
| Rhode Island   | \$ 94,164,967                                    | \$ (44,547,755)                        | \$ 49,617,212  | \$ 10,124,460                               | \$ 4,134,466                                  | \$ 63,876,138                          |
| South Carolina | \$ 265,498,461                                   | \$ (145,726,201)                       | \$ 119,772,259                                       | \$ 34,018,800                               | \$ 4,460,603                                  | \$ 158,251,662                         |
| South Dakota   | \$ 113,591,333                                   | \$ (57,912,770)                        | \$ 55,678,563  | \$ 13,719,897                               | \$ 4,338,112                                  | \$ 73,736,572                          |
| Tennessee      | \$ 402,583,658                                   | \$ (190,619,674)                       | \$ 211,963,983                                       | \$ 44,505,676                               | \$ 7,879,654                                  | \$ 264,349,313                         |
| Texas          | \$ 1,271,467,942                                 | \$ (742,240,415)                       | \$ 529,227,527                                       | \$ 178,196,910                              | \$ 11,649,424                                 | \$ 719,073,861                         |
| Utah           | \$ 143,209,760                                   | \$ (65,064,693)                        | \$ 78,145,067  | \$ 15,996,497                               | \$ 4,473,342                                  | \$ 98,614,906                          |
| Vermont        | \$ 94,665,533                                    | \$ (36,599,510)                        | \$ 58,066,023  | \$ 8,323,240                                | \$ 5,440,712                                  | \$ 71,829,975                          |
| Virginia       | \$ 476,025,031                                   | \$ (230,472,390)                       | \$ 245,552,641                                       | \$ 54,177,947                               | \$ 8,668,599                                  | \$ 308,399,187                         |
| Washington     | \$ 227,834,509                                   | \$ (148,061,997)                       | \$ 79,772,512  | \$ 34,027,656                               | \$ 8,437,436                                  | \$ 122,237,604                         |
| West Virginia  | \$ 181,721,630                                   | \$ (93,821,783)                        | \$ 87,899,846  | \$ 22,071,410                               | \$ 5,510,356                                  | \$ 115,481,612                         |
| Wisconsin      | \$ 308,855,692                                   | \$ (171,925,320)                       | \$ 136,930,373                                       | \$ 39,949,646                               | \$ 5,703,151                                  | \$ 182,583,170                         |
| Wyoming        | \$ 108,935,413                                   | \$ (57,022,296)                        | \$ 51,913,117  | \$ 13,930,885                               | \$ 1,746,192                                  | \$ 67,590,194                          |
| <b>Total</b>   | <b>\$ 16,154,643,154</b>                         | <b>\$ (8,708,000,000)</b>              | <b>\$ 7,446,643,154</b>                              | <b>\$ 2,033,388,118</b>                     | <b>\$ 368,634,966</b>                         | <b>\$ 9,848,666,238</b>                |

## Correction: DeFazio Would Only Tax Gasoline and Diesel, Not Crude Oil

Last week's *Transportation Weekly* contained a discussion of potential sources of new tax revenues to fund the surface transportation reauthorization bill. We included one paragraph about a proposal being advocated by Rep. Pete DeFazio (D-OR) in discussions with various groups, involving a tax on imported oil by the barrel rather than a tax on gasoline or diesel fuel directly.

We ignored several obvious problems with the proposal, for example, those inherent in levying a tax on crude oil imported from Canada (19 percent of total U.S. annual imports) and Mexico (10 percent of imports) under the North American Free Trade Agreement. This would likely result in both Canada and Mexico levying punitive retaliatory tariffs on other goods made in Oregon and other states identified with the sponsors of the new tax (see Trucks, Mexican).

Last week's *TW* relied on the common-sense assumption that the cost of a tax levied on a bulk commodity inevitably gets passed through and built into the prices of all of the finished goods made from that bulk commodity. In the case of a tax on crude oil by the barrel, the tax would presumably be passed through to every end-use product made from crude oil, from asphalt to Ziploc® bags. The examples used in the article were aviation fuel, the plastics industry, and little old ladies in New England who rely on home heating oil to keep from freezing to death in winter.

However, common sense apparently has little to do with this proposal.

A DeFazio spokesperson contacted us to demand a correction on the following grounds: "The tax will be structured so that non-surface transportation users will be exempt from the tax and will get a refund. There are already existing refunds in the tax code, such as Sec. 6421 of the Internal Revenue Code which refunds the gas tax paid when the gas is used for certain non-highway purposes, including a refund for transit systems. We are still working with legislative counsel and the Joint Committee on Taxation to hammer out the details of the proposal but we are using these existing refunds as a model."

When asked to clarify, the DeFazio spokesperson could not give any fur-

ther answers on the large technical hurdles raised by this proposal, including:

- How would the cost of the per-barrel tax be allocated to end-product consumers? The imported crude oil with the lowest specific gravity (North Africa) gives almost three times as much gasoline per barrel of oil as do the heaviest imports (Venezuela). Would the DeFazio tax require the IRS to measure the specific gravity of each barrel of imported oil and then estimate how much of that oil would be made into gas, diesel, fuel oil, etc? Or would a standard (though inherently inaccurate) average allocation be used?
- Under section 6421 (cited by DeFazio's spokesperson), all transit systems and individual farmers have to file their own applications for tax credits for the tax-exempt gas and diesel they purchase. If you use that as a model, just how many end-use purchasers of jet fuel, kerosene, plastics, and home heating oil would have to file annual tax credit applications for the DeFazio tax?
- How much additional manpower will the IRS need to allocate, collect, refund and enforce this?

A more important problem raised by the DeFazio proposal is conceptual. Consider the following analogy: if you levy a tax on another bulk commodity — say, a bushel of oats — and then are magically able to give a tax refund/credit/rebate to the purchasers of every conceivable end-use oat and oat-bearing product made from the oats in that bushel except for Cheerios®, what you are left with is not a tax on oats by the bushel in any rational or meaningful sense. What you are left with is a tax on a healthy, delicious breakfast cereal and nothing else.

Likewise, if you tax each barrel of crude oil but then are magically able to give a tax refund/credit/rebate to every oil end-product purchaser (from asphalt to Ziploc®) for the portion of the tax they paid *except* for highway-use gasoline and diesel fuel, then the tax is not really a tax on crude oil by the barrel at all. The DeFazio proposal would be an increase in federal taxes on gasoline and diesel (if that fuel happened to be made from a barrel of imported oil) and nothing else.

But it is a spectacularly inefficient and wasteful way to tax gasoline and diesel that would require vast new IRS collection systems and reams of duplicative paperwork burdens imposed on transit systems, farmers, and other purchasers of tax-exempt gasoline, diesel and other petroleum products who would have to apply for credits or refunds and pray that the cost of the tax was fairly allocated to them.

It would be far, far, far more efficient to simply increase the existing excise taxes on gasoline and diesel fuel than to tax a barrel of oil and then make everybody who bought a product made from that barrel of oil except for highway-use gas and diesel purchasers fill out refund forms (even if there were an accurate way to ensure that the credits/rebates were accurately allocated, and we doubt that there is).

The one conceivable salutary benefit of the DeFazio approach would be if it made gas from imported oil cost more than gas made from domestic oil, thus discouraging dependence on foreign oil. But even there, the DeFazio proposal falls short. Gas and diesel go from refinery to city via pipeline, and there are only a few of those pipelines. All of the big Gulf Coast refineries, no matter which oil company owns the refinery, put their products into the same handful of pipelines, and for efficiency reasons, most pipeline traffic is "fungible."

This means that ExxonMobil, Shell, ConocoPhillips, and the rest all make identical products (for example, 87 octane unleaded gasoline with 10 percent ethanol) and it is all mixed together in the pipeline, no matter where the oil to make the gas came from. In a big city hundreds of miles down the road, your local fuel wholesaler draws off x thousand gallons, adds the additives that make his particular brand special, and trucks it out to gas stations. Most of the time, there is no way for consumers at the pump to discern what company refined the gasoline they purchase or whether or not the gas was manufactured from imported crude oil or domestic crude oil. Therefore, the costs of a DeFazio tax on gas and diesel from imported crude oil would be borne more or less equally by all gas and diesel consumers, regardless of which barrel of oil came from where.

## NEW AND NOTABLE ON THE INTERNET

### Coast Guard Authorization Bill

The text of the 50-page Oberstar managers amendment to H.R. 3619, the Coast Guard bill, is here:

[http://www.rules.house.gov/111/SpecialRules/hr3619/1oberstar\\_hr3619\\_111.pdf](http://www.rules.house.gov/111/SpecialRules/hr3619/1oberstar_hr3619_111.pdf)

### Highway Apportionments Under the Continuing Resolution

The text and tables for the Notice apportioning highway formula CA under the CR are here:

<http://www.fhwa.dot.gov/legsregs/directives/notices/n4510713.pdf>

And the text and tables for the Notice apportioning SAFETEA-LU earmark money as STP formula money is here:

<http://www.fhwa.dot.gov/legsregs/directives/notices/n4510714.pdf>

### Tax-Preferred Bonds For Infrastructure Investment

A new joint report from the Congressional Budget Office and the Joint Committee on Taxation entitled *Subsidizing Infrastructure Investment with Tax-Preferred Bonds* is here:

<http://www.cbo.gov/ftpdocs/106xx/doc10667/10-26-TaxPreferredBonds.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             |
| Department of Homeland Security            | Erroll Southers    | Assistant Secretary for Transport. Security        | Commerce, Science and Transportation             | Nomination transmitted 9/17/09          |

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**THIS WEEK IN COMMITTEE**

**Tuesday, October 27, 2009** — Senate Environment and Public Works — full committee hearing on S. 1733, cap-and-trade — *9:30 a.m., SD-406 Dirksen.*

House Transportation and Infrastructure — Subcommittee on Economic Development, Public Buildings, and Emergency Management — subcommittee hearing on tracking Recovery Act spending — *2:00 p.m., 2167 Rayburn.*

Senate Commerce, Science and Transportation — full committee business meeting to report nominations including Anne Ferro (FMCSA), Cynthia Quarterman (PHMSA), and Erroll Southers (TSA) — *2:15 p.m., S-216, The Capitol.*

**Wednesday, October 28, 2009** — Senate Environment and Public Works — full committee hearing on S. 1733, cap-and-trade — *9:30 a.m., SD-406 Dirksen.*

House Transportation and Infrastructure — Subcommittee on Aviation — subcommittee hearing on NEXTGEN and the RTCA Mid-Term Implementation Task Force Report — *2:00 p.m., 2167 Rayburn.*

Senate Commerce, Science and Transportation — full committee hearing on combating distracted driving — *2:30 p.m., SR-253 Russell.*

**Thursday, October 29, 2009** — House Transportation and Infrastructure — Subcommittee on Highways and Transit — subcommittee hearing on distracted driving — *9:30 a.m., 2167 Rayburn.*

Senate Environment and Public Works — full committee hearing on S. 1733, cap-and-trade — *9:30 a.m., SD-406 Dirksen.*

Senate Commerce, Science and Transportation — Subcommittee on Aviation Operations, Safety and Security — subcommittee hearing on NTSB reauthorization — *10:00 a.m., SR-253 Russell.*

**STATUS OF MAJOR TRANSPORTATION BILLS — 111<sup>th</sup> CONGRESS**

| BILL   | HOUSE ACTION   | SENATE ACTION   | RESOLUTION  |
|--|--|---|---|
| <b>Economic Stimulus Appropriations &amp; Tax Cuts</b>     | 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<br>2/17/09                           |
| <b>FY 2010 Congressional budget resolution</b>             | 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 |
| <b>FY 2010 Transportation-HUD Appropriations</b>           | 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          |   |
| <b>FY 2010 Energy and Water Appropriations</b>             | 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           | Presented to the President<br>10/21/09                |
| <b>FY 2010 Homeland Security Appropriations</b>            | 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          | Presented to the President<br>10/22/09                |
| <b>Federal Aviation Admin. Reauthorization Bill</b>        | H.R. 915 passed House 5/22/09 by a vote of 277-136         | S. 1451 reported 9/29/09<br>S. Rept. 111-82                       |   |
| <b>Surface Transportation Reauthorization Bill</b>         | Subcommittee marked up draft bill on 6/24/09               |   |   |
| <b>Short-Term Extension of Surface Transportation Laws</b> | H.R. 3617 passed House 9/23/09 by a vote of 335-85         | S. 1498 reported 7/22/09<br>S. Rept. 111-59                       |   |
| <b>Water Resources Development Act</b>                     |  |   |   |
| <b>FY 2010 Coast Guard Authorization</b>                   | H.R. 3619 passed House 10/23/09 by a vote of 385-11        | S. 1194 ordered reported 7/8/09 by Senate Commerce Committee      |   |
| <b>Transportation Security Admin. Reauthorization</b>      | H.R. 2200 passed House 6/4/09 by a vote of 397-25          |   |   |