

THE LEGISLATIVE SERVICES GROUP'S

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Legislative Schedules

Week of November 30, 2009

House

Tuesday — meets at 2 p.m. for legislative business — seven measures under suspension of the rules.

Wednesday and the balance of the week — meets at 10 a.m. (9 a.m. Friday) — ten suspensions plus H.R. 4154, estate tax relief, and other items cleared for action.

Senate

The Senate convened at 10 a.m. today and resumed consideration of the health care bill. The Senate will recess from 12:30 p.m. to 2:15 p.m. for the weekly party luncheons.

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Dem Leaders Debating Second "Jobs" Stimulus Oberstar, Obey Said To Be Exploring A Two-Year Suspension of New Highway Trust Fund Obligations, During Which General Fund Appropriations Would Replace & Supplement Contract Authority

Congressional Democratic leaders hope to decide this week whether and how to proceed on new legislation to provide a second economic stimulus package, this one targeted almost exclusively towards short-term job creation.

As part of this debate, House Transportation and Infrastructure chairman James Oberstar (D-MN) and House Appropriations chairman David Obey (D-WI) have presented their leadership with a proposal to provide over \$100 billion in highway and transit spending from the gen-

eral fund of the Treasury immediately. At the same time, new spending obligations from the Highway Trust Fund would be almost eliminated for two fiscal years. Replacing current levels of Trust Fund spending with significantly higher levels of general fund spending for two years would allow the now-depleted Trust Fund balances to build back up and support higher spending levels for the last few years of a six-year surface transportation reauthorization bill.

The details of the proposal are unknown. However, it is hard to

imagine the Oberstar-Obey proposal working as described without requiring well over \$100 billion in up front appropriations from the general fund. First, in order to replace existing spending obligations from the Highway Trust Fund, at least \$50 billion per year would be needed. (The Congressional Budget Office baseline for the obligation limitation on the federal-aid highway program and on mass transit spending from the Trust Fund are a combined \$50.6 billion in fiscal 2010).

But simply replacing current Trust Fund spending

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House T&I Panel Approves Hazmat Safety Bill

The House Transportation and Infrastructure Committee on November 19 approved a bill further restricting the interstate transportation of hazardous materials after an unusually contentious markup session.

The bill (H.R. 4016), the Hazardous Material Transportation Safety Act of 2009, was reported from the committee by a voice vote.

The primary issue in dispute was H.R. 4016's provision requiring that all tanker trucks manufactured two years hence have equipment that prevents hazardous liquids (principally gasoline) from being transported in the pump lines under the tank (the 'wet lines,' which can hold up to 50 gallons) and requiring that all trucks on the road be prohibited from carry-

ing any hazardous material in their wet lines after December 31, 2020.

The National Transportation Safety Board has recommended for over ten years that DOT prohibit the transportation of hazardous materials in wet lines. DOT began a rule-making to comply with the NTSB recommendation several years ago, but the cost-benefit analysis

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levels with general fund spending levels would not create any new jobs, only maintain existing jobs. So another large chunk of additional funding would have to be added on top of the two-year, \$100+ billion in general fund replacement of existing spending.

The first stimulus provided a total of \$35.9 billion for highways and transit (\$27.5 billion for highways and \$8.4 billion for transit). It is not known how much money the Oberstar-Obey plan would add to that, but the level could be comparable (in addition to the \$100+ billion to replace existing funding levels, of course).

The metaphor being used to pitch the Oberstar-Obey plan is that of a married couple with two separate checking accounts where the mortgage check is traditionally written out of Spouse A's checking account. Instead, the couple decides to write the mortgage check out of Spouse B's account for two years. This would require some rejiggering of whose paycheck gets deposited in which account but would not affect the couple's gross underlying finances. Then, at the end of two years, the couple goes back to the practice of covering the mortgage out of Spouse A's account — no harm, no foul.

However, in the real world, shifting from Trust Fund financing of highways and transit to general fund financing would have more consequences than a married couple moving their own money around. In particular, this would mean a total, albeit temporary, abandonment of the "user-financing" principle that has supported the federal-aid highway program since 1956. (That principle has already taken some blows in the last eighteen months with \$15 billion in general fund bailouts of the Trust Fund being required due to overspending in the highway program, with another bailout needed next summer.)

It is the fact that the Trust Fund has been user-financed for 50+ years that gives the program so much political clout and has allowed the advocates of Trust Fund spending programs to carve out so many exemptions from normal budget rules. (The 1974 Budget Act exempted contract authority drawn out of user-financed trust funds from the new ban on backdoor spending, and the 1998 TEA21 law gave highway and transit spending their own budget spending categories and "firewalls" that make those programs almost off-budget and protect them from some normal budgetary pressures, on the grounds that the programs are user-financed.)

Supporters of the highway and transit programs in the Senate, and in outside stakeholder groups, worry that by abandoning the user-financing principle, even for a temporary two-year period, Oberstar would be giving away much of their leverage in the future in order to solve a temporary funding crisis in the present. And indeed, a likely consequence of the Oberstar-Obey plan, if successful, would be a renewed insistence by the White House and the Budget Committees that the scorekeeping of Highway Trust Fund programs be changed as proposed in the Obama Administration's fiscal 2010 budget to basically eliminate contract authority as a meaningful concept in the federal budget and to repeal what remains of the TEA21 "firewalls" and guarantees applying to highway and transit spending.

(Obey, while supportive of higher highway and transit spending levels, has often chafed loudly at the privileged status given to Trust Fund programs over other federal programs, so his motivations would actually be consistent here.)

Under this scenario, the huge general fund appropriation (\$100-140 billion) would be provided quickly, as part of the second stimulus bill, which would give Congress the time to enact a six-year surface transportation bill (the last few years of

which would revert back to Trust Fund financing) by next summer to give states a certainty of multi-year funding and enable them to start construction on large multi-year projects.

As a practical matter, the funding under the Oberstar-Obey plan would probably have to be given out, like the money in the first stimulus, under current law formulas, since no attempts to write new formulas have yet been made in the House or Senate and in all previous reauthorizations, attempts to write new formulas take several months of high-level negotiations, threats and brinksmanship.

House Democratic leaders are expected to meet once members return for the first votes this evening to discuss various proposals for short-term job creation, including the Oberstar-Obey plan, and the means of paying for those proposals.

The Senate seems to be moving more slowly on job creation legislation, but Democratic leaders there are also expected to meet this week on the issue.

Meanwhile, the White House is organizing a "jobs summit" on Thursday to give a public airing to a variety of proposals to lower the unemployment rate, which currently stands at over 10 percent.

In an attempt to break into that jobs summit news cycle, Oberstar is scheduled to hold a press conference tomorrow with the head of the organization of state DOTs (AASHTO) to release an updated list of tens of billions of dollars of "ready to go" highway, bridge and transit projects in all U.S. states and territories which could be approved for construction within 120 days if Congress were to enact large amounts of additional funding quickly.

This will emulate what Oberstar and AASHTO did last year and earlier this year — hoping to use the long list of specific projects to show individual legislators how a quick

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burst of stimulus spending could affect their areas. However, this approach also has its drawbacks.

The previous AASHTO survey lists were criticized by legislators in urban areas for being too focused on projects in rural areas. This is to be expected, since highways are inherently more rural than urban and since urban projects tend to take much longer to plan and execute and are not as “shovel-ready.”

But members of the Congressional Black Caucus are flexing their muscle within the House Democratic Caucus to criticize the previous stimulus law for not providing benefits to their districts. The jobs created/sustained numbers on the Recovery.gov website, while unreliable, consistently show much lower job creation levels in inner-city urban areas to date, and unemployment rates are highest in those areas. So Black Caucus members and other legislators from urban areas can be expected to give even more scrutiny to the next AASHTO list than to previous lists.

Some Democratic members have suggested bypassing the current, indirect stimulus model in favor of a return to the New Deal approach of direct federal “workfare” programs like the WPA and CCC. In the construction sector, however, this is not as practical for job creation as it used to be. (Look at archival photos of WPA construction projects sometime. The bulldozer did not start entering the construction market until the mid-1930s and took time to gain wide use. Earthmoving in the WPA-CCC days was done by men with shovels and pickaxes, and today, one man on a bulldozer can do the work of 20 men with shovels. The WPA and CCC were based around manual (often menial) labor, but 70 years of efficiency gains and automation increases make that approach grossly inefficient today.)

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How Might The Oberstar-Obey Plan Work?

If chairmen Oberstar and Obey do indeed have a plan to use \$100+ billion in appropriations from the general fund of the Treasury for highways and transit to create jobs and ease the financial pressures facing the Highway Trust Fund (and we are reliably assured that they do), the actual implementation of such a plan will be very interesting. We believe that the plan involves eliminating most new funding obligations from the Highway Trust Fund for two fiscal years. During that time, dollars would continue to flow out of the Trust Fund to pay to fulfill commitments made in prior years, but no new spending commitments from the Trust Fund would be made, at least not for most highway and transit programs.*

In the place of contract authority from the Trust Fund, appropriations from the general fund of the Treasury would be made to replace the \$50+ billion per year in highway and transit contract authority and to supplement that baseline spending in the short term to create more jobs. Here is the latest set of CBO spending and revenue assumptions for the Highway Account of the Highway Trust Fund (dollar amounts in billions):

CBO August 2009 Highway Trust Fund - Highway Account Baseline

<u>HTF Highway Account</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Assumed FAHP Ob Limit	40.7	41.2	41.5	41.7	41.9	42.3	42.9
B-O-Y Cash Balance	10.0	8.6	2.1	-4.4	-15.5	-26.4	-37.9
Receipts	30.3	30.4	31.0	32.2	33.2	34.0	34.6
General Fund Transfer	7.0	0.0	0.0	0.0	0.0	0.0	0.0
Outlays & Transfers to MTA	38.9	36.9	37.6	43.4	44.1	45.5	45.7
E-O-Y Cash Balance	8.6	2.1	-4.4	-15.5	-26.4	-37.9	-49.1

We do not know the presumed start date of the transition from contract authority to general fund appropriations under the Oberstar-Obey plan. Since some new obligations from the Trust Fund have already been made in FY 2010 under the continuing resolution, for the purposes of this exercise we assume that all of FY 2010 will be funded in the traditional way since that makes the arithmetic much easier. If all new highway obligations (subject to limitation) from the HTF Highway Account were suspended in FY 2011 and FY 2012, the above baseline would be changed to look like so:

CBO August 2009 Highway Trust Fund - Highway Account Baseline, Assuming No New Highway Obligations Subject to Limit in FY 2011 and FY 2012

<u>HTF Highway Account</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Assumed FAHP Ob Limit	40.7	41.2	0.0	0.0	41.9	42.3	42.9
B-O-Y Cash Balance	10.0	8.6	2.1	6.7	24.2	33.7	27.6
Receipts	30.3	30.4	31.0	32.2	33.2	34.0	34.6
General Fund Transfer	7.0	0.0	0.0	0.0	0.0	0.0	0.0
Outlays & Transfers to MTA	38.9	36.9	26.4	14.7	23.7	40.1	41.5
E-O-Y Cash Balance	8.6	2.1	6.7	24.2	33.7	27.6	20.7

The point of letting the Trust Fund take a two-year breather is twofold: to end the need for periodic bailouts of the Trust Fund by the general fund in the short term, and to allow higher spending levels from the Trust Fund in the long term. If the remainder of a six-year highway bill pursues a SAFETEA-LU strategy (to spend down Trust Fund balances to as close to zero as possible by the end of the authorization period), the table at right shows the maximum that highway spending could be increased.

	<u>2013</u>	<u>2014</u>	<u>2015</u>
CBO Baseline Ob Limit	41.9	42.3	42.9
Plus Additional Spending	+25.0	+25.0	+25.0
Ob Limit Under Scenario	66.9	67.3	67.9
CBO Baseline E-O-Y Balance	33.7	27.6	20.7
Minus Additional Outlays	-6.8	-17.3	-19.0
E-O-Y Balance Under Scenario	27.0	10.4	1.7

*It is likely that FMCSA and NHTSA spending would continue to be drawn from the Trust Fund during this period. Also, the \$739 million per year in mandatory highway spending from the Trust Fund would also probably continue in some form, because if that spending is discontinued for a year, CBO would have to adjust their baseline and remove the money in all future years, making it difficult to put that money back after the two-year hiatus ends.

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But too much focus on construction projects in urban areas could slow the rate of job creation. The table below shows all transportation and public works spending from the first stimulus in terms of obligation and outlays as of November 20. About \$6.0 billion of the \$27.5 billion in highway and bridge funding remains unobligated, and several experts we contacted believe that the vast majority of that \$6.0 billion comes from the \$4.3 billion of the stimulus money that was allocated directly to metropolitan planning organizations in urbanized areas with a population over 200,000 which had later “use it or lose it” deadlines. (The actual breakdown is not available from FHWA or on Recovery.gov.)

The fact that some stimulus accounts have yet to obligate any money at all (see high-speed rail and multi-modal discretionary surface transportation grants) brings up another issue to be discussed by Democratic leaders this week—how to pay for a second stimulus.

Several ideas have been floated. Rep. Pete DeFazio (D-OR) and others have proposed a tax of 0.25 percent on certain financial instrument transactions, but a consensus seems to be forming that any such action would at least require an identical tax to be levied in the United Kingdom (and preferably also in other European nations and Japan as well) in order to be effective, which would take time and negotiations.

Another popular option would be to rescind the remaining spending authority in the TARP program, which could be used to offset between

\$160 and \$225 billion in budget authority and somewhere between \$50 and \$120 billion in outlays (depending on which assumptions are used by CBO). But the White House and Treasury Department oppose this, and if balances are canceled and Congress then has to provide new bailout money for the financial sector next year, the political consequences would be worse than if the existing TARP money were simply left in place.

As a result, more and more Democrats are talking openly about rescinding unobligated money from the first stimulus to pay for the second stimulus. (Republicans have long supported this approach.) Since about a quarter of the first stimulus was never intended to create jobs in the short term, the thought is that some of that money can be reprogrammed to other pro-

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OBLIGATION AND OUTLAY OF MAJOR TRANSPORT./PUBLIC WORKS STIMULUS FUNDING

(Millions of Dollars, as of Close of Business for the Week Ending Nov. 20, 2009)

<u>Agency</u>	<u>Bureau</u>	<u>Account</u>	<u>Total Provided</u>	<u>Obligated 11/20/2009</u>	<u>Oblig. % of Total</u>	<u>Outlays 11/20/2009</u>	<u>Outlay % Of Total</u>
DOT	FHWA	Highways	27,500	21,501	78.2%	4,436	16.1%
DOT	FTA	Transit - Capital Formula	6,900	6,271	90.9%	822	11.9%
DOT	FTA	Transit - Rail Mod	750	739	98.5%	100	13.3%
DOT	FTA	Transit - New Starts	750	468	62.4%	367	48.9%
DOT	OST	Multimodal Discr. Grants	1,500	0	0.0%	0	0.0%
DOT	FAA	Airport Grants	1,100	1,089	99.0%	352	32.0%
DOT	FRA	High-Speed Rail	8,000	2	0.0%	1	0.0%
DOT	FRA	Grants to Amtrak	1,300	1,294	99.5%	166	12.8%
DOT	Other	Other USDOT	320	202	63.0%	11	3.3%
Total, USDOT			48,120	31,565	65.6%	6,255	13.0%
DOD	USACE	Construction	2,000	919	46.0%	149	7.4%
DOD	USACE	Operations and Mainten.	2,075	1,351	65.1%	296	14.3%
DOD	USACE	Investigations	25	15	59.5%	3	11.6%
DOD	USACE	Mississippi River System	375	177	47.2%	87	23.3%
DOD	USACE	Former Site Cleanup	100	90	89.9%	2	2.1%
DOD	USACE	Regulatory Program	25	9	34.3%	5	19.8%
Total, Corps of Eng.			4,600	2,561	55.7%	542	11.8%
DHS	TSA	Aviation Security	1,000	576	57.6%	40	4.0%
DHS	FEMA	State & Local Programs	300	300	100.0%	0	0.0%
DHS	USCG	Acquisit, Constr. & Improv.	98	13	13.7%	0	0.5%
DHS	USCG	Alteration of Bridges	142	142	100.0%	0	0.0%
EPA		State & Tribal Asst. Grants	6,400	6,213	97.1%	326	5.1%

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grams that create jobs quickly. The problem is that realistically, the only way to rescind unobligated money from the first stimulus is to use a date certain criteria — “all funds not obligated by [date] are hereby rescinded.” If you exempt slow-spending programs that are White House priorities, like high-speed rail, then everyone else with a slow-spending program in the energy, health, education, etc. sectors will step up and demand that their sacred cows be exempted from cuts as well, and the process collapses.

The other option for financing is, as one Hill aide said, “Article I, Section 8, Clause 2” (the provision of the Constitution granting Congress the power “to borrow money on the credit of the United States”). But polls show public opinion amongst political independents recoiling against further deficit spending, which is causing moderate Democrats to insist that any further stimulus spending be fully paid for. In the end, the big question may be this: does President Obama want to keep the TARP money badly enough to have a public showdown with Congress over it, possibly leading to a veto threat?

The timing of Congressional action on a second stimulus bill is also at

issue. House leaders want to let their members vote on something related to job creation before they go home for Christmas. But Senate leaders have expressed an interest in letting their chamber amend and vote on a measure in January, meaning that the hope expressed by the Speaker that a jobs package could be jammed into the omnibus appropriations conference report and sent to the President for his signature by Christmas is probably unattainable.

(The table below shows the results of a new CBO comparison of their earlier estimates for FY 2009 stimulus outlays with actual outlays reported by the Treasury Department.)

COMPARISON OF FEBRUARY 2009 CONGRESSIONAL BUDGET OFFICE ESTIMATES OF DISCRETIONARY STIMULUS OUTLAYS IN FISCAL YEAR 2009 WITH ACTUAL TREASURY OUTLAYS IN FISCAL YEAR 2009

	Original CBO FY09			Actual FY09			Original CBO FY09			Actual FY09	
	Budget Author.	Outlay Estimate \$\$\$	Rate	Outlays (Treasury) \$\$\$	Rate		Budget Author.	Outlay Estimate \$\$\$	Rate	Outlays (Treasury) \$\$\$	Rate
Title I - Agriculture											
Rural Broadband	2,500	63	2.5%	-	0.0%	Title VIII - Labor-HHS-Education					
Other Title I	3,243	608	18.7%	212	6.5%	National Institutes of Health	10,400	891	8.6%	71	0.7%
Subtotal, Title I	5,743	671	11.7%	212	3.7%	Nat'l Coordinator for Health IT	1,980	297	15.0%	-	0.0%
Title II - Commerce-Justice-Science						Other HHS	9,517	2,140	22.5%	514	5.4%
Broadband Tech. Opportunities	4,690	80	1.7%	73	1.6%	Employment & Training Admin.	4,480	616	13.8%	825	18.4%
State/Local Law Enforcement	2,765	415	15.0%	1,156	41.8%	DOE - Education for Disadvantaged	13,000	494	3.8%	804	6.2%
National Science Foundation	3,002	342	11.4%	27	0.9%	DOE - Special Education	12,200	732	6.0%	791	6.5%
Other Title II	5,485	1,619	29.5%	525	9.6%	DOE - Student Financial Assisst.	15,840	913	5.8%	6,355	40.1%
Subtotal, Title II	15,942	2,456	15.4%	1,781	11.2%	Other Dept. of Education	2,124	207	9.7%	71	3.3%
Title III - Defense (Military)	4,555	1,679	36.9%	239	5.2%	Other Title VIII	1,620	609	37.6%	225	13.9%
Title IV - Energy and Water						Subtotal, Title VIII	71,161	6,899	9.7%	9,656	13.6%
Energy Efficiency & Renewables	16,800	445	2.6%	210	1.3%	Title IX - Legislative Branch	25	8	32.0%	4	16.0%
Innovative Tech. Loan Guarantees	4,000	60	1.5%	(2)	-0.1%	Title X - Military Construction/VA	4,288	454	10.6%	101	2.4%
Other Dept. of Energy	15,925	1,293	8.1%	743	4.7%	Title XI - State - Foreign Operations	602	96	15.9%	28	4.7%
USACE - Miss. River System	375	188	50.1%	65	17.3%	Title XII - Transportation-HUD					
USACE - Investigations	25	10	40.0%	1	4.0%	DOT - Highways	27,500	2,750	10.0%	2,416	8.8%
USACE - Construction	2,000	100	5.0%	96	4.8%	DOT - Discretionary Surface Grants	1,500	-	0.0%	-	0.0%
USACE - Oper. & Maintenance	2,075	830	40.0%	166	8.0%	DOT - FAA Facilities & Equip.	200	20	10.0%	2	1.0%
USACE - Regulatory Program	25	13	52.0%	3	12.0%	DOT - FAA Airport Grants	1,100	55	5.0%	179	16.3%
USACE - Former Site Cleanup	100	30	30.0%	-	0.0%	DOT - Grants to Amtrak	1,300	1,231	94.7%	99	7.6%
Subtotal, US Army Corps of Eng.	4,600	1,171	25.5%	331	7.2%	DOT - High-Speed Rail	8,000	160	2.0%	2	0.0%
Other Title IV	1,000	180	18.0%	113	11.3%	DOT - FTA Transit Formula Grants	6,900	621	9.0%	566	8.2%
Subtotal, Title IV	42,325	3,149	7.4%	1,395	3.3%	DOT - FTA Fixed Guideway Mod.	750	68	9.1%	76	10.1%
Title V - Financial Services/Gen. Gvt.						DOT - FTA New Starts	750	68	9.1%	307	40.9%
GSA Federal Buildings Fund	5,550	400	7.2%	47	0.8%	DOT - Inspector General	20	9	45.0%	-	0.0%
Other Title V	1,439	334	23.2%	509	35.4%	DOT - Assistance to Shipyards	100	-	0.0%	-	0.0%
Subtotal, Title V	6,989	734	10.5%	556	8.0%	Subtotal, DOT	48,120	4,982	10.4%	3,647	7.6%
Title VI - Homeland Security						HUD - Public Housing Capital Fund	4,000	80	2.0%	196	4.9%
TSA Aviation Security	1,000	30	3.0%	21	2.1%	HUD - Other Housing Assistance	9,625	409	4.2%	1,324	13.8%
Coast Guard AC&I	98	6	6.1%	-	0.0%	Subtotal, Title XII	61,745	5,471	8.9%	5,167	8.4%
Coast Guard Alteration of Bridges	142	14	9.9%	-	0.0%	Title XIV - State Stabilization Fund	53,600	6,540	12.2%	12,433	23.2%
FEMA State & Local Programs	300	6	2.0%	-	0.0%	DIVISION A, BEFORE ADJUSTMENTS	280,680	29,832	10.6%	31,965	11.4%
Other Title VI	1,215	450	37.0%	88	7.2%	Outlay Adjustment - Pell Grants				(4,400)	
Subtotal, Title VI	2,755	506	18.4%	109	4.0%	Outlay Adjustment - HUD Project-Based Rental Assistance				(1,180)	
Title VII - Interior & Environment						DIVISION A TOTAL, ADJUSTED	280,680	29,832	10.6%	26,385	9.4%
EPA Water State Revolving Funds	6,000	180	3.0%	235	3.9%						
Other Title VII	4,950	989	20.0%	49	1.0%						
Subtotal, Title VII	10,950	1,169	10.7%	284	2.6%						

CBO now believes that stimulus spending for Pell Grants and public housing reduced outlays from the regular accounts for those programs by the amounts shown at right (adjustments).

Hazmat Markup

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showed that the costs would outweigh the number of lives saved, and the regulation was shelved.*

The trucking industry felt that the costs of upgrading their existing fleet to comply with the new rule, which they estimated at up to \$8,000 per tanker truck, far outweighed the value of the estimated average one person per year killed in wetlines accidents. T&I chairman James Oberstar (D-MN) and his staff, meanwhile, felt that the cost to upgrade existing trucks was lower (closer to \$3,000 per truck) and that saving lives is beyond price.

The wet lines issue had caused Oberstar to postpone a scheduled markup of H.R. 4016 two weeks beforehand. The night before the November 19 markup, Oberstar presented other leaders of the T&I panel with a revised version of the provision that Republicans and their trucker allies felt would have made the wet lines provision more onerous (it would have allowed DOT to set the deadline for retrofitting existing trucks administratively, and quite possibly earlier than the 12/31/2020 date in the underlying bill).

T&I Railroads, Pipelines and Hazardous Materials Subcommittee chairman Corrine Brown (D-FL) was in the truckers' corner on this issue, as were several other Democratic T&I members, and at about the time the markup was supposed to start, Oberstar told his staff to negotiate a new compromise.

*The dollar value of saving a human life for the purposes of DOT safety regulations is now \$6.0 million, but when the first wet lines rulemaking went through, the value was only \$3.0 million. See link on the following page. And it puts the I-35W bridge collapse in a bit of a different perspective, doesn't it? Actual cost to replace the bridge = \$234 million. Dollar value of the lives of the thirteen persons killed in the bridge collapse under the DOT methodology in use at the time = \$39 million.

AMENDMENTS OFFERED TO H.R. 4016 DURING THE HOUSE T&I COMMITTEE MARKUP ON NOVEMBER 19, 2009

- **Oberstar (D-MN) managers' amendment** amending section 201 of the bill to establish a research and testing program for lithium batteries; replacing all of section 202 of the bill with new language that changes the start date of the ban on transportation hazardous materials in wetlines from December 31, 2020 to December 31, 2025, gives the Secretary of Transportation the authority to grant waivers of that requirement if he finds it is in the public interest, and allows alternative means of compliance that provide a level of safety at least equivalent to the prohibition against transporting materials in wetlines; adds a new sec. 204 to require a report on cargo tank rollovers; adds a new section 401 requiring DOT to implement a hazardous material technical assessment, research, and analysis program; and making various changes to PHMSA permitting processes — agreed to as modified by voice vote.
- **Graves (R-MN) second-degree amendment to the managers amendment** directing DOT to establish standards for PHMSA permitting — *offered and withdrawn*.
- **Latta (R-OH) amendment** to strike section 201 of the bill relating to transportation of lithium batteries in air cargo — *defeated by roll call vote of 26 yeas, 44 nays*.
- **Kagen (D-WI) amendment** creating a new federal tax credit equal to 75 percent of a taxpayer's wet line compliance costs — *offered and withdrawn*.
- **Mica (R-FL) amendment** adding a new sec. 204 to the bill prohibiting the carrying of laptop computers on board aircraft until such time as fire resistant containers for the same are in commercial use — *defeated by roll call vote of zero yeas, 61 nays*.

The final managers' amendment (adopted by the committee by voice vote) extends the deadline to December 31, 2025 (if one assumes a 15- to 20-year lifespan for a tanker truck, this would let most of the existing fleet exit through attrition without the need for retrofitting. The amendment also gives DOT the power to issue waivers of the rule if such waivers are in the public interest.

The other major issue being contested during the markup was the bill's requirements for the labeling, packaging and positioning of lithium batteries on air cargo planes. (The transportation of lithium batteries as air cargo on passenger planes is already prohibited.)

Rep. Bob Latta (R-OH) offered an amendment at the markup to strike the lithium batteries section from the bill entirely. During debate on the amendment, Aviation Subcommittee chairman Jerry Costello (D-IL) gave a multimedia presentation on the dangers of lithium batteries, first showing a UPS airplane on fire sitting on a runway at the Philadelphia airport in February 2006 (there were slight injuries but no one was killed). The NTSB investigation indicated that the fire was most probably (but not conclusively) caused by lithium batteries in the

cargo hold "cooking off" and starting a fire. Costello also showed a popular YouTube video of the lithium battery in an unattended laptop computer in an airport terminal overheating, setting off a small explosion and a fire.

After debate, the Latta amendment was defeated by a 26 to 44 vote. But then T&I ranking member John Mica (R-FL) accurately pointed out that H.R. 4016 would do nothing to prevent the specific problem shown in Costello's YouTube video—that of a single laptop computer battery causing a fire.

So Mica offered a hastily drawn amendment to prohibit anyone from carrying a laptop computer on board a passenger or cargo aircraft until such time as fireproof containers are in use — the point being, presumably, that if Democrats really cared about prohibiting the specific threat shown in Costello's video, they would have to be consistent and keep all of those things off all aircraft.

The Mica amendment, of course, received zero affirmative votes (not even Mica) and was defeated on a 0-61 vote.

Once a cost estimate is forthcoming from the Congressional Budget Office, H.R. 4016 is expected to move to the House floor.

NEW AND NOTABLE ON THE INTERNET

How Much Is A Human Life Worth?

Earlier this year, the U.S. Department of Transportation increased its Value of a Statistical Life (VSL) to \$6.0 million pursuant to regulations issued by the Office of Management and Budget. The DOT memo explaining this calculation and how it is used in safety rulemakings can be read here:

<http://ostpxweb.dot.gov/policy/reports/VSL%20Guidance%20031809%20a.pdf>

U.S. Government Accountability Office.

GAO has issued several new transportation-related reports, to wit:

Aviation Safety: Information on the Safety Effects of Modifying the Age Standard for Commercial Pilots

<http://www.gao.gov/new.items/d10107r.pdf>

Surface Transportation: Efforts to Address Highway Congestion through Real-Time Traffic Information Systems Are Expanding but Face Implementation Challenges

<http://www.gao.gov/new.items/d10121r.pdf>

Federal Aviation Administration: Human Capital System Incorporates Many Leading Practices, but Improving Employees' Satisfaction with Their Workplace Remains a Challenge

<http://www.gao.gov/new.items/d1089.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	Nomination confirmed 11/5/09
DOT-National Highway Traffic Safety Admin.	Charles Hurley	Administrator	Commerce, Science and Transportation	Nomination withdrawn prior to transmission
DOT—Pipeline and Hazard. Materials Adm.	Cynthia Quarterman	Administrator	Commerce, Science and Transportation	Nomination confirmed 11/5/09
Amtrak Board of Directors	Anthony Coscia	Director for a term of five years	Commerce, Science and Transportation	Hearing held 11/18/09
Amtrak Board of Directors	Albert DiClemente	Director for rest of a term expiring 7/26/2011	Commerce, Science and Transportation	Hearing held 11/18/29
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	Hearing held 11/18/09
Surface Transportation Board	Daniel Elliott	Chairman (and member until 12/31/2013)	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 <i>and</i> Homeland Security	Nomination reported 11/19/09

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THIS WEEK IN COMMITTEE

Tuesday, December 1, 2009 – Senate Commerce, Science and Transportation – Subcommittee on Aviation Operations, Safety and Security – subcommittee hearing on pilot fatigue and aviation safety – *10:15 a.m., SR-253 Russell.*

Wednesday, December 2, 2009 – House Transportation and Infrastructure – Subcommittee on Aviation – subcommittee hearing on commercial space transportation – *10:00 a.m., 2167 Rayburn.*

Senate Commerce, Science and Transportation – full committee hearing on transportation security challenges post-9/11 – *10:00 a.m., SR-253 Russell.*

NEXT WEEK IN COMMITTEE

Tuesday, December 8, 2009 – House Transportation and Infrastructure – Subcommittee on Highways and Transit – subcommittee hearing on the federal role in public transportation safety regularion – *10:00 a.m., 2167 Rayburn.*

Wednesday, December 9, 2009 – House Transportation and Infrastructure – Subcommittee on Coast Guard and Maritime Transportation – subcommittee hearing on maritime domain awareness – *2:00 p.m., 2167 Rayburn.*

Thursday, December 10, 2009 – House Transportation and Infrastructure – full committee hearing on the progress of the Recovery 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	Public Law 111-85 10/28/09
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	Public Law 111-83 10/28/09
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	Subcommittee hearing scheduled for 11/18/09		
FY 2010 Coast Guard Authorization	H.R. 3619 passed House 10/23/09 by a vote of 385-11	S. 1194 reported 10/30/09 S. Rept. 111-95	
Transportation Security Admin. Reauthorization	H.R. 2200 passed House 6/4/09 by a vote of 397-25		