



May 2, 2012

Legislation

Congressional Schedule. Congress is in recess the week of April 30 and will reconvene on Monday, May 7.

Conference committee on surface transportation bill to meet on May 8th. Leaders of the House and Senate have appointed 47 members from the two legislative bodies to a conference committee in the attempt to advance a long-awaited surface transportation bill. The initial meeting will occur on May 8.

Every six years, the U.S. Congress reauthorizes legislation that determines the volume of spending, the recipients of that spending, and the revenue sources of that spending for the nation's surface transportation system. The current surface transportation plan, the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU), had an expiration date of September 30, 2009. Since Congress has been unable to reach consensus on a new six year authorization, the current legislation has repeatedly been extended.

The infrastructure projects and overall plan stipulated by SAFETEA-LU are primarily financed by an 18.4 cent tax per gallon of gasoline purchased and a 24.4 cent tax per gallon of diesel fuel. This arrangement has proven to be unsustainable in adequately funding our nation's surface transportation needs. As a result, new funding mechanisms for the next surface transportation bill are being explored and debated.

On March 14, the Senate passed a two year, \$109 billion bill by a 74-22 margin. The House thus far has failed to pass anything beyond an extension of the current law. The most recent action was a 90 day extension passed on April 18.

Senator Barbara Boxer (D-CA), the Chairwoman of the Senate Environment and Public Works Committee, will chair the conference committee. Other Senate appointees include Dick Durbin (D-IL), Max Baucus (D-MT), Jay Rockefeller (D-WV), Charles Schumer (D-NY), Tim Johnson (D-SD), Bill Nelson (D-FL), Robert Menendez (D-NJ), James Inhofe (R-OK), Orrin Hatch (R-UT), Kay Bailey Hutchison (R-TX), Richard Shelby (R-AL), David Vitter (R-LA), and John Hoeven (R-ND).

House Republicans appointed to the conference committee include John Mica (R-FL), Chairman of the House Transportation and Infrastructure Committee, Dave Camp (R-MI), Don Young (R-AR), John Duncan (R-TN), Bill Shuster (R-PA), Shelley Moore Capito (R-WV), Rick Crawford (R-AR), Jaime Herrera Beutler (R-WA), Larry Buschon (R-IN), Richard Hanna (R-NY), Steve Southerland (R-FL), James Lankford (R-OK), Reid

Ribble (R-WI), Fred Upton (R-MI), Ed Whitfield (R-KY), Doc Hastings (R-WA), Rob Bishop (R-UT), Ralph Hall (R-TX), Chip Chavaack (R-MN), and Patrick Tiberi (R-OH).

House Democrats appointed to the committee include Nick Rahall (D-WV), Peter DeFazio (D-OR), Jerry Costello (D-IL), Jerrold Nadler (D-NY), Corrine Brown (D-FL), Elijah Cummings (D-MD), Leonard Boswell (D-IA), Tim Bishop (D-NY), Henry Waxman (D-CA), Ed Markey (D-MA), Eddie Bernice Johnson (D-TX), Earl Blumenauer (D-OR), and Eleanor Holmes Norton (D-DC).

Short line tax credit not included in Senate bill. The provision extending the short line and regional railroad tax credit was not included in the two year, \$109 billion surface transportation legislation passed by the Senate.

Originally enacted in 2004, the measure provides a 50 percent tax credit on rehabilitation and upgrades to existing short line and regional railroad track. The credit expired on December 31, 2011. Proponents of the legislation are working to extend the tax credit through 2017.

Co-sponsors added to “WAVE 4” bill. On March 29, Congressman Ed Whitfield (R-KY) introduced H.R. 4342, the “Waterways Are Vital for the Economy, Energy, Efficiency, and Environment” Act of 2012 (WAVE 4). A companion bill is expected to be introduced in the Senate.

Since the bill’s introduction, 13 additional House members have agreed to sign on as co-sponsors: Jerry Costello (D-IL), John Duncan (R-TN), Tim Johnson (R-IL), Russ Carnahan (D-MO), Robert Aderholt (R-AL), Terri Sewell (D-AL), Pete Olson (R-TX), John Shimkus (R-IL), Steve Cohen (D-TN), Adam Kinzinger (R-IL), Leonard Boswell (D-IA), Daniel Lipinski (D-IL), and Dave Loebsack (R-IA).

The WAVE 4 Act is largely inspired by the Capital Development Plan developed by the Inland Waterways Users Board. The primary elements of the WAVE 4 Act are:

- Preserving the existing 50 percent industry/50 percent federal cost-sharing formula for new lock construction and major lock rehabilitation projects costing \$100 million or greater.
- Adjust the current model to provide 100 percent federal funding for 1.) Smaller lock rehabilitation projects and 2.) Dam construction and major rehabilitation.
- Institute a cap on the industry cost share in order to encourage keeping projects within budget. If cost overruns occur, the federal government would be wholly responsible for those expenditures.
- The existing 20 cent per gallon tax on diesel fuel paid by the barge and towing industry would be increased to 26 cents or 29 cents.

President Obama’s FY2013 budget calls for a ‘vessel user fee’ to provide needed investments for the inland waterway system.

In an earlier testimony before a House Appropriations subcommittee, Jo-Ellen Darcy, assistant secretary of the Army for Civil Works, who commands the Corps of Engineers, explained that the president’s 2013 budget calls for “targeted investments in the nation’s water resources infrastructure,” to support domestic and international trade.

In previous years, barge and towing companies strongly opposed proposals to collect a fee from operators each time they transited a lock. Darcy's testimony did not specify a lockage fee, but refers to a "vessel user fee" to supplement the existing tax on fuel accessed on the barge and towing industry.

Administration

Overwhelming demand for TIGER Grant Program. Last month, U.S. Transportation Secretary Ray LaHood announced that the overwhelming demand for TIGER (Transportation Investment Generating Economic Recovery) grants has once again far surpassed the available funding.

Applications to the U.S. Department of Transportation (DOT) for TIGER 2012 grants totaled \$10.2 billion, far exceeding the \$500 million set aside for the program. The DOT received 703 applications from all 50 states, U.S. territories and the District of Columbia.

"President Obama has challenged us to invest in an America that is built to last, and it's clear that communities across America can't afford to wait any longer to get started," said Secretary LaHood. "At a time when gas prices are high, it's more important than ever that we invest in projects that will relieve congestion, improve the safety of our transportation systems, and provide Americans with affordable, efficient options for reaching their destinations."

On November 18, 2011, the President signed the FY 2012 Appropriations Act, which provided \$500 million for Department of Transportation infrastructure investments. Like the first three rounds, TIGER 2012 grants are for capital investments in surface transportation infrastructure and will be awarded on a competitive basis. This is the fourth round of TIGER funding.

The previous three rounds of the TIGER program provided \$2.6 billion to 172 projects in all 50 states, the District of Columbia and Puerto Rico. Demand for the program has been overwhelming, and during the previous three rounds, the Department of Transportation received more than 3,348 applications requesting more than \$95 billion for transportation projects across the country.

Corps Recommends 47 ft. depth at Savannah. On April 11, the U.S. Army Corps of Engineers Savannah District released the final report on the Savannah Harbor Expansion Project.

The final report concludes that deepening the harbor from its current depth of 42 feet to 47 feet is economically viable, environmentally sustainable, and in the best interests of the United States.

While the Georgia Ports Authority (GPA) recommended deepening the Savannah River to 48 feet, officials at the GPA are confident that the 47 foot depth would still enable the Port of Savannah to accommodate the larger ocean vessels that will pass through the Panama Canal after it is expanded in 2014. "We're going to be fine with 47 feet at low tide and 54 feet at high tide," explained Curtis Foltz, GPA executive director. "So we are very comfortable with it."

The report, authorized by Congress, analyzed the engineering alternatives, environmental impacts, and economic costs and benefits of deepening the Savannah Harbor and shipping channel. Funded by the federal government and the state of Georgia, the study examined the characteristics of future international shipping fleets, current and future trade routes, and the capacity of the Garden City

Terminal on the Savannah River.

Based on analyses within the report, the 47-foot plan would bring \$174 million in annual net benefits to the nation, with a cost-to-benefit ratio of 5.5 to 1. Essentially, for every \$1 invested in the project, the nation would yield nearly \$6 in returns. The estimated total cost for the project, based on fiscal year 2012 levels, is \$652 million, cost-shared by the Federal government and the State of Georgia.

Of the total cost, 45 percent (\$292 million) is allocated for environmental mitigation efforts.

Surface Transportation Board

BNSF, Union Pacific Ordered to Pay Reparations. On April 27th, the Surface Transportation Board (STB) ordered BNSF Railway and Union Pacific Railroad to pay reparations totaling \$9,244,144 to Arizona Electric Power Cooperative (AEPCO) for rate overcharges for the movement of utility coal.

In its decision, the STB explained, “ In 2008, AEPCO filed a complaint challenging the reasonableness of the joint rates established by BNSF Railway Company and Union Pacific Railroad Company for unit train coal transportation service from New Mexico and the northern portion of the Powder River Basin in Wyoming and Montana to AEPCO’s Apache Generating Station located near Cochise, Arizona.

“In a decision served Nov. 22, 2011, the Board found that AEPCO had shown that defendants have market dominance over those movements, and that their rates were unreasonable. Accordingly, the Board ordered defendants to reimburse AEPCO for amounts collected above prescribed levels. The Board ordered defendants to establish and maintain rates for movements of the traffic that do not exceed 180% of the variable costs of the service.”

The Surface Transportation Board is the regulatory agency created by Congress to resolve railroad rate and service disputes and reviewing proposed railroad mergers. The STB is administratively affiliated with the U.S. Department of Transportation and is governed by a three member board. Each member is appointed by the president and confirmed by the Senate.

Revenue to Variable Cost Ratios (R/VC) are used by the STB to evaluate and measure the profitability and reasonableness associated with railroad freight charges. For example, if a railroad’s freight charges are \$2,000 per carload and the variable costs for that movement are \$1,000 per carload, the R/VC would be 200%. In order for a rate to be regarded as potentially excessive, and subject to STB jurisdiction, the R/VC ratio must be equal to or greater than 180%.