



June 12, 2009

Rail - On June 1st, Senate Commerce, Science, and Transportation Committee Chairman John Rockefeller (D-WV) and Senate Antitrust Subcommittee Chairman Herb Kohl (D-WI) notified their colleagues by letter of their decision to “withdraw the pending cloture petition” on Kohl’s rail anti-trust legislation. The Chairmen went on to say that the “Commerce and Judiciary Committees intend to work together on comprehensive rail competition legislation” and produce a “bipartisan package that reforms the Surface Transportation Board and repeals the railroads’ antitrust exemption.” They closed their letter by reaffirming their commitment to “finding real solutions that can be enacted into law this year.”

A large group of shippers, including agricultural groups, plan to send the following letter on June 15th to the Chairmen supporting their actions:

Thank you for your agreement to work together on comprehensive rail legislation for consideration by the full Senate later this year. We strongly believe in a program to ensure a normal commercial relationship between railroads and their customers, and we are hopeful that your joint efforts will result in a comprehensive, coherent and balanced legislative vehicle. We look forward to working with you in the development of your unified legislation.

Thank you for your leadership and advocacy on this issue. We are pleased that your goal is enactment of this legislation in 2009, especially since we understand that the agenda of the Senate this year is particularly crowded. However, we stand ready to work with you to resolve this important issue quickly.

It is now expected that this comprehensive rail reform legislation will be introduced prior to the August recess.

Court Rules on Small Rate Case – The U.S. Court of Appeals for the D.C. Circuit ruled June 9th against the petitions by both shippers and carriers in favor of the Surface Transportation Board’s (STB) interpretation of rules for bringing small rate cases. The decision found that the STB had acted within its statutory authority, was neither arbitrary nor capricious in its actions, and affirmed the agency’s position to decline all challenges by both groups. Shippers have expressed the need for including revisions of these rules in any rail reform legislation.

Surface Transportation Bill - Prior to the Memorial Day recess, House Transportation and Commerce Committee Chairman Jim Oberstar (D-MN) had targeted the first week of June for release of an outline of the highway reauthorization bill. Now the Committee has delayed the outline’s release to the end of June with a plan to report the bill from Committee by the end of July. This new time-line pushes back consideration of the bill by the full House to September.

The growing shortfall in the Highway Trust Fund coupled with a desire to increase infrastructure investment beyond current levels in the reauthorization bill is causing considerable complications for the Committee. Administration officials have told Congress that the Trust Fund will need a \$5-\$7

billion infusion of cash by August to prevent a decline in reimbursements to states; and up to \$17 billion in the coming two years just to maintain the nation’s highway infrastructure system.

Last year the Bush administration had to shore up the Highway Trust Fund with an additional \$8 billion because of declining revenues, but no corresponding spending cuts or offsets were found. The Obama Administration has stated their intention to find offsets for this year’s infusion of cash, but no indication has been made where the savings would come from. The 18.4 cent federal gas tax and the 24.4 cent tax on diesel account for 58 and 28 percent respectively of the receipts for the Highway Trust Fund. And although miles driven are declining while vehicle fuel efficiency is increasing, a politically acceptable solution has yet to be found to close this growing funding gap.

302 (b) Appropriations – House Appropriations Committee Chairman David Obey (D-WI) introduced to the Committee the discretionary spending allocations for the subcommittees for FY2010 (below). Discretionary spending for Transportation, Housing & Urban Development was set at \$68.8 billion, a \$13.9 billion, 25 percent increase over the previous year’s level of \$54.9 billion.

The Chairman also released a markup schedule for the various bills. Energy & Water is scheduled for the sub-committee on June 25th and the full committee on July 7th. Transportation/HUD is slated in sub-committee on July 15th and full committee on July 21st. The calendar also lists the tentative date the bills would be taken up on the floor – Energy & Water on July 15th, and Transportation/HUD on July 28th. The proposed schedule envisions the House passing all 12 appropriation bills by the end of July. The calendar can be found at: http://appropriations.house.gov/pdf/Tentative_2010_Schedule-06-09-2009.pdf

The Senate Appropriations Committee has not yet released its 302 (b) allocations or mark-up schedule.

FY10 House Appropriations Subcommittee Allocations

| Subcommittee | FY10 Proposed | FY09 Allocations | Change |
|-----------------------------|----------------|------------------|-----------|
| Agriculture | \$22.9b | \$20.6b | 11% |
| Commerce, Justice & Science | 64.3 | 56.9 | 13% |
| Defense | 508.0 | 487.7 | 4% |
| Energy & Water | 33.3 | 33.2 | < 1% |
| Financial Services | 23.6 | 22.4 | 5% |
| Homeland Security | 42.4 | 39.9 | 6% |
| Interior & Environment | 32.3 | 27.9 | 16% |
| Labor - HHS | 160.7 | 153.1 | 5% |
| Legislative Branch | 4.7 | 4.4 | 7% |
| Military Construction / VA | 76.5 | 72.7 | 5% |
| State & Foreign Operations | 48.8 | 36.6 | 33% |
| Transportation / HUD | 68.8 | 54.9 | 25% |
| Totals | 1,086.3 | 1,012.7 | 7% |



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