



Legislation

October 2, 2009

Transportation Appropriations - The Senate passed by a 73-25 margin its version of the FY2010 Transportation-HUD appropriations bill on September 17, 2009. The bill provides for \$1.1 billion in grants to support various infrastructure projects including highway and bridges, public transportation, passenger and freight rail, and port infrastructure, with a provision requiring a minimum of \$250 million to be expended in rural communities. Senator Susan Collins' (R-ME) provision to exempt Maine from federal truck weight limits for one year was also included. The House passed its bill on July 23, 2009, and the two chambers will now reconcile the differences in conference prior to final passage.

One Month Continuing Resolution Approved - With the fiscal year ending at midnight, the Senate passed by a vote of 62-38 the FY2010 Legislative Branch Appropriations bill – the first of the twelve annual bills that had completed conference. Included in the bill was a continuing resolution funding the majority of the federal government at FY2009 levels through the end of October of 2009. The House had passed the bill on September 25th by a vote of 217-190.

Transportation Bill Extension – The Legislative Branch Appropriations bill also contained language that extended the authorization of surface transportation programs for one month. A deal to extend the authorization for three months, including restoration of \$8.7 billion in spending authority, fell apart due to a disagreement over the source of the funds.

Congress reauthorizes a surface transportation plan every six years. The current version of the surface transportation plan – the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU) – was scheduled to expire on September 30, 2009.

With a one month extension now in place, the Senate and the Obama administration continue to favor a longer extension through March 2011 while House Transportation and Infrastructure Chairman James Oberstar (D-MN) and his committee continue to resist such a move because it would remove the need for Congress to take up the \$500 billion reauthorization bill they have reported from their committee. The stumbling block continues to be the source of new funding (Increase in gasoline tax?, Tax on vehicle miles traveled?, Increased use of tolling?, etc.), and the House Ways and Means Committee has yet to identify where the new revenue will come from because their energy has been focused on the debate raging on health-care reform.

Energy and Water Conference Report Filed – The Energy and Water Appropriations Subcommittee has finished conferencing their FY2010 spending bill. The House may take it up yet this week with action in the Senate likely next week. The bill will provide \$33.5 billion in FY2010, a \$200 million increase over the House bill as well as FY2009 levels; and \$100 million over the President's request; but \$300 million below the Senate bill.

For lock and dam modernization and repair, the Army Corps of Engineers receives \$5.4 billion, \$43 million above FY2009 and \$320 million above the President's request. Of that amount, \$2.4 billion will go towards Operations and Maintenance, a \$198 million increase from FY2009; \$2 billion for Construction, and \$160 million for Investigations. Mississippi River and Tributaries receives \$340 million.

The complete text of the Energy and Water Conference Report can be found at: http://appropriations.house.gov/pdf/EW_Conf_Rpt_FY2010.pdf ; a summary of the report can be found at: http://appropriations.house.gov/pdf/EW_FY10_conference-09.30.2009.pdf .

Senate Rail Reform Bill – There has been no public movement on the Senate side where the Senate Commerce, Science, and Transportation Committee continues to accept input from stakeholders as they draft the legislation. The timing of an introduction or committee mark-up is still unknown.

Surface Transportation Board

2008 Railroad Cost of Capital is 11.75% - The Surface Transportation Board (STB) issued on September 25 their decision on calculating the rail industry's 2008 cost of capital. The board ruled that the industry had an after-tax cost of capital of 11.75%. The basis for this determination was a 6.57% current cost of debt; a 13.17% current cost of common equity; and a capital structure proportioned at 21.54% debt coupled with 78.46% common equity.

The STB uses the railroad industry's cost of capital in evaluating the health of an individual railroad, including whether or not the railroad's income is adequate. The cost of capital is also used when determining the reasonableness of rail rates when they are challenged, and during abandonment proposals.

The Railroad Cost of Capital decision can be found on the STB website at: <http://www.stb.dot.gov/decisions/readingroom.nsf/fc695db5bc7ebe2c852572b80040c45f/524c43ce35bd8e2f8525763c00428c4a?OpenDocument>

4th Quarter Rail Cost Adjustment Factors Approved – The STB approved on September 15th the 4th Quarter 2009 Rail Cost Adjustment Factors (RCAF) as submitted by the Association of American Railroads (AAR). The 4th quarter 2009 RCAF (Unadjusted) is 0.996, an increase of 6.2% from the 3rd quarter; the RCAF (Adjusted) is 0.450, an increase of 5.6% from the 3rd quarter; and the RCAF-5 is 0.427, an increase of 6.0% from the 3rd quarter.

The Rail Cost Adjustment Factor measures the rate of inflation in railroad inputs such as labor and fuel. The AAR has been required since 1984 to submit quarterly reports on the cost of rail operations. The full decision can be found on the STB's website at:

<http://www.stb.dot.gov/decisions/readingroom.nsf/fc695db5bc7ebe2c852572b80040c45f/cc7ea6d1da6cc3e185257634004b4f9d?OpenDocument>

STB Chairman Elliot Meets with Shippers - On September 17th, representatives of the Alliance for Rail Competition and other shipper representatives met with STB Chairman David Elliot and members of his staff to brief the new Chairman on shipper issues relating to STB oversight. Issues discussed included lack of service guarantees, cost shifting, and the procedural hurdles currently in place at the STB that make challenges of rail rates nearly impossible to begin. The group also discussed the rail reform legislation under consideration in Congress.



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