November 3, 2011

Legislation

Senate hearing on surface transportation bill set for November 9. U.S. Senator Barbara Boxer (D-CA), Chairman of the Senate Environment and Public Works (EPW) Committee, Senator James Inhofe (R-OK), the committee's ranking member, Senator Max Baucus (D-MT), and Senator David Vitter (R-LA) recently announced plans to markup a two-year surface transportation bill on November 9th. Senator Baucus is the Chair of the Senate Transportation and Infrastructure Subcommittee. Senator Vitter is the subcommittee's ranking member.

The proposed legislation, "Moving Ahead for Progress in the 21st Century" (MAP-21), would provide $109 billion in surface transportation funding for two years, significantly reform the nation's transportation programs to ensure more efficient delivery of services, and increase support for projects under the Transportation Infrastructure Finance and Innovation Act (TIFIA).

MAP-21 consolidates 87 current Department of Transportation programs to less than 30. The activities for which dedicated funding has been removed have been consolidated into the very broad core programs, leaving states with the flexibility to fund these activities as they see fit.

The TIFIA program provides direct loans, loan guarantees, and lines of credit to large and nationally or regionally significant transportation projects with a revenue stream at terms that are more favorable than those available in the private sector and that will leverage private and other non-federal investment in transportation improvements. MAP-21 increases the funding for the TIFIA program from $122 million per year to $1 billion per year.

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 been extended until March 31, 2012.

Senator Boxer challenges Mica's transportation proposal. Senator Barbara Boxer (D-CA) is challenging Congressman John Mica's (R-FL) proposed surface transportation bill – setting the stage for a contentious battle between the Senate Environment and Public Works Committee and the House Transportation and Infrastructure Committee over the future transportation funding.

In an October 26th letter to Mica, Chairman of the House Transportation and Infrastructure Committee, Boxer argued that Mica's six-year $286 billion proposal would amount to a 16 percent cut compared to the current $339 billion spending level and result in the loss of hundreds of jobs.

In responding to the charge, Mica stated during a recent speech, "My floor is the current level … and I'm hoping we can find even more money and increase on a cost-of-living or some other incremental basis the funding for a six-year authorization."

Mica argues that his plan would allow for long term planning and funding of infrastructure projects, which Boxer's two year plan fails to achieve.

"We need a long-term bill," Mica further explained. "We need a six-year bill … I'm committed to finding the money."

Hearing highlights economic importance of seaports. An October 26th Congressional hearing highlighted the importance of the nation's maritime trade system and the economic, environmental and global benefits of waterborne shipping. U.S. Representative Bob Gibbs (R-OH), Chairman of the Subcommittee on Water Resources and Environment with the House Transportation and Infrastructure Committee, hosted the hearing.

"Our integrated system of highways, railways, airways, and waterways has efficiently moved freight in this nation, but as we enter a new era of increased trade among our worldwide trading partners, the nation's navigation system has struggled to keep pace," explained Chairman Gibbs. "While the ports themselves have done an admirable job of investing in landside improvements and enhanced intermodal connections, the federal government has all but ignored the nation's navigation channels, the gateways to world markets.

During the hearing, attention was specifically devoted to the condition of the Harbor Maintenance Trust Fund (HMTF). The HMTF was created by Congress in 1986 to provide funding for harbor and channel dredging. Funds generated by the Harbor Maintenance Tax (a 0.125% ad valorem tax on imports) are deposited into the HMTF. In fiscal year 2010, the HMTF grew by $1.3 billion; however, only $828,550,000 was spent in total operations of the fund as the balance was diverted to deficit spending. Because of this inequitable allocation, many of the country's most valuable navigation channels are under maintained, reducing the cost effectiveness and efficiency of maritime trade.

Representative Charles W. Boustany, Jr. (R-LA) has authored the "Realize America's Maritime Promise" (RAMP) Act (H.R. 104) to ensure the HMTF is dedicated solely for the operations and maintenance of America's shipping channels.

Chairman Gibbs summarized the situation, ""I am a fiscal conservative, but I still believe it is necessary to invest in America's transportation infrastructure to stimulate the economy and keep it strong. Unlike a lot of government spending, investing in transportation provides a positive economic return on the investment.

"We need to make investments in our maritime infrastructure, and other investments that will multiply jobs throughout the economy. Many of the recent suggestions that come from the Administration and elsewhere call for expenditures on projects that simply create short-term construction jobs with little or no economic benefit coming from the project being built."

New ports caucus created. On October 25, Congresswoman Janice Hahn (D-CA) and Congressman Ted Poe (R-TX) announced the creation of the bipartisan House Ports Opportunity, Renewal, Trade, and Security (PORTS) Caucus. The mission of the caucus will be to promote the importance of our ports to the U.S. economy and the need to invest in them.

"As a long-time advocate for the Port of Los Angeles, I understand how vital the ports are for our nation's economy," explained Congresswoman Hahn. "This bi-partisan caucus will bring together Members who represent diverse ports across the country, so we will find ways together to promote our ports and keep them safe."

"Promoting and protecting our nation's ports is critical to both national security and economic security," said Congressman Poe. "Ports are the gateway in and out of the United States. They are our country's link to the rest of the world and the global economy. I look forward to working with Representative Hahn to building an effective congressional caucus that advocates on the behalf of ports nationwide."

Administration

LaHood to leave at end of Obama's first term. Ray LaHood recently announced he will conclude his service as Transportation Secretary at the conclusion of President Obama's first term.

LaHood, 65, released the following statement:

"I serve at the pleasure of the president and it is an honor to look out for the safety of the American public when it comes to planes, trains, automobiles and more. Throughout this term, we have also focused our efforts on creating jobs as we rebuild our roads, rails and runways, and I look forward to working with Congress to pass the American Jobs Act so we can put Americans back to work."

LaHood was a Republican congressman from Illinois for 14 years until retiring in 2008.

Maritime Administration Releases U.S. Flag Fleet Competitiveness Report. The Maritime Administration (MARAD) has released a report examining the factors that significantly impact the competitiveness of U.S.-flag vessels in international transportation markets. Developed from two studies, the report compares U.S. and foreign-flag operating costs, examines impediments to the U.S.-flag registry, and provides industry recommendations for addressing these impediments.

According to the study, U.S.-flag merchant ships spend on average 2.7 times more to operate their vessels than their foreign competitors, primarily due to the costs of labor and benefits.

Personnel aboard U.S.-flag merchant ships earned more than five times those aboard foreign vessels in 2010, the report says. Daily labor costs aboard a U.S.-flag ship were, on average, $13,655 compared with $2,590 aboard a foreign-flag vessel.

The Merchant Marine Act of 1920 ("the Jones Act") restricts the carriage of goods or passengers between U.S. ports to U.S. built and flagged ships. In addition, at least 75 percent of crewmembers must be U.S. citizens.

The report is available online at www.marad.dot.gov

USDA submits comments on BNSF acquisition premium. On October 28, the U.S. Department of Agriculture submitted comments to the Surface Transportation Board (STB) requesting that the acquisition premium paid by Berkshire Hathaway to acquire BNSF Railway be excluded from its Uniform Rail Costing System due to the potential for rate increases to be imposed on rail customers.

The Surface Transportation Board has instituted a public proceeding to examine the regulatory effects of the price Berkshire Hathaway paid when it acquired BNSF Railway.

At issue is whether the premium paid by Berkshire Hathaway when it acquired BNSF two years ago should be included when the Surface Transportation Board determines whether BNSF rates are reasonable or not.

Revenue to Variable Cost Ratios (R/VC) are used by the U.S. Surface Transportation Board (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%.

The STB stipulates that railroads can charge customers rates in order to recoup their costs (and make a reasonable profit) of providing that service. An acquisition premium would result in the railroad needing to generate additional revenue on its operations in order for the owners to recoup their costs. One could argue that including the acquisition premium would increase the estimated variable costs of the railroad, which could result in a railroad having the latitude to charge higher rates to its customers - not because normal variable costs (fuel, labor, etc.) have escalated, but simply because of the acquisition premium.

The proponents of this motion argue that the listed stock price that BNSF was traded at before the acquisition should be used to determine the value of the company - not the purchase price.

Opening evidence was submitted to the STB by October 28. Reply evidence is due on November 28 with rebuttal evidence due by December 12.