



January 12, 2011

Legislation

Mica plans field hearings on highway bill. In a recent interview with the Journal of Commerce, Congressman John Mica (R-FL), Chairman of the House Transportation and Infrastructure Committee, intends to start a process in February that can help his panel craft a new multi-year surface transportation bill.

According to the interview, the field hearings will begin on or around February 18. Mica plans to hold field hearings or "listening sessions" outside of Washington to get more input from local and regional officials on what should be in the next transportation legislation.

Congress is mandated to reauthorize surface transportation legislation – commonly referred to as the "Highway Bill" – every six years. The most recent legislation expired on September 30, 2009. Congress has subsequently passed a series short term extensions of the legislation until a replacement bill is passed.

In the interview, Mica did not give a target period for getting a bill through his committee or the House. He has previously said he wants to move legislation as early as possible in 2011 to prevent major initiatives getting caught up in the 2012 presidential election campaign.

Mica has expressed a desire to retool some current surface transportation programs to save money, speed up projects to release funds already approved, spur greater use of infrastructure loans from existing federal government programs and give more incentives to private firms to invest in transportation projects.

No details have been made available regarding the number and location of the field hearings.

Mica says highway funds won't be diverted. The new chairman of the House Transportation and Infrastructure Committee said he has a clear understanding from House leaders that changes to future Highway Trust Fund legislation will not use trust fund receipts to offset other types of federal spending.

Various transportation industry officials have warned that a January 5th change in House rules could jeopardize the flow of money to state highway projects from the federal trust fund, by dropping a guaranteed link the House previously used to distribute fuel tax receipts in line with spending commitments from multi-year surface transportation laws.

But Rep. John Mica (R-FL), who become chairman of the Transportation and Infrastructure panel last week, said "I feel pretty confident" in the assurances he has received in talks with House leaders, particularly Majority Leader Eric Cantor (R-VA), and in a brief but formal exchange he had on the House floor with Rep. David Dreier (R-CA), who chairs the Rules Committee.

"Through a colloquy that I did on the floor with David Dreier," Mica told The Journal of Commerce, "we got a pretty good clarification that the funds would still be handled within the trust fund in the same manner, and that they would only be used for highway purposes."

In that discussion with Dreier, Mica asked for confirmation that the new legislative rule "makes no change in the manner in which highway, highway safety, motor carrier safety, and transit programs are currently funded," but instead allows House members to offer amendments that might reduce funding. Dreier agreed the new rule "does not change the way in which the underlying programs are funded."

Backers of the change say it can prevent the highway fund from spending too quickly so that it needs propping up from general revenue. Critics say by cutting the link used since 1998 between trust fund disbursements and multi-year spending laws, the new GOP House majority makes it easier to cut highway spending or build up trust fund balances to offset deficit spending elsewhere in the federal budget.

Mica had thought of that possibility as well. "We were concerned," he said, "that some of the old practices of a shell game - you know, use trust fund moneys to offset other spending - might be played, but I feel pretty confident both with the colloquy that we have and the understanding I have with leadership, and Mr. Cantor in particular, that that won't happen." *Source: Journal of Commerce*

McCaskill seeks return of "orphaned earmarks." U.S. Senator Claire McCaskill (D-MO) recently sent a letter to Department of Transportation (DOT) Secretary Ray LaHood urging him to evaluate how the earmarking practice in surface transportation reauthorization has led to the prevalence of billions of dollars in unspent or "orphaned" funds. Orphaned earmarks, recently highlighted in a story in USA Today, prevent states from accessing their share of highway funding by causing an adverse affect on the formula funding available. McCaskill further sought Secretary LaHood's assistance in getting the earmarked funds returned to states like Missouri through the proper formula grant distribution process so that the funds, currently tied up, can be used for the high priority needs identified by state and local officials in a merit-based process. As the new Congress looks to consider a surface transportation reauthorization, McCaskill also called on the DOT to work with Congress to develop a process that will end the process of earmarking in transportation bills and instead allocate money for projects solely through merit and need-based formula funding.

"Since joining the Senate in 2007, I have worked to put an end to the practice of earmarking because I do not believe that Members of Congress know better than those in their state how best to utilize federal funding, and that earmarks further eliminate funding that could be made available through competition or formula. The recent reports of these orphan earmarks confirm that this is most certainly the case when it comes to transportation funding," McCaskill wrote.

McCaskill argues that many Members of Congress, who authorize these pet projects, fail to properly assess specific infrastructure projects so when states and localities receive an earmark, they are unable to use the funding. Moreover, because of how the earmarks were written into law, the unused funding cannot be dedicated to other projects, and also counts against a state's share of federal highway funds. This means states get less formula funding than they would otherwise been awarded. McCaskill contents that over the past 20 years, Missouri has reported a loss of \$101 million as a result of this process. McCaskill asked Secretary LaHood to work with her to free up the funds so that Missouri can use the funds for its high priority transportation infrastructure needs.

Administration

DOT announces \$105 for Crescent Corridor. On December 29, U.S. Transportation Secretary Ray LaHood announced that work can begin on construction of two intermodal freight facilities in Memphis and Birmingham thanks to a signed grant agreement with the Alabama and Tennessee Departments of Transportation for \$105 million in American Recovery and Reinvestment Act funds. The facilities are a key part of a larger effort to increase rail capacity and relieve traffic congestion along the 2,500-mile Crescent Corridor from the Gulf Coast to the Mid-Atlantic.

Of the \$105 million, Alabama will use half – \$52.5 million – to build the 261-acre Birmingham Regional Intermodal Facility (BRIMF) near McCalla, about 20 miles southwest of Birmingham. The remainder of this \$97.5 million project's funding will come from Norfolk Southern Railway Company (Norfolk Southern) and other sources.

Tennessee will use its half – \$52.5 million – to build the 380-acre Memphis Regional Intermodal Facility (MRIMF) immediately west of Rossville, about 27 miles east of downtown Memphis. The remainder of this \$105.1 million project's funding is expected to come from Norfolk Southern and other sources.

The existing Crescent Corridor passes through 13 states, from Louisiana to New Jersey. The planned upgrades to facilities and rail capacity will allow freight to move faster and more reliably. By diverting 1.3 million commercial trucks from interstates, the Crescent Corridor will greatly improve air quality along the route, reduce traffic congestion and generate significant fuel savings.

FRA develops model state legislation to improve safety at highway-rail grade crossings. The Federal Railroad Administration (FRA), together with states, developed model state legislation for use in developing bills to improve safety at highway-rail grade crossings without gates or barriers. The model legislation is intended to help states address obstructions limiting a driver's view of an oncoming train.

Between 2001 and 2005, accident reports submitted by railroads to FRA show that 689 collisions resulting in 242 injuries and 87 fatalities occurred at highway-rail grade crossings with sight obstructions. Development of the model state legislation was required by the Rail Safety Improvement Act of 2008. The model legislation is available at <http://www.fra.dot.gov/Pages/1730.shtml>.

Surface Transportation Board

STB to hold hearing on rail competition. The Surface Transportation Board (STB) will receive comments and hold a public hearing to explore the current state of competition in the railroad industry and potential policy alternatives to encourage more competition. The STB is seeking written comments from shippers and railroads prior to the hearing.

Initial comments are due on February 18, 2011. Reply comments are on March 18, 2011. The hearing will occur on Tuesday, May 3, 2011, at the STB headquarters in Washington, DC.

STB Summary of issue: The rail network in the United States is a series of interconnected lines owned by various rail carriers. Because of the high fixed cost associated with building a rail network, sometimes there is only one railroad serving a particular destination and origin. Some companies that either ship by rail, or would like to do so, have complained about being physically limited to a single rail carrier and would like to have greater access to competition from other railroads. Some shippers have suggested that mandated access by a second carrier to singly served businesses would be in the public interest. Railroads have responded that such an action would undermine their ability to price their services differentially based on demand and that, as a result, they would be unable to earn enough revenue to invest sufficiently in their networks. Over the years, various possible measures that would change the way rail shippers currently obtain access to rail service have been debated, including: (1) requiring railroads to quote a rate between any two points they serve to allow another railroad to serve the shipper from an intermediate point to the final destination; and (2) imposing new rules for competitive access, such as mandated reciprocal switching or mandated terminal use arrangements, including trackage rights.

It has been some time since the STB has conducted a thorough analysis of these issues. More than a decade ago, the STB conducted a comprehensive analysis of “captive shippers” and their available remedies for rate relief, as well as the incumbent railroad’s rights and obligations.

STB dismisses 'Double-Dipping' Claim against BNSF. The Surface Transportation Board (STB) dismissed a claim by Cargill that BNSF Railway was “double dipping” in assessing fuel surcharges. However, the STC denied BNSF’s motion to dismiss Cargill’s claim that the railroads is earning excessive profits from the surcharge.

In its complaint before the STB, Cargill accused BNSF of using their fuel surcharge program to overcharge their customers by accessing a surcharge in excess of the actual fuel costs and also establishing base freight rates that include a fuel component.

BNSF asked the STB to dismiss the Cargill complaints of using the fuel fee as a source of excessive profits. However, the STB rejected that request by stating that Cargill’s claim “offers a reasonable basis for further consideration,” which will allow the case to move forward.