Soy Transportation Coalition Washington Report

May 15, 2012

Legislation

Conference committee on surface transportation bill holds initial meeting on May 8th. The 47 members of the House and Senate had their initial meeting on May 8th to develop a long-awaited surface transportation bill.

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.

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.

In her opening statement, Senator Barbara Boxer (D-CA), Chairwoman of the Senate Environmental and Public Works Committee, expressed the need to move beyond short term extensions and approve a longer term bill, "Because of those endless extensions, many states have limited the funds available to hire workers for construction projects due to funding uncertainty, costing thousands of jobs all across America - right now…I learned from the Associated Equipment Distributors that the same uncertainty has caused construction businesses to rent equipment that in the past they had the confidence to buy. This has depressed their businesses, placing a further drag on the economy and increasing unemployment."

Congressman John Mica (R-FL), Chairman of the House Transportation and Infrastructure Committee, stressed the need to employ better stewardship of our scarce resources, "Particularly in this current economic environment, there is no appetite to keep funneling money into programs in need of a major overhaul, unless we make necessary, meaningful reforms.

"I am concerned that the long-term solvency of the Highway Trust Fund is at risk; however the solution to the Trust Fund solvency problem is not more deficit spending or General Fund transfers. The solution is major reform of programs, cutting wasteful spending and reining in the federal bureaucracy."

A significant point of contention in the negotiations will be over the proposed Keystone XL Pipeline. The House-approved extension of the surface transportation bill includes a provision for construction of TransCanada Corp.'s proposed pipeline to bring Canadian oil sands to refineries along the Gulf Coast. The provision is not included in the Senate-passed version.

The American Soybean Association and a number of other leading agricultural organizations recently forwarded a number of letters to the members of the conference committee urging support of a several provisions important to the delivery of agricultural products.

1.) Hours-of-service exemptions for agriculture. There is a need for Congress to provide clarification to the Federal Motor Carrier Safety Administration of the existing hours of service regulations for motor carriers.

    In particular, Congress should clarify that the transportation of agricultural commodities across state lines is allowed to continue provided that both states are in compliance with the agricultural hours-of-service exemptions (i.e. the driver is within the allowed mileage radius and within the state designated planting and harvesting dates).

2.) Realize America's Maritime Promise Act (RAMP Act). The RAMP Act ensures funds brought into the Harbor Maintenance Trust Fund are used as originally intended – the dredging and maintenance of the nation's ports and waterways.

    The Harbor Maintenance Trust Fund was established in 1986 and is funded via a 0.125 percent tax on the value of imports and domestic cargo arriving at U.S. Ports with federally maintained harbors and channels. The tax collects $1.3 to $1.6 billion annually.

    In establishing the Harbor Maintenance Trust Fund, there was an understanding that revenue generated from the tax would be spent on dredging and channel maintenance. Instead, about half is spent on such projects. The balance is spent on other discretionary projects that are unrelated to harbor maintenance.

    While there is a $6.1 billion surplus in the account, that money has already been spent. To regain that surplus or even to get 100 percent of the trust fund revenue in future years for harbor maintenance, it would require a reduction in spending in other areas.

3.) Achieving better balance between rail customers and rail service providers. Congress is encouraged to mandate that the Surface Transportation Board – the agency that mediates between railroads and rail customers – provide more frequent reports on pending formal and informal rail complaints and a more expeditious process for resolving disputes. Congress is also encouraged to ensure that the rail rate dispute process allows for increased financial awards to shippers who demonstrate that unreasonable rates are being accessed.

House Appropriations Committee passes Energy and Water Development bill. On April 25, the House Appropriations Committee passed the fiscal year 2013 Energy and Water and Related Agencies Appropriations bill. The legislation provides the annual funding for the Department of Energy, the Army Corps of Engineers Civil Works program, and other agencies and programs. The total cost of the bill is $32.1 billion.

The Army Corps of Engineers Civil Works program includes water resource development activities including flood risk management, navigation, recreation, and infrastructure and environmental stewardship.

The legislation contains no earmarks and provides $4.731 billion for the Army Corps of Engineers Civil Works program - $83 million more than President Obama's budget request, but $188 million less than provided in fiscal year 2012. The bill allocates the $4.731 billion as follows:

- Construction: $1.477 billion

- Operations and maintenance: $2.507 billion
- Mississippi River and Tributaries: $224 million
- Investigations: $102 million
- Navigation and flood control: $324 million

Administration

LaHood predicts PTC changes will save railroads $775 million. On May 10th, U.S. Transportation Secretary Ray LaHood announced changes to regulations governing the installation of positive train control (PTC) equipment that he predicts will give railroads additional flexibility, save money and maintain a high level of safety.

PTC is a system of integrated technologies capable of preventing collisions, over-speed derailments and unintended train movements.

Earlier this year, President Obama called for a government-wide review of regulations in order to identify those that needed to be changed or removed because they were unnecessary, out-of-date, excessively burdensome or overly costly.

Under the revisions announced on May 10th, railroads will no longer have to conduct risk analyses to obtain approval to not install PTC or take other costly risk mitigation measures on an estimated 10,000 miles of track that will not carry passenger trains or poison inhalation hazard (PIH) commodities after December 2015. Railroads are expected to save approximately $335 million over the first five years, and up to $775 million over 20 years, by utilizing safety measures other than PTC, where appropriate.

The Rail Safety Improvement Act of 2008 (RSIA) mandates widespread installation of PTC systems by December 2015 on rail lines which carry at least five million gross tons of freight annually, on Class I railroads that ship PIH commodities, and on lines where intercity passenger rail and commuter service is regularly operated.

Surface Transportation Board

STB proposed rule clarifying liability for railcar demurrage. On May 7th, the Surface Transportation Board (STB) announced that it is proposing a rule providing that any person receiving rail cars that detains those cars beyond specified "free time" may be responsible for paying demurrage charges, so long as that person accepts cars with actual notice of the demurrage terms prior to the cars' delivery.

Demurrage serves two primary functions. First, it compensates railroads for the time their equipment is held out of the transportation network. Second, it penalizes parties for detaining rail cars for too long, thereby encouraging prompt return of cars into the transportation network.

Differences among recent court decisions highlight the need for uniformity on demurrage liability, particularly on the issue of which party—receiver or intermediary—should be liable when an intermediary detains rail cars for too long.

In announcing the proposal, STB Chairman Daniel R. Elliott III said, "We expect this rule to bring clarity to what has become a murky legal area. It should simplify the roles and responsibilities of all parties in the chain of rail car movements, realigning them with actual industry practices and enhancing efficiency of movements."

The STB's Notice of Proposed Rulemaking in Demurrage Liability, EP 707, is available for viewing and downloading at the Board's website at www.stb.dot.gov .

The STB is the regulatory agency created by the United States 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.