September 13, 2010

Administration

President Announces Plan to Invest $50 Billion in Infrastructure. On September 6, President Obama announced a plan to "renew and expand our transportation Infrastructure," including rebuilding 150,000 miles of roads, constructing and maintaining 4,000 miles of rail, and rehabilitating or reconstructing 150 miles of airport runways. The plan would create an infrastructure bank to leverage federal funding for the projects, according to an Administration press release.

Unfortunately, the President's remarks neglected to mention the need to invest in locks, dams, ports and other projects essential for efficient transportation along our nation's interior waterways.

Moreover, it appears the focus in the President's remarks regarding rail is on improving passenger rail service. I see no mention of improving freight rail service. Studies have shown that investing in freight rail (removing more semis from the highways) has a greater benefit on relieving motorist congestion than investing in passenger rail. One can argue that a rising tide can lift all ships - i.e. that by providing more resources and attention to passenger rail will have a benefit on freight rail (since they will mostly utilize the same tracks), but not devoting any attention to our freight rail network in the President's proposal is a missed opportunity.

The major provisions of the President's plan are pasted below from the White House's website:

- **Roads**. The nation's highways serve as the backbone of our transportation system. Many roads and bridges are in need of repair and expansion and many of the Americans who want to do this work face high unemployment right now. Our investments would be focused on modernizing the highway system's critical assets while providing much-needed jobs.
- **Rail**. Many parts of transit systems have been allowed to fall into a state of ill-repair. The President's plan would help address this by making a major new investment in the nation's bus and rail transit system. The Administration is also committed to expanding public transit systems and would dedicate significant new funding to the "New Starts" program – which supports locally planned, implemented, and operated major transit projects. In addition, the Administration is committed to building on its investments so far in high-speed rail – constructing a system that will increase convenience and productivity, while also reducing our nation's dependence on oil and cutting down on pollution. The President's plan would also invest in a long-overdue overhaul of Amtrak's fleet.

- **Runways & NextGen**. The Administration proposes to invest in our nation's airports by improving their runways and other equipment and facilities. We also propose a robust investment in our effort to modernize the nation's air traffic control system (NextGen). This investment will help both the FAA and airlines to install new technologies and, among other improvements, move from a national ground-based radar surveillance system to a more accurate satellite-based surveillance system – the backbone of a broader effort to reduce delays for passengers, increase fuel efficiency for carriers, and cut airport noise for those who live and work near airports.
- **Infrastructure Bank**. The President proposes to fund a permanent infrastructure bank. This bank would leverage private and state and local capital to invest in projects that are most critical to our economic progress. This marks an important departure from the federal government's traditional way of spending on infrastructure through earmarks and formula-based grants that are allocated more by geography and politics than demonstrated value. Instead, the Bank will base its investment decisions on clear analytical measures of performance, competing projects against each other to determine which will produce the greatest return for American taxpayers.

Legislation

Congress Returns from Summer Recess. The Senate returns on September 13 and the House of Representatives on September 14 from being on recess for most of the past six weeks. Only sixteen legislative days remain until the scheduled adjournment of October 8.

Differing Projections Between Railroads, Rail Shippers on Likelihood of Rail Legislation Passage:

NS Chief Moorman Says Rail Legislation Must Wait. New rail regulatory legislation appears dead for this Congress, according to the top executive for Norfolk Southern Railway.

Charles W. Moorman, NS chairman, president and CEO, told the Dahlman Rose investors transportation conference this week that he expects the issues that prompted the legislation will wait for a new Congress to deal with next year.

If so, that would be a major defeat for a coalition of activist rail shippers and for key Democratic committee chairmen in the Senate and House, who had pledged to get a rail competition bill enacted this year while the current Congress is still in place. It they fail to pass it in 2010, the next Congress could start over in drafting a completely new bill.

A shipper-backed regulatory overhaul bill passed the Senate Commerce Committee last December as a top priority of Chairman Jay Rockefeller, D-W.Va., and with broad bipartisan support.

But it never advanced to the full Senate, amid stiff railroad opposition to various parts they said would shift competition rules too much toward rail freight shippers and thereby threaten railroad profitability. House Transportation and Infrastructure Chairman James L. Oberstar later said he was negotiating the contents of a final bill with Rockefeller, and would put an identical measure through the House once the Senate acts.

But Moorman talked in the past tense about the legislation, as he told the New York conference on Sept. 8 that rail industry officials “worked very hard over the past 2 years to try to see if there was in some sense a compromise position on legislation.” Instead, said Moorman, “there was never seemingly an ability to reach a position in which we could live with and other folks could live with as well.”

Moorman said he considers it “highly unlikely” that a lame-duck Congress would act on the Rockefeller bill after the Nov. 2 elections and before a new Congress takes office in January. He did not address whether it could pass before the election, and most observers think Congress will be able to enact very little new legislation before it recesses to campaign this fall.

So, he said, “I think that we’ll all come back. We’ll have a Congress that obviously looks different next year, and we’ll sit down and start again with those conversations and see if there’s something to be done.”

Activist shippers have seen the current legislation as their best hope since 1980 deregulation to win competitive access to a second railroad for many freight shipments now held “captive” under current rules. Captives pay significantly higher freight rates on average than shippers that have more than one rail transportation option. But railroads labeled it as “reregulation,” and said it risked pushing the industry back toward the crippling financial situation that prompted Congress to deregulate them 30 years ago.

Still, railroad executives have also pressed Congress for financial aid such as new tax breaks targeted just for major railroads investing in capacity expansion, and for help paying for a federally mandated train-control technology they must deploy by mid-decade. They are also winning substantial support from the Obama administration for grants to support new freight terminals and fast-route corridors, and to carry more passenger trains.

Moorman has been outspoken against the legislation and against what he has said is a small group of activist shippers trying to get it passed to lower their own freight charges. He told the investor conference this week that “the rail industry remains interested in trying to find some way to put some of this discussion behind us, but it cannot be at the expense of putting us back” to an era of weak railroad finances. *(Source: Journal of Commerce)*

Rail Shippers Say Regulatory Bill Could Have Momentum. Two activist rail shipper groups say they see new signs that the Senate could move on long-dormant rail competition legislation in the final months of the current Congress.

Both the Alliance for Rail Competition and Consumers United for Rail Equity (CURE) said recent signals from the Senate Commerce, Science and Transportation Committee indicate that key lawmakers are trying to reactivate the bill that passed the committee last December.

CURE said a scheduled Sept. 15 hearing by that committee on "the federal role in national rail policy" will be a chance for shippers to air concerns about lack of competitive access to rail transportation options. CURE tied the hearing and the need for

new rail legislation to an investment program proposed last week by President Obama that would include funds for rail infrastructure upgrades.
Glenn English, CURE's chairman, said that before Congress considers more funding for rail systems, lawmakers "need to pass meaningful rail reform legislation that would protect consumers from the railroads' monopoly pricing power." He said the Commerce Committee hearing, which was just put on its schedule last week, "shows the Senate is serious about passing legislation this year to address the problems posed by a lack of competition in the freight rail industry."

In the face of sharp criticism from freight railroad executives, the Commerce panel's legislation has never been scheduled for action by the full Senate, although Commerce Chairman Jay Rockefeller, D-W.Va., declared it a priority for passage in 2010. Rail officials fear it would tilt regulation too much in favor of shippers in issues of freight routing and customer challenges to rail pricing, thereby hurting the carriers' profitability.

On the House Side, Transportation and Infrastructure Committee Chairman James L. Oberstar, D-Minn., has said he is working with Rockefeller on the bill's final language before it moves in the full Senate, and that the House would pass an identical version so it could quickly go to President Obama for his signature.

Railroad officials have sometimes said they would prefer no legislation to the one Commerce proposed. Charles W. Moorman, the chairman, president and CEO of Norfolk Southern Railway, last week told the Dahlman Rose investors' conference that behind-the-scenes negotiations have not produced bill language that satisfies the carriers, so he thinks the issues will have to wait for 2011 and the next Congress.

However, the ARC last week sent its members a newsletter update saying "we have recently heard from the staff of the co-sponsors of the Rockefeller bill . . . that they are working on the legislation in an effort to move it forward and meeting with all interested parties. They report that they are fully committed to enacting this legislation this year."

The ARC notice said the group had been in contact with the Senate staffs of co-sponsors Byron Dorgan, D-N.D., ranking committee Republican Kay Bailey Hutchison, Texas, and John Thune, R-S.D. It said congressional staffs during the August congressional recess have been "working on the many issues that the House and Senate will consider prior to leaving in October to campaign and during the much anticipated lame-duck session following the elections in November." *(Source: Journal of Commerce)*

Dodd Announces Infrastructure Hearing. Senate Banking Committee Chairman Chris Dodd (D-CT) announced the Committee will hold a hearing at 10:00 A.M. on Tuesday, September 21st on the need to invest in the nation's infrastructure. At the hearing Chairman Dodd will explore the benefits of creating a National Infrastructure Bank that would fund critical national and regional projects to upgrade infrastructure such as roads, bridges, transit and water systems across the United States.

"A significant investment in our ailing national infrastructure will create jobs, boost long-term economic growth, and improve safety," said Dodd. "With a National Infrastructure Bank we could leverage state, local, and private funds to ensure our infrastructure systems are equipped to meet the demands of the 21st Century."

Dodd originally introduced the National Infrastructure Bank Act in 2007 with then-Senator Chuck Hagel (R-NE). Hours after the bill's introduction, the I-35W Mississippi River bridge in Minneapolis, Minnesota, suddenly collapsed, killing 13 motorists and construction workers and injuring 145. June 28th marked the 27th anniversary of the tragic Mianus River Bridge collapse, which killed three in Greenwich, Connecticut in 1983.

U.S. Navy Supports Jones Act. The U.S. Navy and Navy League expressed their opposition to legislative proposals to repeal the Jones Act, a law that 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.

"For decades, U.S. merchant mariners have provided essential support for the U.S. Navy during times of war and national crisis," the Navy said. "Repealing the Jones Act would remove that support at a time when we are fighting two wars and facing a continuing threat from international terrorism."

Daniel B. Branch Jr., president of the Navy League of the United States, expressed the importance of a "strong commercial maritime industry" to a "maritime nation (like) the United States."

"As a maritime nation, the United States depends not only on a strong Navy, Marine Corps and Coast Guard, it also requires a strong commercial maritime industry," Branch said. "The Jones Act must be maintained so that the more than 8,000 U.S. citizen mariners can continue to provide the economic and military support that is critical to our national interests."

The U.S. Navy has historically supported the Jones Act – arguing that any effort to repeal the law would adversely impact the military's need for a strong inventory of American ships, citizen mariners, and "maritime industrial base of shipyard and repair facilities."

Surface Transportation Board

STB to Hold Oral Argument in Coal Routing Case. The Surface Transportation Board will hold an oral argument on Tuesday, October 26 on the case Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad and Missouri & Northern Arkansas Railroad and BNSF Railway, NOR 42104.

Entergy would like coal from Wyoming's Powder River Basin shipped to its energy plant near Newark, Ark., by BNSF Railway Company and then interchanged to the Missouri & Northern Arkansas Railroad Company, Inc., which directly serves its plant. Entergy currently uses Union Pacific Railroad Company to ship coal to an interchange with the Missouri & Northern Arkansas.

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