TRANSPORTATION: SENATE EPW COMMITTEE PASSES SURFACE TRANSPORTATION BILL

The Senate Environment and Public Works Committee held a markup on November 9, 2011 on S. 1813, the Moving Ahead for Progress in the 21st Century, or MAP-21, bill. The bill enjoyed unanimous bipartisan support at the mark up and was reported favorably to the Senate floor by a vote of 18-0.

The 600-page bill is the second attempt to replace the Safe, Affordable Flexible Efficient Transportation Equity Act – a Legacy for Users (SAFETEA-LU), which expired more than two years ago. S. 1813 is co-sponsored by EPW Chairwoman Barbara Boxer, Ranking Member James Inhofe (OK), as well as the Transportation and Infrastructure Subcommittee Chairman Max Baucus (MT) and Ranking Member David Vitter (LA). Compared to previous reauthorization versions, Map-21 constitutes a shorter, more streamlined bill, but if successful will serve only as a $83.8 million two-year extension, despite the original goal to pass a six-year bill.

In her opening statement, Sen. Boxer called Map-21 a true “reform bill” and highlighted one major change -- the consolidation of 90 transportation programs into 30. She also stated that MAP-21 “continues the current level of funding plus inflation which protects 1.8 million jobs” and could create “up to one million more jobs through leveraging in the Transportation Infrastructure Finance and Innovation Act (TIFIA) program.” Sen. Inhofe emphasized the bill’s effect of putting Americans back to work, agreeing with Boxer and saying the bill is “proven to help strengthen our economy and create jobs.”

Sen. Boxer also took extensive time to praise the bill’s bipartisan support and to mention over 40 associations and groups by name that support the bill. Sen. Inhofe also noted the significance of this, saying that a “strong bipartisan majority in the Senate” has allowed the Committee to strike “the right balance on our highway bill.”

The bill itself faces major hurdles as it moves to the floor. Although several amendments were passed en bloc at the beginning of the mark up, many that the Committee was unable to reach a compromise on remain to be heard on the floor (all Senators witheld amendments at the mark up in deference to the co-sponsors’ wishes). In addition, MAP-21 is still seeking a funding source, most likely
through offsets, to fill the existing $12 billion gap between current Highway Trust Fund tax revenue levels and the bill’s authorized spending levels. According to Sen. Inhofe, the bill “won’t go anywhere outside of this committee without that $12 billion. . . . In the event that doesn’t happen, it’s back to the drawing board.” However, the Committee was assured by Sen. Baucus that through bipartisanship, a "no gimmick" funding source will be found. Sen. Inhofe was quoted after the mark up as saying that he is confident that this is possible.

Important changes to surface transportation in the bill include:
- A two-thirds reduction in the number of surface transportation programs from about 90 to 30, including the reduction of the existing seven core programs to the following five:
  - National Highway Performance: Consolidation of the Interstate Maintenance, National Highway System and Highway Bridge programs - $20.6 billion
  - Transportation Mobility: Replaces the Surface Transportation Program - $10.4 billion
  - National Freight Network: Consolidation of existing programs in order to focus on improving freight movement and cargo connections among different transportation modes - $2.1 billion
  - Congestion Mitigation and Air Quality Improvement: Will include particulate matter as a pollutant - $3.3 billion
  - Highway Safety Improvement: Receives funding increase and also requires states to develop and implement safety plans - $2.5 billion
- The transportation enhancements program will still require states to use some federal aid funds for bicycle and pedestrian paths, but will no longer allow those funds to be used for transportation museums.
- Each state will get funding equal to the percentage received under the last bill (PL 109-59) and no state will get back less than 95 percent of what it paid in gas taxes.
- Requires states to provide the federal government with reports showing how their funds are used.
- Requires states to adopt stricter drunk-driving laws, with the consequence of reductions in highway funding for failure to do so.
- Expansion of TIFIA by more than eightfold to $2 billion.

In related efforts, the House Transportation and Infrastructure Committee Chairman John L. Mica (FL) said as recently as October that he would like to pass a six-year bill, which might put that bill up against a two-year Senate bill. But several sources, including House aides and transportation lobbyists, have said that the ability to identify offsets for six years of funding is going slowly. Despite this, House Speaker John A. Boehner (OH) has expressed that he would like to have a House bill in two weeks, and mentioned in early November that funding for the bill could be fulfilled by expanding domestic oil and gas drilling and using royalties to boost the Highway Trust Fund.

For more information, please visit: http://epw.senate.gov/.
**TAXES: SENATE PASSES BILL ELIMINATING CONTRACTOR WITHHOLDING REQUIREMENT; ADDS VETERANS JOBS BILL**

The Senate by a vote of 95-0 passed H.R. 674, the 3% Withholding Repeal and Job Creation Act, on November 10, 2011. The bill eliminates a tax law requiring the withholding of three percent of payments made to contractors providing services to federal, state, and local governmental entities.

The law was originally enacted in 2005 and was aimed at improving tax compliance by government contractors, but it was never enforced. As part of the 2009 stimulus bill, Congress deferred its implementation by one year and earlier this year the IRS, in a rulemaking, further delayed implementation until the start of 2013. Supporters of the repeal stress that allowing the requirement to take effect would impede job creation because it would constrict the cash flow of thousands of government contractors.

The House overwhelmingly passed the bill on October 27, 2011 by a vote of 405-16. The House measure is sponsored by Rep. Wally Herger (Marysville).

During floor consideration, the Senate approved an amendment to include the VOW to Hire Heroes Act in H.R. 674. The measure will provide a $5,600 tax credit for hiring long-term unemployed veterans, $2,400 for hiring short-term unemployed veterans and credits of up to $9,600 for hiring unemployed veterans with service-related disabilities. The amendment was approved 94-1.


**INFRASTRUCTURE: HOUSE SUBCOMMITTEE HOLDS HEARING ON NECESSITY OF PROPOSED L.A. COUNTY FEDERAL COURTHOUSE PROJECT**

The House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings & Emergency Management held a hearing on November 4, 2011 to examine the proposed L.A. County Federal Courthouse Project. The hearing was held in Washington, D.C. and was titled *A Review and Analysis of the Proposed $400 Million Los Angeles, California Federal Courthouse Project*. Witnesses included The Honorable Margaret M. Morrow, United States District Judge, U.S. District Court, Central District of California; Mr. Robert Peck, Commissioner, Public Buildings Service, U.S. General Services Administration (GSA); and Mr. Mark L. Goldstein, Director, Physical Infrastructure, U.S. Government Accountability Office (GAO).

At the announcement of the hearing, Subcommittee Chairman Jeff Denham (Merced) commented on the project, saying, “This is a prime example of government waste. Ten years ago, $400 million was appropriated for a building that still doesn’t exist, to house federal judges that don’t exist. This vacant lot in downtown LA could be sold and used for private sector growth to create jobs.” In his opening statement at the hearing, he stated that a new L.A. courthouse is not needed. He further commented that the GAO had found that in the period from 2000-2010, the GSA built 3.5 million square feet of new courthouse space “that we don’t need at a cost of $800 million,” and abandoned existing courthouses while underutilizing every new courthouse.

The hearing focused on the need for a third federal courthouse in Los Angeles county, for which $400 million was appropriated in 2005. The Judicial Conference has historically said that the L.A. courthouse system needs more space because of capacity and security issues. But due to a new courthouse sharing program devised by L.A. county, Mr. Goldstein testified that recent GAO reports indicate no need for a third courthouse in L.A., because a new one would exceed the needs of their judicial system. He also said that the GAO “found that the proposed courthouse was designed to provide courtrooms to accommodate the judiciary’s estimate of 61 district and magistrate judges in the L.A.
Court by 2011 – which, as of October 2011, exceeds the actual number of such judges by 14. This disparity calls into question the space assumptions on which the original proposals were based.”

Mr. Peck noted that the L.A. project has been stalled too long and that the GSA is ready “to issue a solicitation” for a smaller, and still necessary, project. He stated that the Courts and GSA have heard the concerns of Congress and the GAO, and “have worked closely together to develop a feasible solution for a smaller district courthouse ... providing needed courtrooms and chambers with secure access... [and] have incorporated the latest sharing guidelines and eliminated projected judgeships to develop a solution to build this courthouse within the latest Judiciary management guidelines and lessons learned over the past several years. The current proposal will provide approximately 600 to 650 thousand GSF of space, 24 district courtrooms and 32 chambers to house active district court judges and senior district court judges, as well as the supporting Clerk and U.S. Marshals Service functions.”

Judge Morrow reiterated that “the planned project is a reduction of 350,000 square feet, 17 courtrooms, and 8 chambers from the project that this Committee considered in prior years.” She testified that a new building, smaller than the ones previously proposed, would solve the significant operational, security, and space concerns in the current L.A. courthouse complex, which does need a new building.

For more information, please see: http://transportation.house.gov/.

TELECOMMUNICATIONS: Senate Defeats Net Neutrality Resolution

The Senate on November 10, 2011 defeated, 46-52, S. J. Res. 6, a resolution that would have nullified the Federal Communications Commission rule on “net neutrality.” The FCC adopted the rule in December 2010, which prohibits fixed broadband service providers from blocking Internet content and discriminating in the transmission timing and speeds of network traffic. It also prohibits mobile broadband service providers from blocking websites or applications that compete with their voice services.

Supporters of S. J. Res. 6 argue that the FCC lacked the authority to issue the rule and Congress should be the ultimate arbiter of the issue. Moreover, they argue that allowing the FCC to regulate the Internet will only hamper its continued innovation and growth. Opponents, on the other hand, argue the opposite – that without the net neutrality rule service providers will be free to discriminate among content providers and users and limit consumer access to Internet sites.

The House passed H. J. Res. 37, nullifying the FCC rule, in April 2011 on a substantially party-line vote of 240-179.

For more information, go to: http://thomas.loc.gov.

EDUCATION: Senate HELP Committee Continues Discussion on NCLB Reauthorization

On November 8, 2011, the Senate Health, Education, Labor and Pensions (HELP) Committee held a hearing to further discuss the reauthorization of No Child Left Behind (NCLB). The hearing was titled Beyond NCLB: Views on the Elementary and Secondary Education Reauthorization Act and comes just a few weeks after the initial NCLB reauthorization bill was reported out of the HELP Committee by a vote of 15-7 on October 20, 2011.

The hearing occurred in the time between Committee passage and the bill’s consideration on the Senate floor, because of an agreement among Chairman Tom Harkin (IA), Ranking Member Michael B. Enzi (WY), and Sen. Rand Paul (KY). During the Committee’s mark up last month, Sen. Paul had repeatedly objected to the HELP Committee’s meeting beyond the first two hours of the Senate’s day,
an action that requires unanimous consent but is rarely questioned. This week’s interim hearing was a compromise in order to gain Sen. Paul’s consent to allow the Committee to continue the markup.

Witnesses at the hearing included educators from several states, as well as representatives of educational organizations. There were no witnesses from California.

Chairman Harkin stated that in the last two years, the Committee has held ten hearings, numerous stakeholder meetings, and lengthy negotiations in order to markup and report a bill to the floor that:
- Reorders national educational goals from student proficiency to student college and career readiness;
- Closes the comparability loophole in order to ensure that Title I schools receive their fair share of federal funding;
- Incentivizes states and school districts to develop individual plans for principal and teacher accountability and evaluations, with the aim of improving instructions; and
- Focuses on the bottom five-percent of all schools and the nation’s “dropout factories,” which are high schools that consistently graduate less than sixty-percent of their students.

Issues discussed at the hearing included:
- The need to focus on individualized plans for states and schools, including teacher evaluations, versus a “one size fits all” model that focuses on schools versus students and instruction.
- The need to increase parents’ ability to see their child’s progress easily and transparently.
- The need for constant improvement in teaching driven by feedback, mentoring, and high expectations.
- The need for effective leadership to be able to create a culture of expectation of success for the school as a whole and for the students.
- Removal of NCLB’s “culture of compliance” which inhibits a culture of high expectations and innovation.
- Possible improvements in the bill, including putting in place a substantial incentive (perhaps fifty-percent of the Title II program) and using those funds towards competitive grants for states and districts to design and use proven accountability and professional development systems.

For more information, please see: http://help.senate.gov/.

**RESOURCES: USGS RELEASES STUDY DESCRIBING CLIMATE CHANGE IMPACTS FOR THE BAY-DELTA**

The United States Geological Survey (USGS) recently published the results of a study that examined the impacts of climate change on the California Bay-Delta region. The results were published by the journal PLoS ONE in September 2011, in an article titled "Projected Evolution of California’s San Francisco Bay-Delta-River System in a Century of Climate Change."

The findings showed that in the next century the Bay-Delta will experience changes to its habitats, sea level, and freshwater availability. USGS experts used both fast and moderate change scenarios in the study and found that variables such as water temperature and salinity levels may adversely affect species already under scrutiny, including the Delta smelt and Chinook salmon.

Other highlighted results include:
- The need for more strategies to deal with the possibility of longer dry seasons, caused by loss of seasonal snowpack and the earlier melting of snow.
- The need for more strategies to plan for the possibility of more winter flooding, due to earlier snowmelt and a shift in precipitation from snow to rain.
At the release of the results, USGS Director Marcia McNutt said in a statement that "the protection of California's Bay-Delta system will continue to be a top priority for maintaining the state's agricultural economy, water security to tens of millions of users, and essential habitat to a valuable ecosystem … this new USGS research complements ongoing initiatives to conserve the Bay-Delta by providing sound scientific understanding for managing this valuable system such that it continues to provide the services we need in the face of climate uncertainty."

The report's findings are expected to be used by the Bay Delta Conservation Plan and will likely also support the Delta Stewardship Council's Delta Plan.

The full study results, as published in the journal PLoS ONE, can be found at: http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0024465.