Senate Budget Committee Republican Staff
BUDGET BULLETIN
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INFORMED BUDGETEER

Highway Reauthorization Recurring Bad Dream

As the May 31 expiration date of the latest extension of federal surface transportation programs rapidly approaches, the pressure is on the Senate to pass a reauthorization bill by the end of this month. The House passed its version of the bill (H.R. 3) last month.

The Senate bill is being considered on the floor, as the four committees with jurisdiction – Environment and Public Works (EPW), Banking, Commerce, and Finance – have each marked up their respective titles of the bill. The Banking, Commerce, and Finance titles are added on the floor to the bill reported by EPW.

There are several different metrics that participants in the legislative process are using to evaluate this bill besides "how much does each state get?" – is it more than the President's request, is there enough "money" in the highway trust fund, and does the budget resolution allow it?

Bigger than the President's Request?

The Senate-reported and House-passed bills are, in total, both consistent with the President's FY 2006 Budget request of $284 billion for transportation programs for FY 2004-2009, reflecting the informal conference agreement reached, but not enacted, last year.

Transportation Bill Comparisons
Totals for 2004-2009
($ in billions)

	Pres. FY06 Budget	House-Passed (109th)	Senate-Reported (109th)	Senate-Passed (108th)
EPW - Highways	227	225	226	256
Banking - Transit	40	42	43	47
Commerce - Safety	6	6	6	7
Subtotal, Contract Auth.	**273**	**273**	**275**	**310**
Authorized Discretionary Transit BA	9	11	9	10
Highway Emerg. Relief Supplemental	2	n/a	n/a	n/a
Advertised Bill Total	**284**	**284**	**284**	**319**

In FY 2005, $2 billion was appropriated from the highway trust fund for the Federal-aid highway emergency relief program to provide funds to repair damage from the 2004 hurricanes and to clear the backlog of emergency relief program requests. The Administration includes this funding in its revised reauthorization proposal, but the House and Senate proposals do not.
NOTE: Totals may not add due to rounding.

End of story, right?...given this apparent coalescence around a $284 billion bill? Because the Administration drew a line in the sand most recently with a SAP threatening to veto anything above $284 billion (as well as anything creating a new federal borrowing mechanism), the Senate leadership insisted that the bill brought to the floor not breech that level. The authorizers' action, however, has only lived up to the letter, but not the spirit, of that admonition. Senate authorizers snuck in a change to their substitute, without a separate vote, to increase the bill's funding level above $284 billion. So the bill before the Senate currently exceeds the prescribed level by $10-$15 billion.

Affordable from the Highway Trust Fund? The latest CBO estimates indicate that revenue now credited to the highway trust fund is sufficient to support a $284 billion bill, mainly due to provisions in the American Jobs Creation Act (AJCA) of 2004 (P.L. 108-357), enacted in the closing days of the 108th Congress. But last summer the highway trust fund could not have supported a $284 billion bill. How can the highway trust fund all of a sudden have sufficient resources?

Last summer, the Senate faced the exact same pickle it does now. The Senate's highway spending appetite ($319 billion) was greater than the level of related federal revenues dedicated to highways and transit at that time. The Finance Committee had intended to pay for the additional spending through a combination of (1) brand new revenues from those who had been avoiding gasoline taxes (fuel fraud) and (2) shifting the incidence of revenues the government was already collecting (2.5 cents gas tax), or already not collecting (ethanol subsidy), between the general fund and the highway trust fund (general fund transfers).

To the extent that some proposed increases in highway trust fund spending were being justified on the concept of general fund transfers (which do not constitute new revenue to the federal government), that spending would have been a pure increase in the federal deficit. Because of bipartisan concern about such a deficit increase on the part of some of its members, the Finance Committee committed to offsetting some of the general fund transfers with unrelated (to highways) revenue raisers.

Such unrelated-but-real new revenues could have mitigated the deficit increase that would have otherwise resulted from the component of higher trust fund spending rationalized by magically "augmented" trust-fund balances. However, when the highway bill failed to emerge from conference last year, the fuel fraud and general fund transfer provisions were lifted out of S. 1072 and enacted separately in AJCA, without the accompanying additional offsets that had been promised by the Finance Committee.

It is true that the enacted fuel fraud provisions are now bringing a welcome $1 billion or so per year (that was not being collected before) to the federal government and the highway trust fund. But the enacted general fund transfers have made the highway trust fund "healthier" by about $2-3 billion annually only by definition, since merely moving around deck chairs has not changed the federal government's bottom line.

Nonetheless, because there is a new CBO baseline and a new Congress, highway spending proponents in the Senate only seem to notice that the highway trust fund will now support a higher level of spending than it did six months ago (even though gasoline consumption has not increased, and has probably decreased because of higher prices). They seem to forget that some of the spending that will be done on the strength of these general fund transfers was supposed to have been offset by real revenue increases.

Bigger than the Budget Resolution? The "reported" Senate transportation bill already exceeded the levels of contract authority allocated for 2006 (for the Banking Committee) and for the 2006-2010 period (for all three committees) by the FY 2006 budget resolution just adopted.

How can that be if the 2006 budget resolution assumes the $284-billion level? The oversimplified answer is that the budget resolution assumed the stream of contract authority associated with the H.R. 3 as passed by the House (because the House had completed its action, while the Senate had not finished reporting as the conference report on the budget resolution was being finalized). But the spread of the $284 billion across the years and over the different types of transportation spending (highways, transit, and safety) is different in the "reported" Senate bill, which means that the Senate bill does not fit an allocation based on the House bill. Therefore, a 60-vote point of order (under section 302(f)) applied against the "reported" bill.

Now that the bill has been increased by $10-$15 billion, a point of order applies against the $295-$300 billion bill. (Last year, a 302(f) point of order was raised against S. 1072 the Senate highway bill in the 108th Congress, but the Senate waived it by a vote of 72-24.)

Authorizers potentially could avoid a 302(f) point of order by employing the mechanism established in section 301 of the 2006 budget resolution, which anticipated that transportation spending demands would exceed the levels allocated by the resolution.

Section 301 says that if the Senate EPW, Banking, or Commerce committee (Transportation and Infrastructure Committee in the House) reports a bill (or amendment thereto is offered) that provides new budget authority in excess of the budget resolution levels, the Budget Committee Chairman may increase the allocation to the relevant committee "to the extent such excess is offset by…an increase in receipts" to the highway trust fund. Such legislation increasing receipts must be reported by the Finance Committee.

The Finance Committee once again has pledged to provide additional receipts to the highway trust fund to support higher spending on transportation programs, but the title of the bill reported by the Finance Committee does not include any offsets.

It appears that the Finance Committee's floor amendment includes provisions quite similar to those general-fund transfers that were included in last year's Senate-passed bill. Such general-fund transfers do nothing to offset the deficit effect of the increased spending in that amendment.

This year's Senate floor debate on the highway bill seems all too familiar, with proponents of higher spending on highway and transit programs potentially considering options that would partially "pay for" a larger bill by rearranging paper entries on the government's books rather than increasing resources collected by the federal government -- the same as last year's debate. Now the Senate must decide whether to allow history to be repeated, a mere two weeks after it adopted a conference report on a budget resolution to enforce fiscal discipline at agreed-upon levels.

An Emergency, a Supplemental, or an Emergency Supplemental?

While the Senate debated the Iraq supplemental two weeks ago, there was some confusion about the effect of emergency designations and the difference between regular and supplemental appropriations. Over the last four years, Congress has repeatedly approved funding outside the regular appropriations process in response to the wars in Afghanistan and Iraq and the war on terror. The funding has most often been in an emergency supplemental appropriation. Though emergency designations and supplementals are often discussed as if they are interchangeable terms, they are distinct concepts.

Supplemental appropriations. A supplemental appropriation is simply an appropriations bill other than the regular appropriations bills that the Congress must consider each fiscal year (most recently there were 13 such regular bills; for 2006 there are 12 in the Senate and 11 in the House). Neither a supplemental bill nor all items in it are necessarily designated as an emergency or even intended for purposes alleged to be emergencies. Simply providing funding through a supplemental appropriation does not trigger the "do not count" (for budgetary enforcement) treatment that an emergency designation provides. Each item in a supplemental must include an explicit emergency designation to receive "do not count" status.

Supplemental appropriations are required when, after the regular appropriations are enacted for the year, new events or information requires adjustments to the previously appropriated amounts. Supplementals are also useful for purposes that are known to be temporary because a supplemental provides a discrete and therefore optically severable amount of money that could discourage those amounts from becoming part of and enlarging regular appropriations in future years.

Emergency designations. Emergency designations are attached to individual accounts (and may even be attached to tax provisions or direct spending items in authorization bills), and can be used in any appropriations bill, either regular or supplemental. When a provision is designated as an emergency, the Budget Committee does not count the spending in that line item against the enforceable levels in the budget resolution. Contrary to popular misconception, the emergency spending still counts toward total federal spending and the deficit; it is only not counted for Congressional enforcement purposes.

The appropriate use of an emergency designation in the Senate is most recently articulated in section 402(b) of the Conference Report on the 2006 Budget Resolution, which is the source of the authority to not count emergencies for purposes of budgetary enforcement. Section 402 (and its predecessors in the 2004 and 2005 budget resolutions) have required that the report accompanying any bill with emergency spending to explain the manner in which the spending is sudden, urgent, pressing, a compelling need requiring immediate action, unforeseen, unpredictable, unanticipated and temporary. To date, this requirement has been ignored.

However, whether the emergency point of order applies does not depend on whether this reporting requirement has been fulfilled or on any evaluation of whether the emergency item actually meets the criteria. Instead, the emergency point of order automatically applies to any non-defense spending item that has an emergency designation. Defense emergencies are exempt from the point of order. The existence of the point of order allows any Senator to use the "eye-of-the-beholder" test to confront the rest of the Senate with the issue of whether a non-defense item meets the emergency criteria and warrants an emergency designation so that it does not count for enforcement.

If the point of order is raised against a non-defense emergency designation in either a pending bill or amendment, supporters of the spending can move to waive the point of order, which requires 60 votes. If the point of order is sustained, the emergency designation is struck and the spending in the bill or amendment is then counted against the 302(a) allocation and other appropriate levels. If the committee is already at or above its allocation (this is the case for fiscal year 2005), the amendment or bill then faces a 60-vote 302(f) point of order.

Baseline treatment. While the concepts are not interchangeable, a commonality between emergency spending and supplemental appropriations is their treatment in the CBO baseline. Whether in a regular or supplemental appropriation (and regardless of the presence of an emergency designation), every discretionary spending item appropriated for the current fiscal year is assumed by CBO to continue on, adjusted for inflation, in the subsequent fiscal years for baseline purposes. Statutory rules for constructing the baseline mandate this treatment, and CBO has no discretion to pick and choose which discretionary items may be recurring versus a one-time only expenditure.

The Budget Committees are not required to use the CBO baseline as the basis for constructing the budget resolution. But in practice, the Budget Committees use their discretion to adopt an alternate baseline in only limited circumstances. Removing what the Committees view as temporary spending from the baseline is an instance where the Committees occasionally make adjustments to the CBO baseline. However, CBO's 2006 baseline (issued in March 2005) did not include appropriations for Iraq and Afghanistan because a 2005 supplemental has not been enacted, so no baseline adjustment was necessary in this year's budget resolution.