THE REPUBLICAN STUDY COMMITTEE

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Legislative Bulletin……………………………….………July 31, 2014

Contents:

The Senate Amendments to H.R. 5021 — Highway and Transportation Funding Act of 2014 (Camp, R-MI)

Order of Business: The House is expected to consider the Senate amendments to H.R. 5021 on July 31, 2014.

The Rule makes in order a motion that the House disagree to the Senate amendments to H.R. 5021 by the Chairman of the Committee on Transportation and Infrastructure, or his designee.

The rule would restrict a motion under Clause 4 of Rule 22 of the Rules of the House to the Majority Leader or his designee. This provision of the House Rules states "When the stage of disagreement has been reached on a bill or resolution with House or Senate amendments, a motion to dispose of any amendment shall be privileged."

The motion to disagree with the Senate amendments would send the original House-passed version of H.R. 5021 back to the Senate, a summary of which is available below.

CRS has a report on the process of resolving differences between the House and Senate.

The Rule also provides a closed rule for the consideration of H.R. 5230, the Supplemental Appropriation bill and H.R. 5272 regarding deferred action for illegal aliens. The Rule further provides suspension authority on July 31, 2014, and waives the two-thirds requirement (Clause 6a of Rule XIII) for the consideration of a rule on the same day it has been introduced.

Previous Consideration in the House and Senate: The House passed H.R. 5021 on July 15, 2014, by a 367 – 55 vote. The Senate passed H.R. 5021, with amendments, on July 29, 2014, by a 79 – 18 vote.

During Senate consideration of the bill, two amendments were adopted:

1. Wyden/Hatch Amendment: This amendment reduced the amount of revenue from pension smoothing compared to the House-passed bill and added in a number of new tax

provisions. Specifically, the amendment includes revenue provisions on customs fees, mortgage reporting, the statute of limitations for the overstatement of basis, liquefied natural gas, liquefied petroleum gas, the child tax credit, levy authority on payments to Medicare providers, and mutual ditch or irrigation companies. The amendment also removes the expiration date for the highway extension. A detailed description of the provisions in the Wyden proposal by the JCT is available here.

The amendment was approved by a 71 – 26 vote.

2. Carper/Boxer/Corker Amendment: This amendment in the nature of a substitute reduced the length of the highway authorization extension to December 19, 2014, reduced the size of the general fund transfer to the Highway Trust Fund, eliminated the pension smoothing provision, and incorporated most of the revenue provisions from the Wyden proposal with the exception of a different policy on customs fees.

   This proposal is meant to force action on transportation policy during a lame duck session, where some feel it will be easier to increase gas taxes on hardworking Americans.

   The amendment was approved by a 66 - 31 vote.

It has been reported that the amendments fail to offset about $2 billion of the general fund transfer to the Highway Trust Fund. Under the House Budget Resolution, any general fund transfer to the Highway Trust Fund must be fully offset to be considered in the House.

A comparison of the House-passed H.R. 5021 and the Senate amendments are available from Transportation Weekly.

Summary of House-Passed H.R. 5021:

Extension of Transportation Authorization: H.R. 5021 would extend through May 31, 2015, the authority to make expenditures from the Highway Trust Fund at the current funding level. Under the current law (MAP-21), the highway program authorization expires at the end of this fiscal year (September 30, 2014).

General Fund Transfer: The bill would transfer a total of $9.8 billion from the Treasury's General Fund to the Highway Trust Fund. Of this total, $7.765 billion is for the Highway Account and $2.0 billion is for the Mass Transit Account.

Some conservatives may be concerned that we are not using this opportunity to enact long-term reforms, despite the fact that a chronic spending imbalance has necessitated another bailout of the Highway Trust Fund. Several RSC Members have put forward specific proposals to reform federal transportation spending. The RSC Budget included reforms that would return control over most transportation spending back to the states and end the Transportation Alternatives Program, which diverts federal highway dollars to projects such as bike paths, trails, and scenic overlooks.

LUST Trust Fund Transfer: The [Leaking Underground Storage Tank (LUST) Trust Fund] is funded through a 1/10th cent per gallon tax on gasoline. The Fund is used for cleanup of underground petroleum tanks that have leaked. The Fund currently has a balance of $1.4 billion. H.R. 5021 would transfer $1 billion from the LUST Trust Fund to the Highway Trust Fund.

Offsets:

Customs Fees: The Bureau of Customs and Border Protection (CBP) collects processing user fees. The authority for CBP to collect these fees is set to expire under current law. The Ryan-Murray Bipartisan Budget Act extended user fee collection from 2021 to 2023. H.R. 5021 extends user fee collection through 2024. This provision would increase receipts by $3.5 billion with all receipts coming in 2024.

Pension Smoothing: H.R. 5021 expands a policy from MAP-21 called pension smoothing.

Employer contributions to pension plans are inversely tied to interest rates. When interest rates fall, employers must contribute more, and when interest rates increase, employers may contribute less. Under MAP-21, the interest rate for calculating employer contributions in 2012 was deemed to not vary more than ten percent from the twenty-five year average interest rate. The amount of variance from the twenty-five year average increased by five percent per year through 2016, when it was permanently set at thirty percent. Because interest rates are at low levels, this policy has the effect of reducing employer contributions in the short term.

H.R. 5021 would set the variance from the twenty-five year average at ten percent through 2017, and then increase at five percent per year through 2021 when it is permanently set at thirty percent.

Put a different way, pension smoothing allows companies postpone pension contributions. Because pension contributions are deductible, this means fewer deductions will be taken, leading to higher tax liabilities for corporations and thus more federal revenue. The companies will make those contributions towards the end and beyond the budget window (increasing deductions, lowering tax liabilities, and lowering federal revenue).

The argument for allowing this policy is that because current interest rates are very low, companies would be required to contribute more to pension plans than under normal circumstances.

According to the CBO report, "CBO expects that the bill would increase the amount of underfunding in such [single-employer defined benefit pension] plans." These pensions that are being underfunded are guaranteed by the taxpayers through the PBGC. The PBGC's deficit increased to $36 billion in 2013.

According to CBO, this provision would reduce the deficit by a total of $6.387 billion over the 2014-2024 period. This total includes $5.152 billion in increased revenues and $1.235 billion in reduced Pension Benefit Guaranty Corporation (PBGC) outlays.

Revenues under this proposal are significantly front-loaded in the budget window. Over the 2014 – 2020 period, pension smoothing increases revenues by $18.063 billion. However, over the 2021 – 2024 period, this proposal decreases revenues by $12.91 billion. Because the budget window for Congressional scorekeeping purposes is only ten years, the CBO does not report on revenue effects in the out-years. Outside of the budget window, it is likely that revenues stay depressed.

When used for the purpose of raising revenue, pension smoothing is widely recognized by all sides of the political spectrum as a budgeting gimmick:

On the Right**:**
- Heritage Foundation: Highway Bill's Pension Language Makes Taxpayer Bailout of PBGC More Likely
- Daily Signal: Pension Smoothing on UI Bill Is an Accounting Trick That Could Lead to Taxpayer Bailout
- Competitive Enterprise Institute: The Highway Bill's Sleeper Funding Provision: Pension Smoothing

Bipartisan:
- Committee for a Responsible Federal Budget: Pension Gimmick Rises Again
- Bipartisan Policy Center: Pension Smoothing Is Not the Solution to the Highway Trust Fund (or Anything Else)

On the Left:
- Tax Policy Center: "Pension Smoothing" is a Sham
- Center on Budget and Policy Priorities: Proposed Offset for Medical Device Tax Can't Offset Anything — It's a Timing Gimmick
- New York Times: This Road Work Made Possible by Underfunding Pensions

Violation of "User Pays": Some conservatives may be concerned that the use of these offsets violates the concept of "user pays" for government services. They argue that if taxes meant for transportation programs are only projected to bring in $38 billion, then the federal government should spend no more than that on these programs.

Further, they argue that taxes paid into the LUST Trust Fund should go toward preventing and cleaning up spills, which is the original justification for the tax. If this Fund is no longer needed, the Fund and its taxes should be eliminated. Similarly, fees charged by Customs and Border Protection should go towards providing services to those who pay such fees.

Additional Background:

Previous Authorization: The Highway Trust Fund is meant to be self-sustaining on a "user pays" concept. The Trust Fund is primarily funded by an 18.3 cent per gallon gasoline tax and a 24.3 cent per gallon tax on diesel fuel. The trust Fund is also financed with other taxes on truck and truck trailer sales, heavy tires, and a heavy vehicle use tax. However, beginning in 2008, Congress has spent more from the Trust Fund than the taxes bring in. Since then, $53 billion has been transferred from the General Fund to the Highway Trust Fund. CRS has additional background on Highway Trust Fund.

The transportation programs were most recently reauthorized in 2012 through September 30, 2014, by the Moving Ahead for Progress in the 21st Century Act (MAP-21). This law authorized over $100 billion in obligations from the Highway Trust Fund in FY 2013 and FY 2014 despite the fact that the Trust Fund was only slated to bring in $76 billion in revenues and interest. You can see RSC analysis on the 2012 reauthorization here.

Current Shortfall: According to the CBO, revenues to the Highway Trust fund are projected to be $38 billion in FY 2014, while expenditures are projected to be $53 billion.

The Highway Trust Fund is supplied with funds from tax receipts by the Treasury twice per month. Under normal circumstances, a state is paid very quickly by the federal government once it submits a request for reimbursement to the Department of Transportation.

The Department of Transportation (DOT) has established a Highway Trust Fund Ticker to show the funding status of the Highway and Transit accounts within the Trust Fund. According to CRS, "the Federal Highway Administration (FHWA) deems it prudent to maintain a $4 billion minimum in the highway account to prevent having to delay payments to states due to insufficient funds. The equivalent prudent balance in the mass transit account is at least $1 billion."

Delayed Payments to States in the Event of a Shortfall: On July 1, 2014, Transportation Secretary Foxx wrote a letter to state departments of transportation explaining that, without enactment of legislation, the Department of Transportation would begin delaying reimbursements to the sates beginning on August 1, 2014. Beginning on August 11, 2014, funds will be distributed to states in proportion to each state's formula apportionment. Distributions will continue twice per month as the Highway Trust Fund is supplied by the Treasury.

Committee Action: H.R. 5021 was introduced by House Ways and Means Chairman Camp on July 8, 2014. House Transportation and Infrastructure Chairman Shuster is an original cosponsor. The bill was referred to the House Transportation and Infrastructure, House Ways and Means, House Science, Space, and Technology, House Energy and Commerce, House Education and the Workforce, and House Natural Resources committees.

The House Ways and Means Committee marked up the bill on July 10, 2014. The bill was reported by a voice vote.

Cost to Taxpayers: According to CBO, H.R. 5021 "would reduce budget deficits over the 2014-2024 period by an estimated $9.9 billion."

Under CBO's baseline, annual highway spending continues at current levels indefinitely, even though the highway authorization expires at the end of FY 2014. Therefore, according to CBO, an extension at current levels has no cost

Under CBO accounting conventions, transfers between funds in the Treasury do not have a cost. However, the House Budget Resolution requires general fund transfers to the Highway Trust Fund to be offset.

Administration Position: According to the initial Statement of Administration Policy, the Administration supports House passage of H.R. 5021.

Does the Bill Expand the Size and Scope of the Federal Government?: No, the bill continues funding transportation programs at current levels.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. According to CBO, the bill imposes a private-sector mandate by extending customs fees. The bill does not include intergovernmental mandates.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment?: Yes. As stated in the RSC Budget, "Congress should phase down the federal government's control over most highway and transit programs to where they belong – the state and local governments." Federal transportation spending should be limited to core federal duties, including the interstate highway system, transportation infrastructure on federal land, responding to emergencies, and research.

Does the Bill Delegate Any Legislative Authority to the Executive Branch?: No.

Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8 of the United States Constitution, specifically Clause 1, Clause 3, Clause 7, and Clause 18."

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