

HEALTH AND PERSONAL CARE LOGISTICS CONFERENCE

WASHINGTON UPDATE

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OVERVIEW

- The health care reform debate will continue, but it is no longer the focus of attention in Washington
- Financial industry reform, budget deficit/pay-go fights are attracting media attention
- Partisanship continues to prevent action
DOT and DOT funding were shut down briefly over the failure of Congress to pay for programs

LEGISLATIVE GRIDLOCK ISN'T ALL BAD

- Many controversial bills are dead for now
 - EFCA/Card Check
 - Climate Change/Cap and Trade
- Some bills are moving
 - FAA Reauthorization may be enacted
 - Rail regulatory reform has a chance

LEGISLATIVE DELAYS DUE TO RECESSION MAY LEAD TO BETTER BILLS

- The old saying is that Congress does two things well: nothing and panic
- Legislation driven by headlines is especially likely to have unintended adverse consequences
- When the devil is in the details, take some time to get the details right
- Let's hope this happens with infrastructure investment. Signals are mixed.

INFRASTRUCTURE

- Infrastructure investment remains the biggest transportation issue on the horizon
- The rationale for investment a year ago was inadequate capacity
- Today there's less talk of capacity constraints and more talk of stimulating the economy
- Whatever the rationale, increased investment is needed

HARD DECISIONS REMAIN

- How much do we need to spend
- How much can we afford to spend
- How do we allocate funding as between
 - truck, rail, water and air
 - maintenance and new construction
 - transit, commuters and freight
 - rural, urban and other areas
- What about oil import issues, climate change and cost effectiveness? Should more freight move by rail?

HOW DO WE PAY FOR WHAT WE NEED?

- The U.S. is facing record deficits
- The Highway Trust Fund required 2008 and 2009 transfusions from general funds (i.e., taxpayers)
- Fuel tax rates have not been increased since 1993
- National Surface Transportation Policy and Revenue Study Commission says raise fuel taxes 5 cents per year and transition to VMT tax
- National Surface Transportation Infrastructure Financing Commission says raise fuel taxes 10 cents and transition to VMT

HOW DO WE PAY FOR WHAT WE NEED? (continued)

- No politicians (including those in the White House) want to come out in favor of higher fuel taxes now, as DOT Secretary Ray LaHood found out
- Privatization was the Bush DOT's answer, but there's little talk about privatization these days
- Senators Jeff Bingaman (D-NM) and Chuck Grassley (R-IA) have introduced S. 884, removing privatized highways from consideration when federal highway funds are allocated

HOW DO WE PAY FOR WHAT WE NEED? (continued)

- Tolling is also unpopular
- ATA continues to oppose tolling of existing highways, and to fight excessive increases in tolls
- Senator Kay Bailey Hutchison introduced S. 1115, prohibiting tolling on existing free federal highways
- DOT just rejected plan to toll I-80

STIMULUS LEGISLATION

- The 2009 Stimulus Bill totaled about \$800 billion but included only \$30 billion for highways
- The Stimulus Bill and other governmental actions have helped shorten the recession, but much more is needed for infrastructure
- The Stimulus Bill has become a subject of partisan fighting. Republicans recently defeated a resolution supporting National Public Works Week because the preamble mentioned Stimulus Bill jobs.

HIGHWAY BILL REAUTHORIZATION

- The main event is the next Highway Bill
- SAFETEA-LU, the 2005 Highway Bill that expires 9/30/09, included \$286 billion in funding for highway maintenance and construction and for transit
- That amount was not enough, even ignoring roughly \$26 billion in earmarks, including the “Bridge to Nowhere”
- Chairman Oberstar wants a successor to SAFETEA-LU with far higher funding levels – \$450 billion over 6 years

HIGHWAY BILL REAUTHORIZATION TIMING ISSUES

- SAFETEA-LU expired 9/30/09, and has obviously not been replaced
- Delays in enacting new Highway Bills are not uncommon. SAFETEA-LU was enacted almost 2 year after its predecessor expired
- The Senate and White House have called for stopgap funding for 18 months
- Rationale is that after the 2010 elections, Congress may be able to come up with the funding we need

HIGHWAY BILL REAUTHORIZATION TIMING ISSUES (continued)

- Chairman Oberstar wants quicker action on a new Highway Bill
- Oberstar argues that major new funding is needed and will stimulate the economy
- ATA, U.S. Chamber of Commerce, NAM and other groups support quicker action
- The Jobs for Main Street Act of 2010 extends SAFETEA-LU till 12/31/2010, adds \$20 billion in funds and repeals provision prohibiting interest on HTF, and provides an additional \$37 billion for highways, transit and Amtrak

HIGHWAY BILL REAUTHORIZATION POLICY ISSUES (continued)

- Oberstar draft Highway Bill has no amounts, so we don't know total funding or how total would be allocated between highways and transit, or among states, or between highway construction and maintenance
- Focus on freight is good, but bill also supports environment, congestion relief, clean air, safety, etc. What weight will be given to each?
- Senate bill, S. 1036, Federal Surface Transportation Policy & Planning Act of 2009, introduced May 14 by Senate Commerce Committee Chairman Rockefeller (D-WV) and Surface Transportation Subcommittee Chairman Lautenberg (D-NJ), calls for 10% increase in freight transportation in “non-highway or multimodal services by 2020.”

NEW WARNING SIGNS FOR JIT SUPPLY CHAINS

- Far more talk now in Washington about getting trucks off the road.
- DOT Secretary LaHood now speaking of “livable communities” with more walking paths and bike trails and fewer “gas-guzzling trucks”
- DOT Deputy Secretary Porcari tells Congress “We want to keep movement on water as long as possible and then on rail as long as possible, and truck it for the last miles.”
- DOT is pushing “marine highway” program
- Railroads have stepped up their ad campaign in favor of freight rail as reducing congestion, reducing emissions and reducing oil consumption and increasing safety

NEW WARNING SIGNS FOR JIT SUPPLY CHAINS (continued)

- Governors' group calls for I-81 rail corridor
- Congress is listening
- Fuel tax increase again rejected, based on weak economy
- We may be seeing U.S. transportation infrastructure needs redefined to justify reduced funding of highway maintenance and construction
- Corporations seek to reduce carbon footprint
- Rail intermodal service quality has improved, but still does not match truck service quality

NEW WARNING SIGNS FOR JIT SUPPLY CHAINS (continued)

- Lean supply chains may be jeopardized by continued underfunding of highway infrastructure, and/or environmental and transportation policies discouraging truck transportation
- Who decides which mode or combination of modes is used?

TRUCKING ISSUES

- Truck Sizes and Weights
- Hours of Service
- LA/Long Beach Port Drayage
- Federal Preemption Challenges

TRUCKING ISSUES

(continued)

- Freeze on longer/heavier trucks being challenged
- Rep. Mike Michaud (D-ME) introduced a bill to allow 97,000 lb. GVW trucks on the highways. New interest in pilot programs.
- NHTSA found increase in truck sizes and weights could offer “significant fuel savings.”
- On Hours of Service, FMCSA had to reopen its proceeding in order to get new agency head, Anne Ferro confirmed
- FMCSA agreed to issue new HOS rules by August 2011

TRUCKING ISSUES (continued)

- At FMCSA “Listening Sessions, “ widespread support for current rules, coupled with calls for more for drivers
- Highway crash and fatality rates continue to decline
- EOBR and distracted driving rules should promote safety along with CSA 2010, which will be delayed till Fall
- H&PCLC recently filed comments supporting current HOS rules
- Efforts to regulate drayage operations at Port of LA/Long Beach were recently overturned in court

TRUCKING ISSUES

(continued)

- Ports of LA/Long Beach asking Congress to amend FAAA Act, which deregulated intrastate trucking, to allow states to regulate port drayage
- Main goal appears to be to promote unionization of drayage
- H&PCLC part of a large coalition opposing this effort

TRUCKING ISSUES

(continued)

- First Congressional hearing May 5, 2010
- Threat to federal preemption could affect issues besides port air quality
- Health, safety, environmental, security and other concerns in states and communities across the country could give rise to new laws and regulations

AIR AND OCEAN

- Montreal Convention as replacement for Warsaw Convention
- “Rotterdam Rules” as replacement for COGSA. Recently approved by 16 nations, including U.S., France, Spain, but not Germany or the UK. European shippers Council concerned about contract limiting ocean carrier liability.
- Senate must ratify before Rotterdam Rules become U.S. law.
- General tightening of liability coverage

RAIL ISSUES

- Antitrust exemption for railroads unlikely to survive
- Captive shipper legislation may pass this session
- Railroad efforts to disclaim or limit liability for or duty to carry hazardous materials
- Investment Tax Credit legislation still pursued by railroad industry

SUPREME COURT CONSIDERING CARGO LIABILITY

- Five years ago Supreme Court held state law inapplicable to cargo claims based on a multimodal through bill of lading in Norfolk Southern v. Kirby
- Carriers and forwarders were relieved, and shippers and receivers had to pay more attention to contracts and shipping documents
- Now, in a dispute between K-Line and Regal-Beloit, Supreme Court is considering whether federal Carmack Amendment is superseded by Carriage of Goods by Sea Act
- Answer will affect liability coverage, carrier defenses, and venue for disputes (Tokyo, according to K-Line shipping documents)

SECURITY

- 10+2 is now in effect
- Liquidated damages penalties may begin this summer, though 3d Quarter more likely
- CBP says 70%-80% of importers are filing and some ports reaching almost 100% compliance
- Mixed shipment and other issues

SECURITY (continued)

- Second nominee for TSA head withdraws
- Target of 100% screening of cargo on passenger planes by August 2010 likely to be met for domestic but not international shipments
- Failed Christmas Day bombing attempt may mean more focus on passengers and less on freight
- Certified Cargo Screening Program remains an important compliance tool