TEXAS DEPARTMENT OF TRANSPORTATION

March 7, 2000

Volume 6, Issue 2

The Federal Flyer

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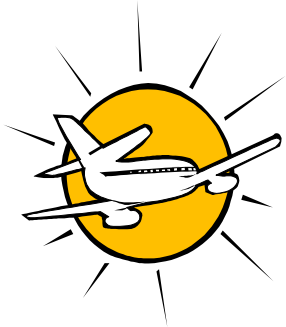
Conferees Agree on Aviation Budget Issues

FAA Authorization Bill Takes Flight

After months of stalemate over the funding of federal aviation programs, the conferees on H.R. 1000, the Aviation Investment and Reform Act of the 21st Century (AIR 21), agreed last week to a three-year, $40 billion bill. The measure, once adopted by both houses of Congress and signed by the president, will provide a significant increase in funding for the Texas general aviation and reliever airport construction program.



The stalemate ended when **Senate Majority Leader Trent Lott** (R - MS) intervened in the longstanding debate between **Senate Budget Committee Chairman Pete Domenici** (R - NM) and **House Transportation and Infrastructure Committee Chairman Bud Shuster** (R - PA) over how much guaranteed funding to provide for the nation's aviation programs. Shuster wanted to take the Airport and Airway Trust Fund "off-budget," protecting the revenues in the fund for aviation spending. He also wanted to continue the $3 billion annual contribution to aviation programs from the General Fund. Domenici insisted that aviation spending remain within the budget, to allow appropriators to continue important oversight of the Federal Aviation Administration's (FAA) spending and program implementation. In addition, Domenici argued that if the Congress voted to set-aside the Airport and Airway Trust Fund revenues, the General Fund contribution would have to end. Last week's agreement represents a compromise between the two positions.

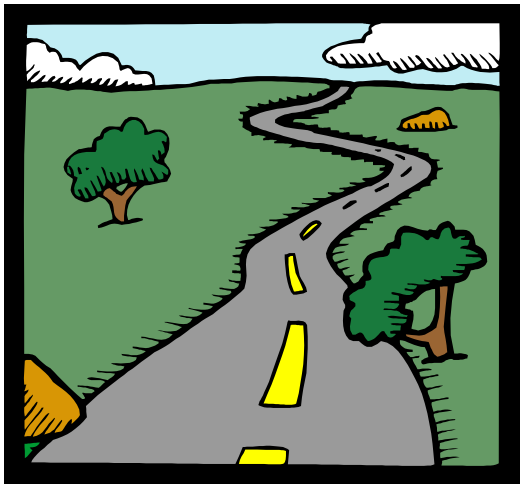
The conferees agreed to a funding arrangement that guarantees that the revenues in the Airport and Airway Trust Fund and the interest earned on those funds shall only be spent on aviation programs. Any funding beyond the level in the Trust Fund (which currently has a $33 billion balance) would not be guaranteed and would have to come from the General Fund. Any General Fund spending would be subject to annual appropriation. In the past, the General Fund contribution supported the FAA's operations and research programs, including air traffic control operations. Since Congress will still want to support such vital programs, we can expect the Congress to continue some degree of funding from the General Fund.

The chairmen of both the House and Senate Appropriations Committees have announced their opposition to the agreement, stating that it would require $10 billion above the FY 2000 baseline for the FAA in the next three years. With the support of other key congressional leaders, however, we expect the bill to pass in the next few weeks.

Transportation Conformity Primer

How the Clean Air Act Affects Transportation Planning and Funding

One federal issue that has recently received tremendous attention in Texas and nationwide is the role of transportation projects in attaining the national ambient air quality standards. The Clean Air Act (CAA) requires the federal government to assess the impact on air quality of all federal actions (including funding of transportation projects) in areas that are designated in violation of the air quality standards (i.e., non-attainment areas). For transportation, this assessment process is known as "transportation conformity." This primer (using a Question and Answer format created by Dianna Noble, P.E., the Texas Department of Transportation's Director of Environmental Affairs) provides information on this process and its impact on Texas transportation planning and funding.



What is transportation conformity? It is the process by which transportation projects are evaluated to ensure that these transportation improvements do not worsen air quality.

When does a transportation conformity lapse occur? A transportation conformity lapse occurs when a non-attainment area's transportation plan exceeds the area's mobile source emission budget or when an area has not yet demonstrated that it does not exceed the area's mobile source emission budget. We anticipate a conformity lapse for several areas in the state when designations of non-attainment under the new 8-hour ambient air quality standard occur this summer.

What are the consequences of not demonstrating transportation conformity? The ability to advance transportation projects is severely limited. A federal court decision in March 1999 [Environmental Defense Fund vs. the Environmental Protection Agency (EPA)] invalidated critical flexibility in the State Implementation Plan (SIP) approval process and transportation conformity process. (A SIP is the state's plan for attaining the national ambient air quality standard.) As a result, added capacity projects cannot be built until conformity is demonstrated unless they were under construction or had received a letter of authority/ funding approval before the lapse occurred.

During a conformity lapse, federal regulations allow only certain transportation projects to proceed. These are:

- *exempt projects* - safety, maintenance, mass transit and non-added capacity transportation projects
- *Transportation Control Measures* (TCMs) *included in an approved SIP* - TCMs are measures to reduce emissions from traffic, such as HOV lanes and traffic management.
- *projects that received funding commitments (letter of authority/funding approval) for construction prior to the lapse and*
- *the environmental and public involvement process* (however, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) will not issue a final approval of the environmental process during a lapse.).

Certain projects, such as interchange improvements, must undergo a project-specific air quality analysis including a consultative process between state and federal agencies to determine whether the projects should proceed during the lapse.

Detailed design (development of Plans, Specifications & Estimates) and right-of-way ac-

quisition cannot continue for added capacity projects during a lapse.

What happens to federal transportation funds for non-attainment areas during a conformity lapse? States and localities can redistribute Federal monies to do exempt projects within the non-attainment area that is under the lapse. In addition, the states can redistribute Federal funds (except the federal funds that are specifically allocated to the Metropolitan Planning Organizations) to do added-capacity projects within any other area of the state that is NOT under a transportation conformity lapse.

What happens to non-federally funded projects and activities during a conformity lapse? Regionally significant, non-federally funded, added-capacity projects are being held to similar restrictions as federally funded projects during a lapse. Some have asked whether it was possible to change the funding of federally funded projects and activities to state funds. In reality, we don't have enough state funds to do this. In addition, the state risks future eligibility for federal funding and may have to reimburse federal funds that have already been expended. Also, it is possible that lawsuits may arise from those questioning the authority of the state to proceed under such a scenario.

What is a sanction? A federal sanction occurs when the state fails to submit or implement a SIP according to EPA requirements. During a sanction, the federal government can restrict federal highway funds that go directly to a sanctioned region. The type of failure will influence the type of highway sanctions imposed. Sanctions can affect funding for all of the non-attainment areas in the state or the sanction can be directed specifically to one or more non-attainment area. In addition, under certain circumstances, the EPA may extend highway sanctions to areas not designated as non-attainment.

Obviously, a sanction is a more severe penalty than a conformity lapse, primarily because a sanction further restricts what types of projects can be developed. In essence, the EPA Administrator (with concurrence from the Secretary of Transportation) determines what projects can proceed during a sanction. Generally, projects are limited to safety projects that have supporting accident data. Texas has not been sanctioned to date.

No states have actually lost federal transportation funds as a result of a lapse or sanction. Federal funds have a multi-year life. Three to four years is the most common life span for federal transportation funding. No states have been under a lapse or sanction long enough for the entire life span of allocated funding to expire.

During a sanction, can money be redirected to do other projects and to other areas of the state? Maybe. During a sanction, the federal government can restrict federal highway funds that go directly to a sanctioned region. The type of failure will influence the type of highway sanctions imposed. Sanctions can apply to all of the non-attainment areas in the state or be directed specifically to one or more non-attainment area. In addition, under certain circumstances, the EPA may extend highway sanctions to areas not designated as non-attainment.

The Legislative Affairs Office has worked over the past year to keep the Texas Congressional Delegation and other elected officials informed about the potential impacts of this issue on Texas. If you have any questions, please contact us.

The ***Federal Flyer*** is a publication of the TxDOT Legislative Affairs Office. It is intended to provide up-to-date information on major legislative activities in the 106th Congress for the management of the Texas Department of Transportation, state leaders, and others interested in Texas transportation issues. This report will also feature key activities in the national transportation community. Sources include news services and staff reports.

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Texas Department of Transportation