Senate Budget Committee Republican Staff
BUDGET BULLETIN
A Weekly Bulletin produced when the Senate is in session.
Don Nickles, Chairman
Hazen Marshall - Staff Director
202/224-6988 http://www.senate.gov/~budget/republican

108th Congress, 1st Session: No. 22 November 12, 2003

INFORMED BUDGETEER

WE'RE ON THE ROAD TO NOWHERE . . .

- Today the Environment and Public Works Committee marked up a six-year reauthorization of highway programs (S. 1072, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 – SAFETEA) as the successor legislation to 1998's Transportation Equity Act for the 21st Century (TEA-21). For a preview, the *Bulletin* examined the recent temporary transportation legislation for clues as to what the full reauthorization might look like.

- As the September 30th expiration for TEA-21 approached, Congress found it necessary to enact a short-term (5 month) extension (P.L. 108-88). Buried within this legislation were a number of provisions with puzzling budgetary implications.

- For the record, that legislation was subject to a point of order in the Senate pursuant to section 302(f) of the Budget Act because the total level of contract authority for transportation programs within the jurisdiction of the Committee on Commerce, Science and Transportation - on an annualized basis – exceeded the allocation provided to that committee in the 2004 budget resolution by $77 million. Because the amount was deemed not significant and the legislation was only a short-term extension, no point of order was raised during the debate in the Senate.

- In addition, section 10 of the legislation contained a number of provisions that are within the jurisdiction of the Committee on the Budget, which created another 60-vote point of order pursuant to section 306 of the Budget Act. Subsections (a), (b) and (c) amended sections 250 and 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) and purported to extend the life of the transportation categories (discretionary "firewalls"). Subsection (d) deemed certain spending adjustments to be "zero" for 2004. Finally subsection (e) expressed a "sense of Congress" with respect to the adjustments for revenue aligned budget authority (RABA).

- Some may argue that these budgetary provisions are of little consequence given the expiration of the statutory spending caps which had been set out in section 251. But enactment of the temporary extension should not be taken as a signal that the Committee on the Budget has acquiesced on the important fiscal policy debate that must take place when the long-term reauthorization comes before the Senate. The 11th-hour agreement reached to assure passage of this necessary stop-gap measure is not a guarantee of the future budgetary treatment of transportation spending.

- Where does this reflexive need to extend meaningless provisions come from? TEA-21 created two new budgetary concepts: (1) two separate transportation categories (for highways and transit) within the discretionary spending limits and (2) an annual automatic adjustment to those limits (RABA). Both concepts were enshrined in section 251 of the BBEDCA as well as in the transportation laws.

- In general, from 1991-2002 section 251 had set out the statutory discretionary spending limits. These limits were enforced through sequestration. In 1998, special consideration was afforded transportation spending within the context of an overall goal to limit spending and balance the budget by 2002. While TEA-21 purported to preserve this special budgetary treatment through 2003 (coinciding with the expiration of TEA-21), the mechanisms were placed within section 251, which expired September 30, 2002 (pursuant to section 275(b)). Consequently this special budgetary treatment of transportation spending ceased to have any substantive meaning nearly two years ago – after enactment of the 2002 appropriation bills in December of 2001.

- Also of concern is the language in this legislation that expresses the "Sense of Congress" on RABA. While the language is not binding and merely suggests that any future provisions should seek to minimize fluctuations in spending – which sounds like a good thing – its very presence in the temporary legislation might lead some to believe that including separate transportation categories and RABA in a long-term extension is a done deal.

- When TEA-21 was enacted, it was done so in the context of 5-year discretionary spending limits – which were designed to manage the growth of discretionary spending in order to reach a balanced budget by 2002. Since then, balanced budgets, surpluses and the days of 5-year caps have come and gone. While many members of Congress hope to exercise fiscal constraint in the coming years, the likelihood of again enacting 5-year discretionary caps into law seems rather remote. Recent experiences have shown us that, at best, caps might be useful for two years. Consequently, as Congress works towards a long-term reauthorization of federal transportation programs, we must take a fresh look at any associated budgetary mechanisms.

THE LONG AND WINDING ROAD TO SCORING EMERGENCIES

- Last week, the President signed a supplemental appropriations bill that has commonly been described as containing $87.5 billion in emergency funding for Iraq. But in the Senate, the scoring of the bill reflects only $84 billion in emergency funding and another $3.5 billion in non-emergency spending. Surprised? Budgeteers who have followed emergency spending procedures since 1990 and who have read section 502 of the 2004 budget resolution would not be.

- Emergencies, 1990-2002. When the Budget Enforcement Act (BEA) amended the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) to create statutory caps on discretionary spending in 1990, drafters recognized the President and the Congress sometimes would face unanticipated situations where additional spending beyond those caps would be appropriate and for which no sequester should be triggered. To allow for such situations, but at the same time limit abuse of the allowance, the BEA required that both ends of Pennsylvania Avenue explicitly agree to confer the emergency designation on each and every item of spending.

- That is why, after the President submitted a request for emergency appropriations, Congress would include in the legislation for each item the following language: "Provided, That the entire amount *is designated by the Congress as an emergency requirement* pursuant to section 251(b)(2)(A) of the [BBEDCA]." Once the measure was enacted, OMB would adjust the discretionary caps, and there was no sequester.

- But what if Congress recognized an emergency before the President did or if the level of emergencies increased after the President submitted his request? How could OMB know if both parties agreed on the emergency so that the caps could be adjusted to avoid a sequester?

- In such circumstances, Congress would attach the following "contingent emergency" language to those items it either increased or proffered first: "Provided, That the entire amount is *designated by the Congress as an emergency requirement* pursuant to section 251(b)(2)(A) of the [BBEDCA]: Provided further, That [the amount] *shall be available only to the extent* *that an official budget request* for [the amount], that *includes designation of the entire amount of the request as an emergency requirement* as defined in the [BBEDCA], *is transmitted by the President to the Congress*."

- So even if the President signed the entire bill including such an item, as long as the President did not transmit an official budget request echoing Congress' action, then no money would be available for that purpose and the caps would not be adjusted. One recent example of this occurred after the President signed a supplemental appropriations bill in the summer of 2002. The President refused to submit a request, as required by a contingent emergency designation in the bill, for a subset of spending items that totaled more than $5 billion. As a result, the funding never became available.

- <u>Maintaining Past Practice, Partially</u>. Now that BEA – with its features of caps and adjustments, emergency designations, and sequesters – expired more than a year ago, what do we do? For 2004, the budget resolution, especially as it applies in the Senate, sought to patch over the hole left yawning by the absent BEA. In setting a discretionary total for 2004, the House relied on an allocation to the Appropriations Committee. The Senate employed both allocations and caps.

- The 2004 resolution also provided guidance regarding the treatment of emergencies, although the procedures differ between the House and the Senate. Section 502(b) of the resolution says: "*In the House*, any new budget authority, new entitlement authority, outlays, and receipts resulting from *any provision designated in that provision as an emergency requirement*, pursuant to this section, in any bill . . . *shall not count*."

- Section 502(c) says: "*In the Senate*, with respect to a provision of direct spending or receipts legislation or appropriations for discretionary accounts that *the President designates as an emergency requirement and that the Congress so designates* in such measure, the amounts of new budget authority, outlays, and receipts in all fiscal years resulting from that provision shall be treated as an emergency requirement for the purpose of this section. . . . [and these amounts] . . . *shall not count*."

- What's the difference between (b) and (c)? The rule that now applies in the Senate maintains the practice in place from 1991-2002 where the President and Congress both must explicitly and affirmatively designate each item as an emergency. The House approach relaxes that practice. As happened with the Iraq supplemental, if the President submits a list of requests, all with a blanket emergency designation, the Congress can increase some of those items or add entirely new ones, all under the President's original blanket designation. By the fact of the President signing the bill, the House rule assumes the President acquiesces to those Congressional emergencies, even if the President does not have the opportunity to concur or reject them one-by-one as he would with the contingent emergency language envisioned by the Senate rule.

- What does this difference in the budget resolution mean for evaluating points of order for the appropriations end game next week? Under the House rule, the $3.5 billion added by the Congress to the Iraq supplemental is considered <u>emergency spending that does not count</u> against the House allocation. In the Senate, the $3.5 billion is <u>non-emergency spending</u>, which <u>does count</u> against the 302(b) allocations of the affected subcommittees (mostly Defense and Foreign Ops). That means the omnibus appropriations bill is virtually guaranteed to have a 302(f) point of order in the Senate. But given that the Iraq supplemental has been agreed to, it is unlikely a point of order will be raised if that is the **only** reason the omnibus exceeds the cap for 2004.

LABOR MARKET ON THE MOVE

- Several recent reports suggest that robust economic growth is beginning to generate jobs. Initial unemployment insurance claims are currently at their lowest level in two years. Applications for new claims have declined by 61,000 between April and October. First payments of unemployment insurance benefits as a share of covered employment are more than a half of a percentage point lower than they were at this same point in the last recovery. Examining first payments as a share of covered employment permits more meaningful comparisons over time (because the labor force is always expanding).

- **Over the last three months, the economy created more than a quarter of a million new jobs**. The economy created **126,000 additional jobs in October**, more than doubling economists' expectations. New revisions also boosted the number of job gains to 35,000 and 125,000 in August and September, respectively. **The unemployment rate declined 0.1 percentage point to 6.0%**. Unemployment is now more than a full percentage point below the same point in the last recovery. The long-term unemployment rate (15 weeks or longer) is also slightly lower than at this point in the last recovery.

- Is this trend sustainable? According to Chairmen Greenspan last week: "The odds, however, do increasingly favor a revival in job creation. . . . Efforts to rebuild inventories and a dwindling pool of possible efficiencies seem a combination that could generate a notable pickup in hiring." This sentiment is consistent with the Blue Chip Consensus of Econometric Forecasts, which indicates that the economy is likely to produce 2.6 million jobs by the end of 2004 (as measured by the household survey).

- Despite this recent improvement in the employment outlook, it is possible Congress could debate legislation (such as S. 1708) extending and expanding temporary unemployment benefits before adjourning. Since March 2002, Congress has authorized a Temporary Extended Unemployment Compensation (TEUC) program to provide extended unemployment compensation for people who exhaust their regular state-funded benefits. Under current law, most states provide up to 26 weeks of benefits. The federal temporary law provides up to an additional 13 weeks for all states, and up to an additional 13 weeks for high-unemployment states. High-unemployment states also receive between 13 and 20 weeks of additional benefits under the Permanent Federal-State Extended Benefits Program. This program is funded jointly with federal and state money. To date congress has invested $30 billion and assisted more than 8 million workers.

- The current TEUC Program costs approximately $1 billion per month and is set to expire on December 31. Those claimants already in the system will receive up to 13 weeks of benefits until the program is scheduled to phase out in March 2004. During this phase-out, $1.2 billion in extended benefits will be paid to more than 700,000 people.

- S. 1708 would double the number of weeks provided under the federal program, expand eligibility and weaken the definition of "high-unemployment state". These changes to the program would rack up a tab of $17.4 billion in one year. Further, it may create incentive to draw benefits longer than necessary. CBO estimates that $1.5 billion of the cost is due to individuals collecting benefits for a longer period of time than they would if the additional benefits were not available.