



Legislative Bulletin.....July 17, 2006

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H.R. 3496—The National Capital Transportation Amendments Act

H.R. 3496—The National Capital Transportation Amendments Act—as amended (Rep. Tom Davis, R-VA)

Order of Business: The bill is scheduled to be considered on Monday, July 17th, under a motion to suspend the rules and pass the bill.

Note: Under House Republican Conference Rules, legislation creating a new program is not to be considered by the House on the Suspension Calendar. Although the Conference rule may be waived, H.R. 3496 has been deemed *not* to create a new federal program, despite evidence to the contrary (see summary below), and a waiver was therefore not sought by the sponsor nor granted by Leadership. The proffered rationale is that the bill makes this new funding contingent on the enactment of an earlier bill *passed* by the House, the Deep Oceans Energy Resources Act (H.R. 4761), which contained an authorization of the new program in question. Therefore, according to the Government Reform Committee, H.R. 3496 “makes no authorization” for a new program. Some conservatives may find this rationale dubious on three grounds: (1) H.R. 4761, the earlier OCS bill, has not been *enacted*, and therefore the new program in question is not yet in existence; and (2) a plain reading reveals that in fact this bill does authorize a new program while simply making *the amount* of funding contingent on receipts from another bill; and (3) the creation of a new Office of Inspector General (also a new program) is contained within the legislation and does not rely on the enactment of the OCS bill.

Background: Since its creation in 1967, the federal government has provided sizable contributions toward the Washington Metrorail system. According to the Government Accountability Office (GAO), the system has relied on federal funding for 60%, or \$6.2 billion, of the costs to construct the 103-mile system and fund various capital improvements. In addition, according to GAO, the Washington Metropolitan Transit Authority (WMATA) has relied on federal funding to cover over 40% of its capital costs during fiscal years 1995-2005. In 2002, WMATA adopted a new \$12.2 billion plan to improve and expand the system with an expectation that the federal government would absorb much of the plan’s cost. According to the Government Reform Committee, if approved by Congress, such funding would be used for the following:

- 340 new rail cars to run all 8 car trains at peak capacity;
- 275 new buses and 3 bus garages;
- vehicle replacements, tunnel repairs, and station enhancements, such as escalators and elevators at transfer stations, including Union Station, Gallery Place, and Metro Center;
- pedestrian and bike improvements at 25 stations, including “pedestrian station connections” at Farragut North/Farragut West and Gallery Place/Metro Center; and
- 140 miles of bus corridor improvements (curb extensions, bus bays, and passenger shelters).

Summary: H.R. 3496 authorizes the Secretary of Transportation (DoT) to make grants to WMATA for the purpose of funding capital and preventative maintenance projects. The language specifically notes that these new grants are “*in addition* to the [federal] contributions” (emphasis added) authorized elsewhere under current law. The grants would be for 50 percent of the net cost of the WMATA plan—the state and localities would pay the remaining share—and would be provided from sources “other than federal funds or revenues from the operation of public mass transportation systems” (meaning DoT could not make the grants out of the standard mass transit allotments).

H.R. 3496 requires that no grants be provided until WMATA amends its compact with the localities to ensure that the local share is paid “from amounts derived from dedicated funding sources.” According to GAO, a dedicated source of revenue is funding “such as local sales tax revenues, that are automatically directed to transit authority.” *In other words, H.R. 3496 requires that benefiting Virginia and Maryland cities and the nation’s capital increase taxes in order to access this new funding.*

The bill also prohibits WMATA from selling or disposing of 3.75 acres of land in Fairfax County, Virginia, until WMATA has held a public hearing and submitted a detailed report to the House and Senate Committees with jurisdiction. According to Ron Utt at the Heritage Foundation, this language pertains to “a dispute between Mr. Davis and Metro over its plans to sell 3.75 acres of land it owns beside a rail station to a developer who wanted to incorporate the land into a large, mixed-use development not far from Mr. Davis’ new home....But as Metro has since sold the land to the developer, this legislative prohibition is pointless.” H.R. 3496 also places restrictions on WMATA selling or disposing of land in Takoma Park, Maryland, and within one mile of Largo Town Center Metro Rail Station. Finally, the bill establishes an Inspector General’s Office (IG) at WMATA. The IG will be appointed by a majority of WMATA’s board of directors and serve a term of five years.

Committee Action: On July 28, 2005, H.R. 3496 was referred to the House Government Reform Committee, which reported the bill on April 26, 2006, for consideration by the full House of Representatives.

Cost to Taxpayers: H.R. 3496 authorizes “such sums as are made available” (subject to appropriations) to the Treasury from receipts derived from drilling in the Outer Continental Shelf upon enactment of the Deep Oceans Energy Resources Act (H.R. 4761). H.R. 4761 passed the House on June 29, 2006, by a vote of 232 to 187. This provision refers to an amendment to H.R. 4761, offered by Rep. Tom Davis and passed by voice vote, to authorize \$150 million for each of fiscal years 2007 through 2016, *or \$1.5 billion over ten years* (subject to appropriations) for these WMATA grants. In other words, H.R. 4761 must be enacted before the WMATA could receive grants under this legislation.

The sponsor claims that using these future OCS receipts amounts to an offset for the WMATA grants. However, it is important to remember that such receipts are already spoken for and are needed to pay for expensive revenue sharing provisions and new entitlement spending contained elsewhere in H.R. 4761 in order to encourage states to drill in the OCS. Such provisions—which had caused H.R. 4761 to breach the budget resolution—required a manager’s amendment to lower the cost of the legislation dramatically. If CBO had assumed that the WMATA grants, attached to H.R. 4761 by the Davis amendment, were mandatory (*not* subject to appropriations), it would have greatly increased the bill’s cost and caused the bill to once again exceed the budget. In other words, the use of the OCS receipts—which would then not be available to offset the costs of the OCS bill—is not an offset in any real sense to the taxpayer.

Conservative Concerns: On June 22, 2006, Reps. Mike Pence and Jeb Hensarling sent a letter to House Leadership, requesting that H.R. 3496 not be scheduled for floor consideration. The letter stated: “We believe that H.R. 3496 unnecessarily commits the federal government to directly support the WMATA system at a time

when federal budgetary resources are constrained....Given the dire straits that our nation currently faces, we believe that his bill should not be scheduled for floor consideration without an acceptable and real offset, preferably in the area of mass transit.”

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill creates a new program to distribute transit grants to WMATA.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, the bill requires WMATA to meet several conditions before disposing of property it owns (although the cost of such mandates would not exceed the threshold established in the Unfunded Mandate Reform Act) and establishes a dedicated funding source to support WMATA.

Constitutional Authority: The Government Reform Committee cites constitutional authority in Article I, Section 8, Clause 18 (granting Congress the power to make all laws which shall be necessary and proper for carrying out the foregoing powers vested by Congress or in any department), but fails to reference any foregoing power.

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