

1 CONTINUATION OF THE OPEN EXECUTIVE SESSION TO CONSIDER A
2 CHAIRMAN'S MARK ENTITLED THE "PRESERVING AMERICA'S
3 TRANSIT AND HIGHWAYS ACT OF 2014"

4 THURSDAY, JULY 10, 2014

5 U.S. Senate,
6 Committee on Finance,
7 Washington, DC.

8 The hearing was reconvened, pursuant to notice, at
9 2:35 p.m., in room 215, Dirksen Senate Office Building,
10 Hon. Ron Wyden (chairman of the committee) presiding.

11 Present: Senators Schumer, Stabenow, Cantwell,
12 Menendez, Carper, Cardin, Brown, Bennet, Casey, Warner,
13 Hatch, Grassley, Crapo, Enzi, Thune, Isakson, Portman,
14 and Toomey.

15 Also present: Democratic Staff: Ryan Abraham,
16 Senior Tax and Energy Counsel; Michael Evans, General
17 Counsel; Kara Getz, Senior Tax Counsel; Jocelyn Moore,
18 Deputy Staff Director; and Joshua Sheinkman, Staff
19 Director. Republican Staff: Chris Campbell, Staff
20 Director; Jim Lyons, Tax Counsel; Mark Prater, Deputy
21 Staff Director and Chief Tax Counsel; and Nicholas Wyatt,
22 Tax and Nominations Professional Staff Member. Non-
23 Designated Staff: Josh LeVasseur, Chief Clerk and
24 Historian; and Jewel Harper, Deputy Clerk.

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26

1 OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM
2 OREGON, CHAIRMAN, COMMITTEE ON FINANCE

3

4 The Chairman. The Finance Committee will come to
5 order.

6 Today the Committee is resuming its executive
7 session to consider the "Preserving America's Transit and
8 Highways Act of 2014," what is known as the PATH Act.

9 I am going to give a brief opening statement and
10 then I will recognize Senator Hatch.

11 Colleagues, with the Highway Trust Fund getting
12 closer to running on fumes, Congress must get beyond the
13 gridlock where each faction says "It's my way or no
14 highway."

15 Getting beyond this corrosive gridlock is what
16 Senator Hatch and I have sought to do on a bipartisan
17 basis in this mark.

18 I just want to express publicly my appreciation to
19 Senator Hatch. He has been so patient and so flexible
20 throughout.

21 Senator Hatch, I am very grateful for our
22 partnership.

23 Senator Hatch. I would rather you had not said
24 that.

25 [Laughter.]

1 The Chairman. The bipartisan mark has important
2 priorities for both sides. For example, it includes tax
3 loophole closing to crack down on those who do not pay
4 what they owe, and it includes squeezing more value out
5 of current government spending while setting aside funds
6 to protect endangered pensions and the needs of our
7 workers in a tough global economy.

8 Most importantly, Senator Hatch and I erect a
9 bipartisan bridge to what is needed most -- a long-term
10 bill that rebuilds America's broken infrastructure, which
11 needs \$3.6 trillion of repairs.

12 Each of us knows the consequences of failing to act
13 on both our short-term and long-term transportation
14 needs. Short-term, hundreds of thousands of workers in
15 America could lose their jobs, jobs that pay good wages,
16 a living wage you can support a family on. Long-term, a
17 little league infrastructure harms our ability to compete
18 with big league competition from nations like India and
19 China.

20 In the other body, the House Ways and Means
21 Committee this morning chose to advance a partisan bill.
22 Senator Hatch and I would like the Senate to choose an
23 alternative path, a bipartisan path.

24 Let me recognize Senator Hatch at this time.

25

1 OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR
2 FROM UTAH

3

4 Senator Hatch. Thank you, Mr. Chairman, for your
5 cooperation on this matter.

6 As I have said many times, I am not a fan of pension
7 smoothing, but in the context of this bipartisan highway
8 mark, which is of critical importance to the country, I
9 have given my agreement. And I will further pledge to
10 work with you, Mr. Chairman, and others on the Committee
11 to deal with these other important issues before the end
12 of the year.

13 I am talking about issues like the multi-employer
14 plans, the abandoned mine land or AML fund, secure rural
15 schools or SRS, and payment in lieu of taxes, generally
16 referred to as PILT, which is extremely important to the
17 Intermountain West.

18 It is, of course, not possible to know with
19 certainty today how these issues will be paid for, but I
20 will do all that I can to get to a resolution that is
21 satisfactory to everyone.

22 The Chairman. Why don't you continue your opening
23 statement, Senator Hatch?

24 Senator Hatch. Thank you once again, Mr. Chairman.
25 I want to commend you for your willingness to reach

1 across the aisle on this important issue or series of
2 issues.

3 The Finance Committee has a tradition of working
4 through funding for the Highway Trust Fund in a
5 cooperative, bipartisan fashion and I am glad we are able
6 to continue that tradition with today's markup.

7 We have already gone through the contours of the
8 Chairman's mark, so I will not spend anymore time
9 detailing the agreement. Instead I want to say a few
10 words about what we have been able to accomplish here.

11 It is important that we act on this and it is
12 important that we act quickly so that States can continue
13 to plan their highway projects without unnecessary
14 interruptions or delays.

15 We all know the timeline and as I said 2 weeks ago
16 when we first convened this markup, it is important that
17 the Committee act to get something done on this, but it
18 is even more important that we get it done right.

19 While I will not say that I have gotten everything I
20 wanted out of this deal, I think we have reached an
21 agreement that can work for both Republicans and
22 Democrats, which, given the state of the Senate these
23 days, is quite an accomplishment.

24 This is, as we all know, just the first step in a
25 process that will hopefully yield a legislative product

1 that can pass through both the House and the Senate and
2 be signed by the President.

3 As we all know, the House Ways and Means Committee
4 marked up their version of the highway bill earlier
5 today. I do have to say that I am disappointed that we
6 were not able to come to an agreement with Ways and Means
7 Chairman Dave Camp. I think having a bicameral agreement
8 at the outset would have helped speed this process along.

9 But I also have tremendous respect for Congressman Camp
10 and the difficulties that he has in putting out his bill.

11 Still looking at their proposal and this one we are
12 marking up today, it does not look like we are all that
13 far apart on the issues. I think Chairman Camp has put
14 together a good bill. It is not perfect, but it is good.
15 I think we have done the same and I am confident that we
16 will be able to find a path forward and get a bill across
17 the finish line in time to prevent any undue problems or
18 delays for our States.

19 Now, Mr. Chairman, I am particularly glad that you
20 have gotten assurances from the Senate Majority Leader
21 that the package we report today will not be altered
22 before it is brought to the floor. That assurance will
23 help protect the product and should bode well for this
24 and any future efforts we undertake here in the Finance
25 Committee.

1 Once again, I am grateful that the Committee has
2 found a way to cooperate in a bipartisan fashion. And as
3 I have said numerous times, I think the Finance Committee
4 can and should serve as an example for the rest of the
5 Senate as to how both parties can work together and get
6 things done for our constituents.

7 So I want to thank you once again, Mr. Chairman, for
8 your work on this project.

9 The Chairman. Thank you very much, Senator Hatch,
10 for all your cooperation.

11 Colleagues, when the Committee previously convened
12 to consider the PATH Act on June 24, Senators were given
13 the opportunity to make their opening statements.

14 Are there any Senators wishing to make additional
15 statements? If so, I ask Senators to keep their
16 statements to no more than 5 minutes.

17 [No Response.]

18 The Chairman. All right. The Committee has before
19 it the Chairman's mark on the Preserving America's
20 Transit and Highways Act of 2014, as modified by the
21 Chairman's modification that was incorporated at our
22 initial session.

23 I have a further modification, called the Chairman's
24 second modification.

25 The mark is so further modified and the Chairman's

1 second modification is deemed incorporated into the
2 Chairman's modified mark.

3 Tom Barthold is here -- we appreciate his
4 professionalism, of course -- from the Joint Committee on
5 Taxation, and Mr. Barthold will describe the second
6 modification.

7 Mr. Barthold. Thank you, Chairman Wyden. Thank
8 you, Senator Hatch.

9 I would first like to call to all the members'
10 attention an error in the description of the Chairman's
11 second modification. This occurs on page 12 of JCX-83-
12 14, which describes the second modification.

13 On page 12, item C, the merchandised processing fee,
14 the description of the proposal says that the proposal
15 would extend that fee until January 7, 2024. That is a
16 typographical error. It should say that it extends that
17 fee through September 30th of 2024.

18 I note that that typographical error has no effect
19 on the revenues that are reported to you on tables JCX-
20 84-14, which shows the revenue effects, and JCX-85-14,
21 which shows the trust fund effects.

22 With that correction before you, just very briefly,
23 I will highlight the items in the Chairman's second
24 modification.

25 As was noted, there are revisions to the percentage

1 ranges for the applicable rates used in determining
2 normal cost and funding targets for qualified plans.

3 I just noted that there are provisions that extend
4 customs and merchandise handling fees.

5 In addition, the second modification would provide
6 for two compliance measures -- continuous levy on
7 Medicare providers and a due diligence requirement on tax
8 preparers with respect to the child tax credit.

9 Lastly, there is an additional fuels modification
10 which would tax liquid propane on a Btu basis and there
11 is a provision which modifies the qualifying exempt
12 income standards for cooperative irrigation and mutual
13 ditch companies.

14 I would be happy to answer in more detail any
15 questions that the members might have, Mr. Chairman.

16 The Chairman. Mr. Barthold, thank you. That is
17 very helpful.

18 Ryan Abraham is here from my staff, and Nick Wyatt
19 is here from Senator Hatch's staff to answer questions
20 about the second modification.

21 We are also joined by the Deputy Treasury Secretary
22 for Tax Policy, Mr. Mark Mazur. Thank you for joining us
23 today, Mr. Mazur.

24 Do any Senators have any questions regarding the
25 second modification?

1 [No Response.]

2 The Chairman. If not, I believe at this time we
3 are going to have a colloquy with Senator Brown.

4 Senator Brown. It is not a colloquy, Mr. Chairman.
5 It is an amendment I would like to offer and withdraw. We
6 can call it a colloquy, and I can talk to myself.

7 [Laughter.]

8 Senator Brown. Or you can say glowing things about
9 my amendment, and then I will still withdraw it, but we
10 know it has momentum.

11 Mr. Chairman, thank you.

12 I am offering Brown Amendment No. 1 to address the
13 problem of misclassification of workers.

14 Tens of thousands of employers, a minority to be
15 sure, but many employers misclassify their employees
16 against the choice of the employee, against the will of
17 the employee.

18 They cut corners to save costs by converting
19 employees -- what normally should be employees into
20 independent contractors. Workers are then denied the
21 vital safeguards that most workers would get. The
22 employers avoid paying payroll tax, offering health and
23 safety protections, avoid paying Social Security,
24 unemployment insurance benefits and worker's comp.

25 We are marking up a bill today to extend funding for

1 infrastructure. It makes sense to discuss workers'
2 misclassification due to the rampant intentional tax
3 fraud in the construction and transportation sectors.

4 Most notably, workers are being paid as 1099
5 contractors when the reality is that they are actually
6 employees that should be receiving W-2s.

7 This misclassification leaves workers without the
8 benefits and protections that other workers have, and it
9 is wrong. This is about a level playing field for those
10 workers and for the employers, most of whom are playing
11 it straight and doing it right.

12 The honest law-abiding employer cannot compete
13 against bidders that break the law by misclassifying as
14 independent contractors. It drives good employers out of
15 the market and leaves their employees without work.

16 My bill does a couple of things. The amendment
17 allows Treasury to issue new guidelines clarifying who,
18 in fact, is an employee. It allows the IRS to reclassify
19 independent contractors who have been found in an audit
20 to meet the common law test of being an employee.

21 Second, it allows employees to keep the current safe
22 harbor unless their workers are reclassified.

23 I have carved out industries at the request of those
24 industries, legitimately where historically workers have
25 been independent contractors by choice -- insurance,

1 financial services, accountants, doctors, other highly
2 compensated professional services. These are industries
3 where workers knowingly enter into an independent
4 contracting relationship.

5 Cracking down on misclassification should be
6 bipartisan. It will raise \$5.7 billion over 10 years.

7 Last point. State legislatures in the Ranking
8 Member's State of Utah and Texas and Louisiana and
9 Oklahoma have taken similar strong action passed by
10 Republican legislatures to deal with this
11 misclassification issue. It is past time for Congress to
12 do the same.

13 Mr. Chairman, I withdraw the amendment.

14 The Chairman. Thank you, Senator Brown. And we
15 have clarified it is not a colloquy, it is an amendment.
16 The Senator has indicated he would withdraw it.

17 I think Senator Stabenow wants to be heard on this.

18 Senator Stabenow. Thank you, Mr. Chairman.

19 I just want to thank Senator Brown for the
20 amendment. I think this is an incredibly important issue
21 and I hope that we are going to be able to address this.
22 If not today, we certainly need to address this soon.

23 The Chairman. Thank you, Senator Stabenow.

24 Senator Brown, first of all, let me say thank you
25 for filing this. The tax rules on worker classification

1 are in dire need of reform and I very much appreciate
2 your leadership on the issue.

3 Today many workers are misclassified as independent
4 contractors. That is not fair for workers who lose
5 valuable rights and protections and it is not fair for
6 the employers who play by the rules while their
7 competitors play games.

8 Thank you for your efforts. I will continue to work
9 with you on this important matter.

10 The amendment is withdrawn.

11 The first amendment will be offered by the good
12 Senator from Delaware.

13 Senator Carper. Thank you, Mr. Chairman.

14 I would like to call up, if I could, Mr. Chairman,
15 Carper Amendment No. 1, and I do this on behalf of
16 Senator Cardin and myself.

17 I would like to replace the text with a modified
18 amendment and this new amendment would effectively strike
19 \$3 billion in offsets from the bill.

20 First, it would strike the provision that would
21 require information returns on mortgage interest to
22 contain additional information, including the outstanding
23 balance of the mortgage, the address of the encumbered
24 property, property assets, property taxes, if any, paid
25 from escrow in the loan origination dues.

1 Second, it would strike the provision permitting the
2 IRS to impose a levy of up to 100 percent on tax
3 delinquent Medicare service providers.

4 These provisions would reduce the total amount of
5 the estimated revenue resulting from this legislation by
6 just under \$3 billion, \$2.955 billion over the 10 years
7 budget window.

8 If everyone is agreeable to this substitution, I
9 would like to talk a little bit about the amendment.

10 The Chairman. Without objection, so ordered.

11 Senator Carper. Thank you very much.

12 Colleagues, I come to this job, as many of you know,
13 as a recovering governor and I am still a recovering
14 governor. And as a recovering governor, I know how hard
15 it is for state and local governments to prepare for, to
16 plan, to fund, to permit, to contract to build
17 transportation projects, roads, highways, bridges,
18 transit projects, you name it. It is just long, hard and
19 difficult.

20 By providing uncertainty as to whether or not we are
21 going to be there with Federal funds, we make the job at
22 the state and local level just so much more difficult.

23 The definition of insanity is to do the same thing
24 over and over again and expect a different outcome.

25 Over the last 5 years, we have kicked the can down

1 the road on the Highway Trust Fund 11 times -- 11 times
2 -- since 2009, and that uncertainty has kept states and
3 cities from being able to plan and build large-scale
4 transportation investments that have the biggest impact
5 on our economy.

6 So there is no reason I think to feel that somehow
7 punting on this issue to the next Congress yet again will
8 magically yield a different result.

9 Kick a can down the road has not served us well on
10 our other responsibilities. I am just going to give a
11 couple of examples. We kicked the can down the road in
12 order to get a budget deal. And what did we get? We got
13 a sequester that no one liked, we got no big budget deal,
14 and eventually we got ourselves a government shutdown.

15 We kicked the can down the road on the Bush tax
16 cuts. And what did we get? We got a deal that hurt our
17 chances for long-term comprehensive tax reform.

18 We kicked the can down the road again on the debt
19 ceiling. What did we get? We got awfully close to a
20 national default. We rattled the financial markets and we
21 stunted economic growth.

22 And why any of us think that if we kick the can into
23 next year that the next Congress will be able to summon
24 the courage necessary to write a long-term plan for our
25 Nation's infrastructure is beyond me.

1 If we extend transportation funding perhaps to the
2 end of this year, I guarantee you that next year we will
3 extend it again and then probably extend it yet again
4 when that expires.

5 It is this Congress responsibility to meet its
6 responsibilities to do that, not the next one.

7 I stand ready to work with anyone in this chamber
8 who wants to work to pass a long-term transportation plan
9 that our states, that our cities, our businesses are
10 asking for and one that they deserve.

11 That is why I am again offering this amendment. It
12 will strike a couple of our revenue-generating provisions
13 in this package; not because I disagree with these
14 provisions. I do not. IN fact, several of them came
15 from my own committee that I chair, because I know how
16 the Congress works and if we pass a funding measure that
17 takes us into next year, I have severe doubts about our
18 ability to get a long-term package done this year.

19 Let me just say this -- \$8 billion takes us to the
20 en end of the year. We essentially run out of money to
21 fund transportation projects at the end of the year; \$11
22 billion takes us to the end of next May,

23 I do not know about you. I remember things that my
24 parents used to say to me as a kid growing up.

25 One of the things I will never forget my dad saying

1 over and over and over again is a job requires the time
2 that we allocate to do a job. And if we say we will do
3 it this year, if we say that we are going to do the
4 funding for this 6-year transportation plan that we need,
5 if we are able to do this year, we will do it this year.

6 And if we give ourselves until next May, we will take
7 that long. We will take that long. And my fear is when
8 we get to next May, we will do it again. It is just too
9 easy.

10 The last thing I am going to say. Put ourselves
11 here. It is Christmas, 5 days before Christmas. We have
12 not come up with the funding for a 6-year plan, and
13 people say, "Well, we don't really need to put something
14 together during this lame duck session. We have money to
15 cover us until the end of May. Why don't we just leave
16 and go home?"

17 And you know what? I am afraid that is what we are
18 going to do. I am afraid that is what we are going to
19 do.

20 This is our responsibility. We can fix it. We can
21 put pressure on us to do the job that we need to do and
22 we do that by setting this number, funding number, at \$8
23 billion, and I would ask you to join Senator Cardin and
24 me in doing just that.

25 I thank you, Mr. Chairman.

1 The Chairman. Senator Carper, thank you. You have
2 extraordinary expertise on the transportation issue,
3 number one; and, number two, I know that all the concerns
4 that you have registered today are heartfelt.

5 Colleagues, I want it understood that Senator
6 Carper's position was my position at the beginning of the
7 transportation negotiations, but it was clear that it
8 would not be possible to research a bipartisan agreement
9 at less than \$10 billion.

10 So I cannot support this amendment in the spirit of
11 getting a bipartisan short-term transportation bill to
12 the floor.

13 I do want to state publicly that I am totally
14 committed -- totally committed to working with Senator
15 Carper and others of our colleagues are going to work
16 with him and I to get a long-term funding bill done this
17 year.

18 This is urgent, urgent business and I am committed
19 to working with my friend from Delaware.

20 Senator Hatch I think wanted to speak.

21 Senator Hatch. Well, Mr. Chairman, I appreciate
22 what Senator Carper is trying to do with this amendment.

23 He is trying to create a situation where we will be
24 obliged to put together a long-term solution for the
25 Highway Trust Fund before the end of the year. That does

1 not necessarily mean it will happen.

2 I think we all share the same goal here. We all
3 want to get to a long-term solution and put an end to
4 these short-term stopgap measures.

5 But I would like to point out that nothing in the
6 Chairman's mark precludes us from reaching an agreement
7 on a long-term fix before the end of 2014. If we can
8 reach an agreement on that timetable, that would be
9 great. However, I just do not think it is a good idea to
10 put ourselves under an artificial deadline that is just a
11 few months down the road and especially in a lame duck
12 session.

13 We need breathing room to ensure that the deal we
14 eventually reach is the best one that we can come up with
15 and I think the Chairman's mark as it is currently
16 written provides that.

17 Therefore, while I understand where Senator Carper
18 is coming from and I appreciate him personally very, very
19 much, I have to oppose this amendment, and I hope others
20 will, as well.

21 The Chairman. Senator Cardin?

22 Senator Cardin. Thank you, Mr. Chairman. And let
23 me thank both Senator Wyden and Senator Hatch for their
24 commitment to have our Committee work on a 6-year
25 reauthorization in this Congress.

1 We have 6 months left of this Congress. There is a
2 lot of time left and we need to start working immediately
3 on a long-term reauthorization of the surface
4 transportation.

5 As Senator Carper, former Governor Carper, pointed
6 out, our States cannot operate under short-term
7 extensions of the transportation programs. They cannot.
8 The projects we are talking about are multiyear projects.
9 They take a long time to get in place.

10 If we are talking about part of new transit system
11 or talking about a major highway or major bridge, you
12 cannot do that on a 6 months or 9 months or a 1-year
13 extension. You need to have the multiyear extension in
14 order to be able to plan for that.

15 So we need to pass a multiyear appropriation. The
16 good news is that this Committee is working in a
17 bipartisan manner. That is good news. Let us continue
18 that.

19 The good news is that one of the major -- the major
20 authorizing committee, the Environment and Public Works
21 Committee that several of us sit on passed a 6-year
22 reauthorization unanimously.

23 So I think the building blocks are there to get it
24 done and I think the amendment that Senator Carper has
25 offered is saying, look, let us make it clear, we are

1 going to get our job in this Congress.

2 I really do appreciate, though, the good spirit in
3 which we are operating and would just urge us all to work
4 together now to get a multi-payer bill done after this
5 patch we hope will be enacted.

6 The Chairman. The Senator from Maryland, as usual,
7 makes some very important points reflecting how critical
8 this is for the economy and to make sure we are moving we
9 are not just kicking the can down the road, and I will
10 tell my colleague what has colored my judgment -- and I
11 watched the entire markup in the House this morning -- it
12 was completely partisan, straight party lines.

13 So this would give us a chance to move forward in a
14 bipartisan fashion.

15 Is there any further debate on the Carper amendment?

16 [No Response.]

17 The Chairman. If there is no further debate, then
18 the question is on the Senator's amendment. Would the
19 Senator like recorded vote?

20 Senator Carper. I would ask for a recorded vote,
21 Mr. Chairman.

22 The Chairman. The Clerk will call the roll.

23 The Clerk. Mr. Rockefeller?

24 The Chairman. No by proxy.

25 The Clerk. Mr. Schumer?

1 Senator Schumer. Aye.
2 The Clerk. Ms. Stabenow?
3 Senator Stabenow. No.
4 The Clerk. Ms. Cantwell?
5 Senator Cantwell. Aye.
6 The Clerk. Mr. Nelson?
7 The Chairman. Aye by proxy.
8 The Clerk. Mr. Menendez?
9 Senator Menendez. Aye.
10 The Clerk. Mr. Carper?
11 Senator Carper. Aye.
12 The Clerk. Mr. Cardin?
13 Senator Cardin. Aye.
14 The Clerk. Mr. Brown?
15 Senator Brown. No.
16 The Clerk. Mr. Bennet?
17 Senator Bennet. No.
18 The Clerk. Mr. Casey?
19 Senator Casey. No.
20 The Clerk. Mr. Warner?
21 Senator Warner. Aye.
22 The Clerk. Mr. Hatch?
23 Senator Hatch. No.
24 The Clerk. Mr. Grassley?
25 Senator Grassley. No.

1 The Clerk. Mr. Crapo?
2 Senator Crapo. Aye.
3 The Clerk. Mr. Roberts?
4 Senator Hatch. No by proxy.
5 The Clerk. Mr. Enzi?
6 Senator Enzi. Aye.
7 The Clerk. Mr. Cornyn?
8 Senator Hatch. No by proxy.
9 The Clerk. Mr. Thune
10 Senator Thune. No.
11 The Clerk. Mr. Burr?
12 Senator Hatch. No by proxy.
13 The Clerk. Mr. Isakson?
14 Senator Isakson. No.
15 The Clerk. Mr. Portman?
16 Senator Portman. Pass.
17 The Clerk. Mr. Toomey?
18 Senator Toomey. No.
19 The Clerk. Mr. Chairman?
20 The Chairman. No.
21 How does the gentleman from Ohio want to be
22 recorded?
23 Senator Portman. Mr. Chairman, would you ask the
24 Clerk to give us a tally?
25 The Chairman. I think that is acceptable.

1 The Clerk. Mr. Chairman, the tally is currently 9
2 ayes, 14 nays.

3 The Chairman. Senator Portman?

4 Senator Portman. Senator Portman is an aye.

5 The Chairman. The Clerk will announce the final
6 tally on the Carper amendment.

7 The Clerk. Mr. Chairman, the final tally is 10
8 ayes, 14 nays.

9 The Chairman. The amendment has failed.

10 Senator Hatch, I believe you have an amendment?

11 Senator Hatch. I would like to call up Hatch
12 Amendment No. 3, which would rescind so-called orphan
13 earmarks, which are earmarks for which more than 90
14 percent of the total amount appropriated remains
15 available more than 10 years after the earmark had been
16 enacted into law.

17 I would like to modify my amendment to conform with
18 Wyden Amendment No. 1 and further to modify the amendment
19 such that rescission of the earmarked funds will not
20 apply if a recipient of funding impacted by this
21 amendment sends a letter to the Secretary of
22 Transportation before the end of the current fiscal year
23 affirming that the project remains a priority and that
24 the recipient still intends to spend the authorized funds
25 on the project.

1 Further, I would modify the amendment to add
2 language suggested by our friends at the Budget Committee
3 to prevent any savings generated by the highway bill from
4 being added to the PAYGO scorecards. It has been used in
5 many bills, including in the last highway bill.

6 Mr. Chairman, I appreciate that your amendment shows
7 that the Committee is willing to examine spending options
8 and look for ways to promote efficiencies in
9 infrastructure spending.

10 That is all I have to say.

11 The Chairman. Senator Hatch, thank you. I also
12 want to exceptionally thank Senator Schumer. He and I
13 were on the phone together until very, very late in the
14 evening and I want to thank him for his efforts to try to
15 address this in a bipartisan fashion.

16 All in favor of the Hatch amendment signify by
17 saying aye.

18 [A chorus of ayes.]

19 The Chairman. Any opposed?

20 [No Response.]

21 The Chairman. The amendment has passed.

22 Are there further amendments?

23 The Senator from Ohio?

24 Senator Portman. Mr. Chairman, I would like to
25 offer an amendment. It is Amendment No. 3, the state

1 opt-out.

2 I may not yet offer this amendment, Mr. Chairman.

3 You look nervous.

4 The Chairman. I think it would be very good if the
5 Senator from Ohio talked about his amendment and withdrew
6 it.

7 Senator Portman. And that is my plan, Mr.
8 Chairman.

9 The Chairman. You have made my day.

10 The Senator from Ohio.

11 Senator Portman. Look, we just had a good
12 discussion over long-term versus short-term funding, and
13 I would have to associate myself with the comments of
14 some of my colleagues who said we need a long-term
15 solution. I know Senator Hatch and you agree with that
16 and I commend you for trying to move the process forward
17 in a bipartisan way.

18 But I will say this is very hard for a lot of us to
19 kick the can down the road, particularly with PAYFORs
20 that have nothing to do with high funding and that should
21 be used for deficit reduction or other purposes.

22 So I would just like to, again, make the point I
23 have made previously in this Committee, which is I think
24 part of a long-term approach that could be done, as my
25 colleagues have aid, before the end of this year, would

1 be for us to cut Washington out as the expensive
2 middleman.

3 I know a lot of you have concerns about this. Let
4 me just say that you might be surprised to learn -- I
5 certainly was as we did more research -- that the States,
6 through local and state funding, currently provide for
7 almost three-quarters of all funding of roads and bridges
8 in this country, not the Federal Government.

9 Our States all have sophisticated ways to prioritize
10 that funding. We know that there will be substantial
11 savings if it goes to the States rather than coming to
12 Washington first.

13 Washington is an expensive middleman for a number of
14 reasons. One is the administrative costs. A lot of it
15 is, though, the regulations that go back with it and the
16 requirements for funding things that really have nothing
17 to do with what the gas tax ought to be for.

18 In other words, it does not have to do with roads
19 and bridges. And I am not saying that some of those
20 purposes are not very valid. They are. But given the
21 problems with our trust fund and given the concern people
22 have over raising the gas tax, which is legitimate given
23 the impact it will have particularly on low and moderate
24 income families.

25 We ought to look at allowing the States to keep that

1 gas tax money and to spend it as they would.

2 There are a number of counties in Ohio that have
3 given me examples of this. I sent a questionnaire out
4 and got back some interesting examples.

5 One is a river that runs through southern Ohio, two
6 bridges both built within about a year's time, identical
7 bridges or practically identical, one built with State
8 funds, one built with Federal funds.

9 The one with State funds, the county engineer tells
10 me costs about 20- percent less and some of that is
11 because of some of the federal requirements coming back
12 with it and the way in which those requirements are
13 relatively inefficient, whether it is an archeological
14 study or whether it is preliminary engineering studies or
15 the way the way the environmental impact study worked.

16 Some people have talked about Davis Bacon as an
17 issue. Well, let us let the States decide that. In
18 Ohio, we do have a prevailing wage law, some States do
19 not.

20 So this is an opportunity for us, Mr. Chairman, I
21 believe at a time when the Treasury has bailed out the
22 Highway Trust Fund to the tune of over \$54 billion since
23 2008. For us to allow the States to have more freedom to
24 be able to spend their gas tax money as they choose, it
25 will be more efficient.

1 We can cut out the middleman, we can save money, we
2 can avoid having to raise these gas taxes. All the
3 States will be making that decision and the States are
4 pretty darn good at prioritizing where this funding goes.

5 I know, again, that this has been a hard-fought
6 process to get to a bipartisan solution today, and again
7 I commend my colleagues, particularly the Chair and
8 Ranking Member, for doing that

9 But I do hope we will follow what has been suggested
10 earlier today, which is provide some predictability, to
11 provide some certainty. And one way to do it, I will
12 tell you, to allow these States to be able to opt out and
13 to be able to spend that money more efficiently for the
14 purposes that the Trust Fund ought to be used for.

15 With that understanding, Mr. Chairman, I would also
16 say that the requirement would still be maintained with
17 the States to protect our national highway system just as
18 we require States right now to maintain their interstate
19 high way system, they would be required to do so under
20 this amendment. So it would not affect the interstate
21 highway system.

22 With that, I will withdraw the amendment with the
23 hopes that we can, before the end of this year, come up
24 with a long-term solution to the trust fund problem we
25 face.

1 The Chairman. Senator Portman, thank you very
2 much. I appreciate your withdrawing the amendment.

3 Obviously, with the urgency of the Highway Trust
4 Fund running out of money, this cannot be considered at
5 this point. But I want you to know that for the long
6 term, we are going to look at ways to strengthen the
7 Federal-State partnership.

8 But turning the entire highway system over to the
9 States certainly has enormous implications. I appreciate
10 your withdrawing it.

11 Now, we have a colloquy that involves Senator Hatch
12 and Senator Rockefeller and myself.

13 Senator Rockefeller is not here. So Senator Hatch
14 and I will address these matters. They involve pensions
15 and the agreement that Senator Hatch and I have entered
16 into includes \$2.7 billion in revenue from so-called
17 pension smoothing.

18 That reduces companies' short-term pension
19 obligations, thereby also reducing their tax deductions
20 and raising revenue.

21 We understand that some Committee members have
22 concerns about further pension smoothing because going
23 too far could jeopardize the long-term solvency of the
24 pension system. Suffice it to say there are a number of
25 Senators who have these concerns.

1 As I have indicated, the agreement raises \$2.7
2 billion from pension smoothing. My understanding is that
3 our staffs have identified additional revenue that can be
4 raised by going further.

5 It is my strong view that the pension-smoothing
6 revenue foregone under the Wyden-Hatch agreement should
7 be used to address the United Mine Workers of America
8 Retiree Health and Pension problems by the end of the
9 year.

10 Our colleague, Senator Rockefeller, has worked
11 tirelessly on this for years to address the retirement
12 and health needs of retired coalminers and their
13 families. Those coalminers are putting their families at
14 risk each day and the least the Finance Committee can do
15 is ensure these workers and their families receive the
16 pension and health care benefits they have been promised.

17 To protect the benefits of retired coalminers and
18 their families, I intend to do everything within my power
19 as Chairman of the Committee to use the additional
20 pension-smoothing revenue to provide the necessary offset
21 so as to be able to solve the United Mine Workers Retiree
22 Health and Pension problems by the end of this year.

23 I understand that Senator Hatch is prepared to work
24 with me and Senator Rockefeller on this.

25 I now recognize Senator Hatch to provide his

1 perspective.

2 Senator Hatch. I again thank the Chairman for his
3 cooperation in this matter.

4 As I stated in my opening remarks, I will do all I
5 can to get to a satisfactory resolution on this matter
6 involving multi-employer plans, the AML fund, secure
7 rural schools, and, of course, payment in lieu of taxes,
8 or PILT.

9 So I will do everything in my power to try and see
10 that we resolve this.

11 The Chairman. Thank you very much, Senator Hatch,
12 especially for mentioning secure rural schools, a program
13 I authored, and PILT, these other important issues that
14 we are going to work on together in a bipartisan fashion.

15 I look forward to working with you, Senator Hatch,
16 to determine and adopt options that fully and permanently
17 fund both of these funds which are so important to our
18 States.

19 We are going to enter Senator Rockefeller's
20 statement into the record at this time.

21 Senator Enzi. Mr. Chairman?

22 The Chairman. Colleagues, if there are no
23 further -- yes, the Senator from Wyoming?

24 Senator Enzi. I just want to appreciate the
25 remarks by Ranking Member Hatch regarding abandoned mine

1 land. I hope that does not get lost in the whole melee.
2 That was a trust fund that people were taxed for for a
3 specific purpose and then it got diverted.

4 So I had two amendments in there, either of which
5 would take care of that, but I chose not to offer them at
6 this time, assuming that perhaps they could be solved at
7 the same time as Senator Rockefeller's problem.

8 The Chairman. I would be very willing to work with
9 the Senator from Wyoming on this. I remember this
10 matter, as you know, not just from Finance Committee, but
11 when I chaired the Energy Committee, as well. So you
12 have my pledge to work closely with you.

13 If there are no further --

14 Senator Hatch. Mr. Chairman, you will be working
15 with me, too, because that has got to be resolved.

16 The Chairman. Nothing better.

17 Senator Hatch. That is terrible.

18 Senator Casey. Mr. Chairman?

19 The Chairman. Senator Casey?

20 Senator Casey. One commercial about the Inland
21 Waterways Trust Fund. Great support, bipartisan support,
22 250 organizations, 300 users support the increase in the
23 fee. We will not be offering it today, but we will get
24 back to it.

25 Thank you.

1 The Chairman. Senator Casey, thank you. You have
2 talked to me on a number of occasions about this and it
3 is particularly attractive as an infrastructure model
4 because, in effect, those who are going to participate
5 are going to pay for the program. So I will work closely
6 with you on that.

7 I there are no further amendments, I would entertain
8 a motion that the Committee report the Chairman's mark as
9 modified and amended as an original bill, Preserving
10 America's Transit and Highways Act of 2014.

11 Senator Hatch. I so move.

12 The Chairman. All those in favor will say aye.

13 [A chorus of ayes.]

14 The Chairman. All those opposed will say no.

15 [A chorus of nays.]

16 The Chairman. The ayes have it, and the bill is
17 ordered reported.

18 I would like it noted that Senator Carper voted no.

19 I would ask unanimous consent that the staff have
20 the authority to make changes to bills that we have voted
21 to report today for technical conforming and budgetary
22 reasons.

23 Without objection, consent is granted.

24 The Committee is adjourned. And I thank Senator
25 Hatch and all the Senators for their immense cooperation,

1 and I thank the staff for their hard work.

2 The Finance Committee is adjourned.

3 [Whereupon, at 3:12 p.m., the meeting was
4 concluded.]

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I N D E X

PAGESTATEMENT OF:

THE HONORABLE RON WYDEN A United States Senator From the State of Oregon	2
THE HONORABLE ORRIN G. HATCH A United States Senator From the State of Utah	4