

ORIGINAL

1 EXECUTIVE COMMITTEE SESSION

2 THURSDAY, JANUARY 22, 1987

3 U.S. Senate

4 Committee on Finance

5 Washington, D.C.

6 The session was convened, pursuant to notice, at 9:10
7 a.m. in Room SD-215, Dirksen Senate Office Building, the
8 Honorable Lloyd Bentsen (chairman) presiding.

9 Present: Senators Bentsen, Baucus, Bradley,
10 Rockefeller, Daschle, Packwood, Danforth, Chafee, Heinz,
11 Wallop and Durenberger.

12 Also present: Bill Wilkins, Staff Director and Chief of
13 Staff; Mary McAuliffe, Minority Staff Director; David
14 Brockway, Chief of Staff, Joint Committee on Taxation;
15 Randy Hardock, Tax Counsel, Committee on Finance; and
16 Karen Phillips, Economist, Trade Legislation, Committee on
17 Finance, Minority Staff.

18 Also present: Linda Carlyle, Department of the
19 Treasury.

20 (The press release announcing the session follows:)

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PRESS RELEASE

FOR IMMEDIATE RELEASE
January 20, 1987

UNITED STATES SENATE
COMMITTEE ON FINANCE

SENATOR BENTSEN ANNOUNCES FINANCE COMMITTEE MARK-UP OF
EXTENSION OF HIGHWAY TRUST FUND TAXES

Washington, DC -- Senator Lloyd Bentsen, Chairman, announced Tuesday that the Senate Finance Committee will hold a mark-up on Thursday January 22, 1987 on the extension of the Highway Trust Fund taxes and related issues within the Finance Committee's jurisdiction.

"It is important that we move quickly to pass legislation extending the Federal-Aid Highway Program in order to maintain our transportation system at peak efficiency and in order to avoid the economic problems that would result if work on the system is further delayed", said Bentsen.

The mark-up will begin at 9:00 A.M., Thursday January 22, 1987 in Room 215 of the Dirksen Senate Office Building.

1 The Chairman. Gentlemen, we will come to order here
2 and we will get started.

3 And the first thing I would like to discuss is the
4 question of procedures and the rules. And what I am
5 recommending to you is that we proceed under the rules as
6 they have been. They have not been changed since 1985 when
7 there was a minor change adopted relating to the release of
8 committee markup transcripts. So I would urge that we
9 continue the rules as they are.

10 They have been, frankly, rather informal rules that have
11 tried to bring about full debate on the issues, and I must
12 say in all candor they have given some latitude to the
13 chairman in setting the priority of amendments when you
14 have overlapping amendments being offered. And certainly it
15 will be my objective to try to see that each member has an
16 opportunity to offer such amendments as he wants, and that
17 we get a full opportunity for debate and resolution of them,
18 and that we try to reflect in our voting and the procedures
19 of voting those things that result in the true majority
20 having expressed itself during that day's business.

21 So with that in mind, if there are any questions I would
22 be happy to address them.

23 Senator Danforth. Mr. Chairman, I have been very
24 satisfied with the rules, and I am very confident that
25 everyone is going to get a fair shake under your chairmanship.

1 Every Congress we raise the issue of absentees voting,
2 and closing off the votes at some future time, or before the
3 end of the day, and the difference between whether those
4 additional votes determine the outcome or do not determine
5 the outcome. And, frankly, I can't remember where we last
6 left it. And I don't know if you have focused on it
7 particularly, but I know that this is in close votes that
8 change back and forth. This has always been a matter of
9 some controversy within the Finance Committee.

10 I think any set of rules is fine, but we should have
11 some understanding before we begin the conference.

12 The Chairman. Good.

13 Let me comment on that because I think that is a very
14 pertinent question.

15 We tightened up the rules under the Tax Reform Act
16 very measurably and said that even though a Senator might
17 be momentarily--and correct me either one of you if I
18 misstate this--someone could be momentarily absent and that
19 vote could not be changed after it is done.

20 Now prior to that time, as I recall, you could change
21 votes up until the bill was reported out virtually. And
22 what I am proposing, I would like to see, is a middle
23 course and saying that you can change a vote until the end
24 of the day's business. So if you have somebody that is in
25 another committee and misses or cannot be there right at

1 that moment. Frankly, what I want to see is the will of
2 the majority that day expressed and I think that is a fair
3 way to proceed.

4 Senator Danforth. Supposing a vote is taken on an
5 amendment, and the vote is, say, 8 to 5 in favor of the
6 amendment, and it is noon time, and we recess for the day,
7 could people then get on the phone and at any time before
8 the end of the day, say, at 8:00 o'clock at night, if the
9 Senate was still in session, change their vote?

10 The Chairman. Before we had an even more lax
11 procedure than that as I understand it. You could change
12 the next day or several days thereafter as long as the bill
13 wasn't reported. Isn't that correct?

14 Mr. Wilkins. That is correct, Mr. Chairman. The
15 general rule was that votes could be registered even to
16 change results until the vote to report the measure began.

17 The Chairman. So what I would like to see is that we
18 might make it until 5:00 o'clock that day if you would
19 prefer that kind of procedure. That would be fine with me.

20 Senator Danforth. I don't have any preference.

21 The Chairman. Try to get it more definitive.

22 Senator Danforth. I suppose any time a bill is
23 reported somebody could offer an amendments, couldn't
24 they?

25 The Chairman. Or we can do that.

1 Senator Danforth. Or reconsideration. So there really
2 is no ending.

3 The Chairman. It doesn't tie you down that much,
4 because you are quite right, we have followed the
5 procedures here that you can reconsider something any time
6 before it is reported out. So you would have that
7 opportunity to do that.

8 Senator Heinz. Mr. Chairman, there is one concern I
9 would have and that is this. If somebody does change their
10 vote or somebody votes who did not vote, and it changes the
11 results of legislation that has been acted upon but has, at
12 the end of the day, not come, how are members of the
13 committee to know about the change in the substance of the
14 legislation, which might affect their subsequent vote?

15 Mr. Wilkins. Mr. Chairman, in a situation like that,
16 the measure would not have been reported and there would be
17 yet another day of markup to come so that at the following
18 day of markup any change results could be announced, and
19 there would be the opportunity during that subsequent day
20 for the question to be put again on a reconsideration if
21 that was the will of any of the members to make that motion.

22 Ms. McAuliffe. I think during the Tax Reform bill that
23 we fixed it so we did not change the outcome of the vote
24 after the immediate consideration that day. We did not wait
25 to report the bill because of revenue estimates.

1 The Chairman. That's correct.

2 Senator Danforth. What is that, Mary?

3 Ms. McAuliffe. On the tax bill we did not allow votes
4 to be changed after we actually voted after a certain time.
5 Senator Packwood announced how long it would be open, but we
6 could not actually change the results.

7 Senator Heinz. You could not change the result of the
8 vote.

9 Mr. Wilkins. Yes, after the call of the roll.

10 Senator Heinz. After the call of the roll.

11 So just so I understand what Senator Bentsen is
12 proposing, he is proposing a looser rule than that? He is
13 proposing that results, could the results of a vote in the
14 committee, could be changed. Is that correct?

15 The Chairman. Yes, I am. I am proposing that what you
16 could do is bring it back up the next day and have a
17 reconsideration of it. Now that has been the history of
18 this committee in the past.

19 Mr. Wilkins. Maybe I could emphasize a point that may
20 not be clear. When the bill is reported that vote is
21 immediately closed and the vote on all amendments would be
22 immediately closed even under the proposal that Senator
23 Bentsen is making.

24 Senator Danforth. Sure. I mean, clearly that is the
25 case. But the typical case is, and we have had this many

1 times, is that we have a very controversial issue in the
2 morning, and we have a vote on it. And say the vote is 8 to
3 7, or something like that, and there are how many members
4 on the committee, 20?

5 Mr. Wilkins. Twenty.

6 The Chairman. Twenty.

7 Senator Danforth. And there are five members who were
8 missing. And then you try to scurry around and get people
9 on the telephone to vote their proxies during the morning.
10 Then you end up, say, having everybody their proxy and the
11 vote is 10 to 10. So the amendment does not carry. And
12 then you spend the rest of the day trying to call people
13 and get them to change their votes. And as I understand
14 the situation, that would be permitted. We would be able
15 to do that.

16 Mr. Wilkins. That would be contemplated.

17 The Chairman. Yes, that would be permitted.

18 Senator Danforth. And that vote would be considered
19 final with every possibility of changing votes until
20 whatever time, 5:00 o'clock in the afternoon or the close
21 of business or whatever we want.

22 The Chairman. Yes.

23 Senator Danforth. And then subsequent to that it would
24 only be changed by a motion to reconsider the vote up to the
25 reporting of the bill.

1 Senator Heinz. Mr. Chairman, with all due respect,
2 I appreciate the desire for you to be flexible, but this
3 committee and all other committees basically are subject
4 to Sunshine laws. Whether we are actually subject to the
5 federal Sunshine law or not, I don't know.

6 I see Alan Greenspan over there, and I remember that
7 our Commission on Social Security Reform was subject to the
8 Sunshine law, and we had all our meetings in public. In
9 fact, there was a question of whether we should be allowed
10 to eat in private or in public. We were able to get the
11 privacy of our meals.

12 But one of the things that would trouble me about
13 keeping a vote open all day is that it gives a lot of
14 opportunity for back room maneuvering. And I am not opposed
15 to back room maneuvering, per se, but we normally do it in
16 the back room altogether. And we have had closed markups,
17 and they have been necessary and appropriate.

18 Senator Packwood. Closed meeting. Not closed markup.

19 Senator Heinz. Closed meeting. Excuse me.

20 Senator Packwood. Like they weren't even meeting. They
21 were discussions.

22 Senator Heinz. They were discussions. They were like
23 the luncheons that we have in the National Commission.

24 Senator Danforth. Whatever it was, I didn't like it.

25 (Laughter)

1 Senator Heinz. It seems to me that having votes
2 changed out of sight, in the afternoon, after the markup is
3 closed is really a violation of the spirit, if not the
4 letter, of Sunshine in government. And I would hope that
5 that would not be the procedure used.

6 I thought that the rule that we had at some point
7 during the last two years, which was, you could change your
8 vote as long as it didn't change the result, or you could
9 vote as long as it didn't change the result, with a
10 reasonable accommodation to members on issues of some
11 complexity. But I do not like the idea of people scurrying
12 around after hours getting people to change their votes.
13 And I don't think anyone would do this, but you can
14 imagine the speculation of the kinds of brandishments of
15 promises that the news media would begin to make. And I
16 just don't think that is good for the reputation of any
17 committee.

18 The Chairman. We have had a spirit of cooperation
19 pretty well carried through on this committee, and I think
20 it should allow some flexibility--someone steps out of the
21 room; someone has to go back to the office for a few
22 minutes--to try to reflect the majority if we can. And I
23 have had a situation I can recall in the past where I was
24 pressing on an amendment--had won it--and over the weekend
25 some minds were changed and I lost it on the following

1 Tuesday. Those things are going to happen to you.

2 But I would like for us to try to resolve it by the
3 end of the day's business with a full understanding, as
4 we have stated for years in this committee, that someone
5 can bring the amendment up again at a later date.

6 But I would try to put that kind of a time limitation
7 on it if we could.

8 Senator Packwood. Could I just ask a question, having
9 missed the first part, Mr. Chairman?

10 The Chairman. Yes.

11 Senator Packwood. Is that a change, Bill, from the
12 rules as they exist? I think I probably agree with it. I
13 know the rules as they exist. Is this the only change
14 being suggested? And that is that the vote will be closed
15 by the end of the day?

16 Mr. Wilkins. There is not being proposed a change to
17 the committee rules. There was a discussion of the
18 informal procedures that the chairman might announce for use
19 in markups.

20 Senator Packwood. But the rules that we are talking
21 about adopting are the same rules we have had.

22 Mr. Wilkins. That is correct.

23 The Chairman. We are adopting the same rules we have
24 had. That is right.

25 Senator Heinz. And this is not covered by the rules we

1 have had?

2 Mr. Wilkins. The existing rules permit the flexibility.

3 The Chairman. That flexibility has been given to the
4 chairman in the past.

5 Senator Packwood. I have got to come down on the
6 chairman's side on this. And sometimes it was the end of
7 the day. Sometimes it was the end of the week if the vote
8 went against the chairman.

9 (Laughter)

10 Senator Packwood. And on other occasions when the vote
11 was 8 to 7, the chairman would drop his gavel and say the
12 vote is 8 to 7. The amendment carries, or fails. And that
13 was the end of it.

14 And I think the chairman has been often for us and
15 against us on occasion, and I don't mean Republicans or
16 Democrats. Seldom do we divide that way. But I think the
17 chairman ought to have that discretion.

18 The Chairman. So with that very statesman-like
19 statement, I would like to have the will of the committee
20 expressed.

21 Senator Packwood. Mr. Chairman, I would move the
22 adoption of the rules.

23 The Chairman. Any discussion to the contrary?

24 (No response)

25 The Chairman. All in favor, make it known by saying

1 "aye".

2 (A chorus of "ayes")

3 The Chairman. Opposed, a similar sign.

4 (No response)

5 The Chairman. Thank you.

6 Now I would like to move on to the Highway Tax provision.

7 As you know, that piece of legislation did not make it
8 through the conference last year. It died on the last day
9 and the last hour. And the taxes for the Highway Fund
10 expire on September 30th, 1988. The authorization title for
11 the Highway Program has already expired. And what you are
12 seeing is a situation where we want to move that highway
13 bill through so you can have your lettings, spring lettings,
14 and a great deal of construction will not be underway
15 without that.

16 I think it is imperative we do it.

17 The Environment and Public Works Committee came out
18 with a 4-year extension of the authorization title on
19 yesterday.

20 Now what I am suggesting is that we give a similar
21 4-year extension for the taxes for the fund. And that will
22 keep the taxes two years ahead of the authorization. A
23 4-year extension is exactly what the Finance Committee
24 approved last year. I propose to just take last year's
25 committee amendment and approve it again this year, if there

1 is no objection to that. So it is exactly the same one we
2 passed through last year.

3 Senator Danforth. Mr. Chairman?

4 The Chairman. Yes.

5 Senator Danforth. I know that Senator Rieggle has an
6 amendment that several of us are joining in and I think he
7 is going to be coming shortly.

8 The Chairman. Let's find out. Let's get a report about
9 Senator Rieggle.

10 Senator Packwood. Is this the Canadian truck tax?

11 The Chairman. Yes.

12 Senator Packwood. I have no objection to the
13 amendment. I think there's merit, especially considering
14 the difficulty we have had in truck operations between
15 Mexico and Canada. Unless he has to be here.

16 The Chairman. I would like to see if there is
17 objection to the amendment. I would like someone on staff
18 to speak to the amendment so all the committee members are
19 informed. Some of them might not be as recent on their
20 review of it as they would like.

21 Mr. Gould. This involves a problem that arose because
22 of the \$550.00 use tax that is applicable to large trucks
23 that travel over 5,000 miles. And it involves the
24 relationship between the various Canadian Provinces and the
25 U.S. States. Different States and different Provinces have

1 entered into different arrangements involving registration
2 of trucks.

3 Some Provinces, principally the eastern Provinces, have
4 entered into reciprocity agreements with eastern U.S. States,
5 whereby they don't have to register in those States. That
6 is relevant for this purpose because registration in the
7 United States is what keys the tax, this use tax. So that
8 when a truck has to register in a State, the \$550.00 tax is
9 due.

10 On the other hand, a number of the western Provinces
11 have entered into arrangements with western States, whereby
12 they do have to register in those States. Therefore,
13 literally by the terms of the tax, they have to pay the
14 tax.

15 The Treasury Department released regulations a couple of
16 years ago, we understand, at the request of the Transportation
17 Department, but the Treasury could speak to that, whereby,
18 they said that that tax will not be applicable to trucks
19 operating from those Provinces. The effect of the
20 regulations is to equalize the situation so that, in effect,
21 all Canadian trucks will be exempt from the tax.

22 At the same time, the 1984 tax bill provides for a study
23 to be made of the transborder tax issue and that study is
24 due in October of this year.

25 This amendment would simply require all Canadian trucks,

1 whether they have to register in the United States or not,
2 to pay the tax. In that way, it does not simply overrule
3 those regulations, because if it simply overruled those
4 regulations it would only apply to tax where the trucks have
5 to register in the United States.

6 On the other hand, this amendment simply provides that
7 all Canadian trucks have to pay that tax were they in the
8 same situation that an American truck would have to pay the
9 tax.

10 Senator Danforth. Mr. Chairman?

11 The Chairman. Yes.

12 Senator Danforth. This amendment would be offered by
13 Senator Riegle, co-sponsored by myself and Senators
14 Durenberger and Baucus, and anyone else who wants to. But
15 the issue is this. The tax is imposed. It is my
16 understanding of the tax that it is imposed for the purpose
17 of compensating for the use of highways.

18 Now the question should be, therefore, are the highways
19 used, not where is the vehicle registered? And it truly
20 would be a loophole to say that there is an exemption from
21 the tax for a vehicle that is registered in Canada as
22 opposed to a vehicle that is registered in the United States
23 when both vehicles are using U.S. highways to the same
24 extent.

25 Under this amendment, any exemption--and there is one in

1 the law for I think less than 5,000 miles use in the
2 United States--any exemption would be applicable regardless
3 of the place of registration. And, therefore, the whole
4 theory of the amendment is that the place of registration
5 is really irrelevant. What is relevant is the use of the
6 highway.

7 Did that accurately state the amendment?

8 Mr. Gould. That accurately stated it, Senator Danforth.

9 One problem is the administration of the tax, the
10 collection of the tax. And we presume that is what the
11 study would come out and make a recommendation on.

12 We have looked at the amendment, and since it applies
13 across the board, it seems technically okay. It doesn't
14 make a recommendation for how the tax will be collected.
15 And that is something that we would have to discuss
16 presumably in drafting. If the amendment is acceptable,
17 we will have to discuss any drafting with the Treasury.

18 The Chairman. Are there any comments in opposition?

19 Ms. Carlyle. Mr. Chairman?

20 The Chairman. Yes. Are you representing Treasury this
21 morning?

22 Ms. Carlyle. Yes, sir.

23 The Chairman. Would you state your name for the
24 record, please?

25 Ms. Carlyle. Linda Carlyle.

1 The Chairman. Fine.

2 Ms. Carlyle. Mr. Chairman, the Treasury Department will
3 have to state its opposition to the amendment principally
4 for the reasons stated, that the administrability is
5 uncertain. Also, we would urge the committee to defer action
6 on this amendment until the study which was mandated by the
7 1984 legislation, dealing with the Highway Trust Fund, is
8 completed. That study should be presented to Congress in
9 October of this year.

10 The Chairman. Are there further comments on the
11 amendment?

12 (No response)

13 The Chairman. If not, do I have a motion to proceed on
14 the amendment?

15 Senator Packwood. So moved.

16 The Chairman. Is there a second?

17 Senator Heinz. Second.

18 The Chairman. All in favor of the amendment, as
19 stated, make it known by saying "aye".

20 (A chorus of "ayes")

21 The Chairman. Opposed, a similar sign.

22 (No response)

23 The Chairman. Now, gentlemen, I would propose that we
24 follow the same procedure in offering this piece of
25 legislation as an amendment on the floor to the Highway Bill.

1 That was done last year. As I recall, Senator Symms
2 offered it. And we would move and try to expedite that
3 bill by handling it in that manner, if there is no objection
4 to that.

5 Senator Durenberger. Mr. Chairman?

6 The Chairman. Yes.

7 Senator Durenberger. Might I ask just one content
8 question of you or of the staff? I am assuming that if the
9 bill we are approving today is last year's bill, that it
10 contains the current exemption from highway excise taxes for
11 gasohol and other alcohol fuel, even though the
12 Administration has proposed in their budget elimination of
13 that. Is that correct?

14 The Chairman. That is right. It is my understanding
15 that it does, but please comment on that.

16 Mr. Gould. That is correct, Senator Durenberger.

17 Senator Durenberger. All right.

18 The Chairman. I had to check. All right.

19 May we have a motion then to proceed with that
20 procedure insofar as an amendment on the floor?

21 Senator Durenberger. So moved.

22 The Chairman. All in favor make it known by saying "aye".

23 (A chorus of "ayes")

24 The Chairman. Opposed, a similar sign.

25 (No response)

1 . The Chairman. Thank you, gentlemen, and ladies.

2 (Whereupon, at 9:33 a.m., the session was concluded.)

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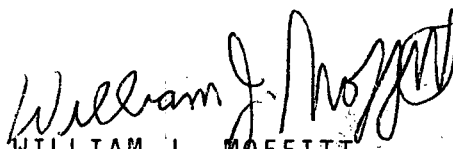
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C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Committee Session of the United States Senate Finance Committee, held on January 22, 1987, were transcribed as herein appears and that this is the original transcript thereof.



WILLIAM J. MOFFITT
Official Court Reporter

My Commission expires April 14, 1989.

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100th Congress,
1st Session
January 20, 1987

SENATE COMMITTEE ON FINANCE

AGENDA

Thursday, January 22, 1987 -- 9:00 A.M.
Finance Committee Hearing Room -- SD-215
(Trade Hearing to Follow Immediately)

1. Adoption of Committee Rules of Procedure pursuant to Rule XXVI of the Standing Rules of the Senate. (Attachment A).
2. Mark-up on the Extension of the Highway Trust Fund taxes and related issues. (Attachment B.)

LLOYD BENTSEN, TEXAS, CHAIRMAN

SPARK M. MATSUNAGA, HAWAII
DANIEL PATRICK MOYNIHAN, NEW YORK
MAX BAUCUS, MONTANA
DAVID L. BOREN, OKLAHOMA
BILL BRADLEY, NEW JERSEY
GEORGE J. MITCHELL, MAINE
DAVID PRYOR, ARKANSAS
DONALD W. RIEGLE, JR., MICHIGAN
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
TOM DASCHLE, SOUTH DAKOTA

BOB PACKWOOD, OREGON
BOB DOLE, KANSAS
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JOHN H. CHAFEE, RHODE ISLAND
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DAVID DURENBERGER, MINNESOTA
WILLIAM L. ARMSTRONG, COLORADO

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510

WILLIAM J. WILKINS, STAFF DIRECTOR AND CHIEF COUNSEL
MARY MCAULIFFE, MINORITY CHIEF OF STAFF

ATTACHMENT A

MEMORANDUM

TO: MEMBERS, COMMITTEE ON FINANCE
FROM: COMMITTEE STAFF
RE: ADOPTION OF COMMITTEE ON FINANCE RULES OF PROCEDURE
DATE: JANUARY 20, 1987

Rule XXVI of the Standing Rules of the Senate provides that "each committee shall adopt rules (not inconsistent with the Rules of the Senate) governing the procedure of such committee". Attached are the rules of procedure used by the Finance Committee during the 99th Congress.

The Chairman is proposing that the Committee continue to operate under the attached Rules of Procedure. Consideration of the Rules of Procedure is scheduled for 9:00 A.M. on Thursday, January 22, 1987, in Room SD-215.

COMMITTEE ON FINANCE

I. RULES OF PROCEDURE

(Adopted February 7, 1985)

Rule 1. *Regular Meeting Days.*—The regular meeting day of the committee shall be the second and fourth Tuesday of each month, except that if there be no business before the committee the regular meeting shall be omitted.

Rule 2. *Committee Meetings.*—(a) Except as provided by paragraph 3 of Rule XXVI of the Standing Rules of the Senate (relating to special meetings called by a majority of the committee) and subsection (b) of this rule, committee meetings, for the conduct of business, for the purpose of holding hearings, or for any other purpose, shall be called by the chairman. Members will be notified of committee meetings at least 48 hours in advance, unless the chairman determines that an emergency situation requires a meeting on shorter notice. The notification will include a written agenda together with materials prepared by the staff relating to that agenda. After the agenda for a committee meeting is published and distributed, no nongermane items may be brought up during that meeting unless at least two-thirds of the members present agree to consider those items.

(b) In the absence of the chairman, meetings of the committee may be called by the

ranking majority member of the committee who is present, provided authority to call meetings has been delegated to such member by the chairman.

Rule 3. Presiding Officer.—(a) The chairman shall preside at all meetings and hearings of the committee except that in his absence the ranking majority member who is present at the meeting shall preside.

(b) Notwithstanding the rule prescribed by subsection (a) any member of the committee may preside over the conduct of a hearing.

Rule 4. Quorums.—(a) Except as provided in subsections (b) and (c) seven members, including not less than one member of the majority party and one member of the minority party, shall constitute a quorum for the conduct of business.

(b) Notwithstanding the rule prescribed by subsection (a), one member shall constitute a quorum for the purpose of conducting a hearing.

(c) Once a quorum as prescribed by subsection (a) has been established for the conduct of business in executive session, the committee may continue to conduct business so long as five or more members are present, including not less than one member of the majority party and one member of the minority party.

Rule 5. Reporting of Measures or Recommendations.—No measure or recommendation shall be reported from the committee unless a majority of the committee is actually present and a majority of those present concur.

Rule 6. Proxy Voting; Polling.—(a) Ex-

cept as provided by paragraph 7(a)(3) of Rule XXVI of the Standing Rules of the Senate (relating to limitation on use of proxy voting to report a measure or matter), members who are unable to be present may have their vote recorded by proxy.

(b) At the discretion of the committee, members who are unable to be present and whose vote has not been cast by proxy may be polled for the purpose of recording their vote on any rollcall taken by the committee.

Rule 7. Order of Motions.—When several motions are before the committee dealing with related or overlapping matters, the chairman may specify the order in which the motions shall be voted upon.

Rule 8. Bringing a Matter to a Vote.—If the chairman determines that a motion or amendment has been adequately debated, he may call for a vote on such motion or amendment, and the vote shall then be taken, unless the committee votes to continue debate on such motion or amendment, as the case may be. The vote on a motion to continue debate on any motion or amendment shall be taken without debate.

Rule 9. Public Announcement of Committee Votes.—Pursuant to paragraph 7(b) of Rule XXVI of the Standing Rules of the Senate (relating to public announcement of votes), the results of rollcall votes taken by the committee on any measure (or amendment thereto) or matter shall be announced publicly not later than the day on which such measure or matter is ordered reported from the committee.

Rule 10. Subpoenas.—Subpoenas for attendance of witnesses and the production of

memoranda, documents, and records shall be issued by the chairman, or by any other member of the committee designated by him.

Rule 11. Open Committee Hearings.—To the extent required by paragraph 5 of Rule XXVI of the Standing Rules of the Senate (relating to limitations on open hearings), each hearing conducted by the committee shall be open to the public.

Rule 12. Announcement of Hearings.—The committee shall undertake consistent with the provisions of paragraph 4(a) of Rule XXVI of the Standing Rules of the Senate (relating to public announcements of hearings) to issue public announcements of hearings it intends to hold at least one week prior to the commencement of such hearings.

Rule 13. Witnesses at Hearings.—(a) Each witness who is scheduled to testify at any hearing must submit his written testimony to the staff director not later than noon of the last business day preceding the day on which he is scheduled to appear. Such written testimony shall be accompanied by a brief summary of the principal points covered in the written testimony. Having submitted his written testimony, the witness shall be allowed not more than ten minutes for oral presentation of his statement.

(b) Witnesses may not read their entire written testimony, but must confine their oral presentation to a summarization of their arguments.

(c) Witnesses shall observe proper standards of dignity, decorum and propriety while presenting their views to the committee. Any witness who violates this rule shall be dismissed, and his testimony (both oral and

written) shall not appear in the record of the hearing.

(d) In scheduling witnesses for hearings, the staff shall attempt to schedule witnesses so as to attain a balance of views early in the hearings. Every member of the committee may designate witnesses who will appear before the committee to testify. To the extent that a witness designated by a member cannot be scheduled to testify during the time set aside for the hearing, a special time will be set aside for that witness to testify if the member designating that witness is available at that time to chair the hearing.

Rule 14. Audiences.—Persons admitted into the audience for open hearings of the committee shall conduct themselves with the dignity, decorum, courtesy and propriety traditionally observed by the Senate. Demonstrations of approval or disapproval of any statement or act by any member or witness are not allowed. Persons creating confusion or distractions or otherwise disrupting the orderly proceeding of the hearing shall be expelled from the hearing.

Rule 15. Broadcasting of Hearings.—(a) Broadcasting of open hearings by television or radio coverage shall be allowed upon approval by the chairman of a request filed with the staff director not later than noon of the day before the day on which such coverage is desired.

(b) If such approval is granted, broadcasting coverage of the hearing shall be conducted unobtrusively and in accordance with the standards of dignity, propriety, courtesy and decorum traditionally observed by the Senate.

(c) Equipment necessary for coverage by

television and radio media shall not be installed in, or removed from, the hearing room while the committee is in session.

(d) Additional lighting may be installed in the hearing room by the media in order to raise the ambient lighting level to the lowest level necessary to provide adequate television coverage of the hearing at the then current state of the art of television coverage.

(e) The additional lighting authorized by subsection (d) of this rule shall not be directed into the eyes of any members of the committee or of any witness, and at the request of any such member or witness, offending lighting shall be extinguished.

(f) No witness shall be required to be photographed at any hearing or to give testimony while the broadcasting (or coverage) of that hearing is being conducted. At the request of any such witness who does not wish to be subjected to radio or television coverage, all equipment used for coverage shall be turned off.

Rule 16. Subcommittees.—(a) The chairman, subject to the approval of the committee, shall appoint legislative subcommittees. All legislation shall be kept on the full committee calendar unless a majority of the members present and voting agree to refer specific legislation to an appropriate subcommittee.

(b) The chairman may limit the period during which House-passed legislation referred to a subcommittee under paragraph (a) will remain in that subcommittee. At the end of that period, the legislation will be restored to the full committee calendar. The period referred to in the preceding sentences should be 6 weeks, but may be extended in

the event that adjournment or a long recess is imminent.

(c) All decisions of the chairman are subject to approval or modification by a majority vote of the committee.

(d) The full committee may at any time by majority vote of those members present discharge a subcommittee from further consideration of a specific piece of legislation.

(e) Because the Senate is constitutionally prohibited from passing revenue legislation originating in the Senate, subcommittees may mark up legislation originating in the Senate and referred to them under Rule 16(a) to develop specific proposals for full committee consideration but may not report such legislation to the full committee. The preceding sentence does not apply to nonrevenue legislation originating in the Senate.

(f) The chairman and ranking minority members shall serve as nonvoting *ex officio* members of the subcommittees on which they do not serve as voting members.

(g) Any member of the committee may attend hearings held by any subcommittee and question witnesses testifying before that subcommittee.

(h) Subcommittee meeting times shall be coordinated by the staff director to insure that—

(1) no subcommittee meeting will be held when the committee is in executive session, except by unanimous consent;

(2) no more than one subcommittee will meet when the full committee is holding hearings; and

(3) not more than two subcommittees will meet at the same time.

Notwithstanding paragraphs (2) and (3), a subcommittee may meet when the full committee is holding hearings and two subcommittees may meet at the same time only upon the approval of the chairman and the ranking minority member of the committee and subcommittees involved.

(i) All nominations shall be considered by the full committee.

(j) The chairman will attempt to schedule reasonably frequent meetings of the full committee to permit consideration of legislation reported favorably to the committee by the subcommittees.

Rule 17. Transcripts of Committee Meetings.—An accurate record shall be kept of all markups of the committee, whether they be open or closed to the public. This record, marked as "uncorrected," shall be available for inspection by Members of the Senate, or members of the committee together with their staffs, at any time. This record shall not be published or made public in any way except:

(a) By majority vote of the committee after all members of the committee have had a reasonable opportunity to correct their remarks for grammatical errors or to accurately reflect statements made.

(b) Any member may release his own remarks made in any markup of the committee provided that every member or witness whose remarks are contained in the released portion is given a reasonable opportunity before release to correct their remarks.

Notwithstanding the above, in the case of the record of an executive session of the committee that is closed to the public pursuant to Rule XXVI of the Standing Rules of the Senate, the record shall not be published or made

public in any way except by majority vote of the committee after all members of the committee have had a reasonable opportunity to correct their remarks for grammatical errors or to accurately reflect statements made.

Rule 18. Amendment of Rules.—The foregoing rules may be added to, modified, amended or suspended at any time.

LLOYD BENTSEN, TEXAS, CHAIRMAN

MARK M. MATSUNAGA, HAWAII
AMIEL PATRICK MOYNIHAN, NEW YORK
MAX BAUCUS, MONTANA
LLOYD L. BOREN, OKLAHOMA
L. BRADLEY NEW JERSEY
JORGES J. MITCHELL, MAINE
LLOYD PRYOR, ARKANSAS
FRANK W. REGLE, JR., MICHIGAN
JIM D. ROCKEFELLER IV, WEST VIRGINIA
IMM DASCHLE, SOUTH DAKOTA

BOB PACKWOOD, OREGON
BOB DOLE, KANSAS
WILLIAM V. ROTH, JR., DELAWARE
JOHN C. DANFORTH, MISSOURI
JOHN H. CHAFFEE, RHODE ISLAND
JOHN HEINZ, PENNSYLVANIA
MALCOLM WALLOP, WYOMING
DAVID DURENBERGER, MINNESOTA
WILLIAM L. ARMSTRONG, COLORADO

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510

WILLIAM J. WILKINS, STAFF DIRECTOR AND CHIEF COUNSEL
MARY MCALIFFE, MINORITY CHIEF OF STAFF

ATTACHMENT B

MEMORANDUM

TO: MEMBERS, COMMITTEE ON FINANCE
FROM: COMMITTEE STAFF
RE: MARK-UP ON THE EXTENSION OF THE HIGHWAY TRUST FUND TAXES
DATE: JANUARY 20, 1987

Attached are background materials prepared for the mark-up on the extension of the Highway Trust Fund taxes and related issues. The materials provide a summary of prior legislative action on Federal-Aid Highway legislation along with a description of the revenue title of the Federal-Aid Highway Act of 1986, as approved by the Finance Committee on September 18, 1986.

The Chairman proposes that the Committee mark-up the revenue title approved by the Finance Committee last year. Two technical corrections which were included in last year's revenue title were adopted in the Tax Reform Act of 1986. Those provisions, dealing with a decrease in the excise tax for qualified methanol and ethanol fuels and the refund of the diesel fuel tax with respect to school buses, would not be part of the mark-up.

The mark-up on the extension of the highway trust fund taxes is scheduled for 9:00 A.M. on Thursday January 22, 1987, in Room SD 215.

BACKGROUND MATERIALS RELATING TO THE
EXTENSION OF HIGHWAY TRUST FUND TAXES
AND RELATED ISSUES

INTRODUCTION

The following is a summary of the 1986 amendment, approved by the Committee on Finance, to extend the present-law highway-related excise taxes and the Highway Trust Fund expenditure authority for four years (through September 30, 1992). The Committee held a public hearing on the issue, and marked-up and approved the committee amendment by voice vote on September 18, 1986. The Committee amendment was offered and adopted as an amendment to the Federal-Aid Highway Act of 1986. That bill was ultimately passed by the Senate on September 24, 1986, by a vote of 99-0. The Conference Committee on the highway bill did not resolve all the issues in conference before the 99th Congress adjourned. The conferees on the revenue title of that bill did not meet due to the unresolved non-tax issues.

On January 6, 1987, the House Committee on Ways and Means approved a highway revenue title, to be offered on the House floor as an amendment to H.R. 2 ("Surface Transportation and Uniform Assistance Act of 1987"). H.R. 2 and the Ways and Means revenue title are based on the provisions of the House highway bill from the 99th Congress. House floor consideration of H.R. 2 is scheduled on January 22, 1987. S. 185 (the "Federal-Aid Highway Act of 1987") has been introduced in the 100th Congress and deals with the reauthorization of the Federal-Aid Highway Program. That bill is identical to the authorization provisions which passed the Senate last year. S. 185 is scheduled for mark-up by the Senate Committee on Environment and Public Works on January 21, 1987.

SUMMARY OF REVENUE TITLE APPROVED BY THE FINANCE COMMITTEE ON SEPTEMBER 18, 1986

Present Law

Excise taxes are imposed on gasoline and diesel and other motor fuels, trucks and truck trailers, heavy tires, and heavy highway vehicles. Revenues from these highway-related excise taxes are deposited in the Highway Trust Fund. Revenues equivalent to one cent per gallon from the taxes on highway motor fuels go into the Mass Transit Account in the Highway Trust Fund. All other highway excise tax revenues go into the Highway Account of the Trust Fund.

The Highway Trust Fund taxes are currently scheduled to expire after September 30, 1988. Also, authority to expend from the Highway Trust Fund expires after September 30, 1988.

The Highway Trust Fund and the related highway excise taxes have been extended four times since 1970; a five-year extension in the Federal Aid Highway Act of 1970 (from September 30, 1972 through September 30, 1977), a two-year extension in the Federal-Aid Highway Act of 1976 (through September 30, 1979), a five-year

extension in the Surface Transportation Assistance Act of 1978 (through September 30, 1984), and a four-year extension in the Surface Transportation Assistance Act of 1982 (through September 30, 1988).

The Highway Trust Fund authorizations in the 1982 Act generally were for fiscal years 1983-1986. Thus, the revenues deposited in the Trust Fund lag behind the authorization period by two years. This is due to the lead time required between the time a project is authorized or obligated and the time when money is needed to pay for it.

Summary of Committee Amendment

The Finance Committee amendment approved on September 18, 1986 included the following provisions:

- The extension of the present Highway Trust Fund excise taxes for four additional years, through September 30, 1992. The highway excise tax extension provisions of the committee amendment apply to taxable transactions occurring after September 30, 1988, and before October 1, 1992.
- The extension of the authority to make expenditures out of the Highway Trust Fund for four additional years, from October 1, 1988 through September 30, 1992.
- An update of the Internal Revenue Code to reflect the trust fund authorization purposes included in the authorization portion of the Highway bill, effective on October 1, 1986.
- A technical correction clarifying that certain transfers from the Highway Trust Fund are to be made proportionately from the Mass Transit Account of that Trust Fund.

The Finance Committee amendment also included: (1) a provision reducing the exemption from the special fuels excise tax for neat alcohol fuels (e.g. fuels 85% or more ethanol or methanol) derived other than from petroleum or natural gas from 9 cents to 6 cents per gallon; and (2) a provision allowing a full 15-cents-per-gallon refund of excise tax paid on diesel fuel used in school buses while engaged in the transportation of students and school employees. Both of those provisions were included in the Tax Reform Act of 1986 as enacted and are, therefore, moot.

January 21, 1987
JCX-2-87

COMMITTEE ON FINANCE MARKUP OF
HIGHWAY TRUST FUND EXTENSION

Present Law

Highway Trust Fund and Highway-Related Excise Taxes

Excise taxes are imposed on gasoline and diesel and other motor fuels, trucks and truck trailers, heavy tires, and heavy highway vehicles. Revenues from these highway-related excise taxes are deposited in the Highway Trust Fund (HTF). Revenues equivalent to one cent per gallon from the taxes on highway motor fuels go into the Mass Transit Account in the HTF. The other highway excise tax revenues go into the Highway Account.

The HTF taxes are currently scheduled to expire after September 30, 1988 (see Table below).

<u>Tax</u>	<u>Tax rate</u>
<u>Motor fuels:</u>	
Gasoline and special motor fuels	9 cents per gallon
Diesel fuel	15 cents per gallon
<u>Trucks and trailers:</u>	
Trucks (over 33,000 lbs.) and trailers (over 26,000 lbs.)	12 percent of retail price
<u>Tires for highway vehicles:</u>	
	40 lbs. or less--no tax
	40-70 lbs.--15 cents/lb. over 40 lbs.
	70-90 lbs.--\$4.50, plus 30 cents/lb. over 70 lbs.
	Over 90 lbs.--\$10.50, plus 50 cents/lb. over 90 lbs.
<u>Use tax on heavy highway vehicles:</u>	
	Under 55,000 lbs.--no tax
	55,000-75,000 lbs. --\$100, plus \$22/1,000 lbs. over 55,000
	Over 75,000 lbs.--\$550

Legislative Action in 99th Congress

H.R. 3129 (99th Congress) as passed by the House would have provided a five-year extension of the current highway excise taxes (through September 30, 1993) and a five-year reauthorization for Highway Trust Fund expenditure programs (for fiscal years 1987-1991). The Senate amendment to H.R. 3129 would have provided a four-year extension of the taxes and trust fund authorizations.

The Conference Committee on H.R. 3129 did not resolve all the issues in conference before the 99th Congress adjourned. The conferees on the revenue title of that bill did not meet because non-tax issues had not been resolved.

Legislative Action in 100th Congress

House Action (H.R. 2)

On January 6, 1987, the House Committee on Ways and Means approved a revenue title, to be offered on the House floor to H.R. 2 ("Surface Transportation and Uniform Assistance Act of 1987"), which would:

- (1) Extend present-law Highway Trust Fund excise taxes, and authority to spend from the Trust Fund, for five years (through September 30, 1993);
- (2) Update the Highway Trust Fund statute to reflect House-proposed 1987 authorizations, including highway beautification and university transportation research centers, as trust fund expenditure purposes (in H.R. 2);
- (3) Provide an amendment to the retail excise tax on certain trucks and trailers regarding the application of that tax in the case of leased trucks and trailers; and
- (4) Make Revenue Rulings 85-196, 1985-2 C.B. 205, and 86-43, 1986-1 C.B. 317, inapplicable to retail sales of certain trucks and trailers acquired by retail dealers before January 1, 1986, and sold by those dealers after September 30, 1986 (and held continuously between those dates).

H.R. 2 would provide a five-year reauthorization of Highway Trust Fund programs (highways and mass transit). House floor consideration of H.R. 2 is scheduled on January 21-22, 1987.

Senate Action (S. 185)

Trust Fund program reauthorizations

S. 185 ("Federal-Aid Highway Act of 1987") is scheduled for markup by the Senate Committee on Environment and Public Works on January 21-22, 1987. S. 185 would provide (as did the 1986 Senate amendment) a four-year extension of Trust Fund (highway) authorizations (fiscal years 1987-1990). The Committee on Banking, Housing, and Urban Affairs has scheduled markup of a four-year reauthorization of mass transit programs on January 21, 1987.

Trust Fund excise tax extension

The Senate Committee on Finance has scheduled a markup of a Highway Trust Fund excise tax extension on January 22, 1987.

Administration Proposal

The Administration is proposing a four-year extension of highway and mass transit authorizations and of current highway excise taxes.

Also, the President's 1988 Budget proposes to repeal the current highway excise tax exemptions for gasohol and other alcohol fuels, public and private bus operators, and State and local governments, effective on October 1, 1987.

January 22, 1987

AMENDMENT

The amendment provides that the highway user tax (26 U.S.C. Sec. 4481) shall apply to all heavy highway motor vehicles operating in the United States regardless of the motor carrier's country of origin. The amendment is effective beginning July 1, 1987. Finally, the amendment requires the promulgation by the Administration within 120 days of enactment of necessary regulations to implement its provisions.