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Subject: POLITICO's Morning Transportation, presented by American Public Transportation Association: Thought we had a deal — Here we go on DOT approps — ATC ping pong

By Lauren Gardner and Stephanie Beasley | 07/27/2017 10:02 AM EDT

With help from Tanya Snyder and Brianna Gurciullo

THOUGHT WE HAD A DEAL: New York Gov. Andrew Cuomo stormed Washington Wednesday to deliver an urgent message to Transportation Secretary Elaine Chao: that "there is no backup plan" for New York and New Jersey to come up with the money the Obama administration pledged for the Gateway program. Our Brianna Gurciullo was there when Cuomo emerged from a morning meeting with New York's Democratic congressional delegation and told reporters what he wanted to get out of his forthcoming meeting with Chao: "I want to hear that we're actually going to fund the tunnel, you know. All the planning is nice, but we don't have a funding agreement in place. And here's the fear: If you said today, 'Ok, let's go build the tunnel' - by the time you do the [environmental impact statement], by the time you do the contract, by the time you deal with all the bureaucracy, you're talking 10 years. ... And these tunnels are not in a position, or I wouldn't want to be relying on these tunnels for 10 years."

So how did it go? Good question - neither Chao's nor Cuomo's offices provided details or statements on the meeting, despite our requests. But as a quick refresher, the Trump administration has proposed phasing out a popular transit grant program that was expected to fund significant portions of Gateway, such as the Portal North Bridge project that proponents had expected would be accounted for in the fiscal 2018 budget (it wasn't). Now, they're hoping a sense of hometown pride hits Trump and compels him to find a way to get the project funded.

HERE WE GO: The full Senate Appropriations Committee will mark up its fiscal 2018 transportation spending bill today. Airports are anticipating that the legislation would push up the cap on the Passenger Facility Charge, but subcommittee Chairwoman Susan Collins (R-Maine) wouldn't confirm that to MT on Wednesday. "We haven't released the entire bill - we can't before the markup under the committee rules," Collins said. Still, when asked whether she would support increasing the cap, Collins said: "I believe that it has to be very carefully done. You certainly can't do it at every stage of the flight, for example, because that would really add up. I think it's important to remember that it's up to the individual airport and community - it's not a fee or tax that is assessed or collected by the federal government. But there certainly is a backlog in airport development."

IT'S THURSDAY: Thanks for tuning in to POLITICO's Morning Transportation, your daily tipsheet on all things trains, planes, automobiles and ports. Lauren and Steph are at the wheel, so please send along tips, feedback and lyrics to lgardner@politico.com or @Gardner_LM and sbeasley@politico.com or @Steph_Beasley.

Truckin' up to Buffalo/Been thinking you got to mellow slow/Takes time, you pick a place to go/Just keep truckin' on

GET LISTENING: Follow MT's [playlist](#) on Spotify. What better way to start your day than with tunes (picked by us and readers) that are all about flying, driving, commuting and sailing?

ATC PING PONG: Administration officials, including Deputy Secretary of Defense Patrick Shanahan, visited Capitol Hill Wednesday to address some lawmakers' concerns about the effects House Transportation Chairman [Bill Shuster's](#) FAA bill ([H.R. 2997 \(115\)](#)) would have on national security and DOD's use of airspace - and to reiterate the department's support. "We feel like we answered everybody's questions," [Jeff Denham](#) (R-Calif.) said, adding that they're "picking up votes." But GOP members agitating against the legislation have indicated that not everyone in DOD is happy about the bill's air traffic control overhaul. "We've got guys that are talking to members about it," Rep. [Todd Rokita](#) (R-Ind.) said. Rep. [Peter DeFazio](#) (D-Ore.) told MT he's seen a recent DOD document outlining concerns with the proposal, but wouldn't elaborate on what exactly they were.

ON SECOND THOUGHT: The Congressional Research Service issued a report suggesting parts of Shuster's air traffic control spin-off proposal could be unconstitutional. The report posits that it could be difficult for a court to determine if the new ATC organization created by the bill would be a government or non-government entity. And, if it is not a government entity, then allowing it to set and adjust user fees without federal oversight could be "improper delegation of legislative authority under the nondelegation doctrine," [Mary Lee writes](#). Shuster was quick to slam the CRS report for not being definitive in its assessment of whether or not his plan would be unconstitutional.

SHELL GAMES: The House Energy and Commerce Committee will consider a bill on driverless cars that, before Wednesday night, was just a "shell" awaiting final language. As [Tanya Snyder reported](#) for Pros, bipartisan language, even on thorny subjects like balancing the roles of federal and state governments and granting exemptions from federal motor vehicle safety standards, was close to a done deal in advance of Thursday's markup. Lo and behold, a substitute amendment [dropped](#) late last night. On introduction, the shell bill ([H.R. 3388 \(115\)](#)) contained only a non-controversial provision to require vehicle manufacturers to provide consumers with clear information on new cars' self-driving capabilities and limitations.

Us, too! Sen. [Gary Peters](#) (D-Mich.) said Wednesday that the Senate will release its bill imminently. "We are just about ready to move as well on the bill," Peters said. "I think there'll be an announcement coming out shortly. Very soon. Extremely soon."

**** A message from American Public Transportation Association:** Public transportation is a vital part of an integrated transportation network that drives our economy forward, creating 50,000 jobs for every \$1 billion invested. Without public transit, America simply can't move forward. And in order to improve our public transportation systems, states and localities need continued federal investment. Learn more at [APTA.com/InvestNow](#). **

OUT OF TIME: Commuter railroads hoping lawmakers might give them more breathing room on the 2018 positive train control deadline should think again, Senate Commerce Chairman [John Thune](#) said Wednesday. "I want to be clear - any railroad that fails to meet the revised

framework should not expect any further extension from this committee," he said during a nominations hearing featuring the Trump administration's pick to head FRA, Ron Batory. Remember that commuter railroad representatives met with congressional staff and American Public Transportation Association officials in June to discuss implementation issues.

Please hold: While Batory vowed to continue FRA's work to promote progress on PTC, he was more reticent on issues like long-distance Amtrak lines (for which Trump has proposed eliminating funding) and electronically controlled pneumatic braking systems for trains. But he did get personal on the issue of grade-crossing safety, describing an accident years ago where a train he was riding on collided with a school bus stalled on the tracks (thankfully, no one was killed or hurt). "After experiencing that, I have become a very strong proponent of good rail-highway crossing innovation, improvement and capitalizing on something that we always talk about within the industry ... and that being best engineering we can come up with at the time, continuous education - it can never stop," Batory said.

Coming soon: The Commerce Committee announced late Wednesday that it will mark up a number of bills and nominations Aug. 2, including the nominations of Batory and NTSB member Robert Sumwalt.

IT AIN'T OVER: DHS is advising airlines to continue complying with an U.S.-EU agreement to share airline passengers' names, despite a European court decision that called the legality of a similar agreement with Canada into question. The European Court of Justice issued a legal opinion Wednesday saying EU lawmakers should not continue with an agreement with Canada that information about travelers between the two countries be collected, shared and stored because it infringed on privacy rights. DHS is reviewing the court's opinion and assessing whether it will impact the U.S.-EU Passenger Name Record agreement, a DHS spokesman said.

What's it all mean? Former DHS Deputy General Counsel Jonathan Meyer told MT that it could be "problematic" if the EU adopted some of the court's suggestions. For example, the court took issue with Canada and EU agencies being allowed to store passenger data for up to five years, saying that was a "particularly long period of time." The court also recommended that travelers be notified whenever either country used their information or disclosed it to law enforcement. "Notifying the individual is problematic when law enforcement is conducting an investigation and does not want the subject or target to know," Meyer said. "The time limitation will be objectionable to some authorities because they like to use the data over time in their analyses."

SAFETY FIRST: The House Homeland Security Committee approved a slew of bills on Wednesday, including a measure (H.R. 3328 (115)) that would require TSA officials to take a closer look at who's working at Cuban airports and what safety measures are in place. The committee also approved legislation (H.R. 3359 (115)) that would establish a new agency within DHS dedicated to cybersecurity and infrastructure security. The new office would also include an emergency communications division.

BIN THERE, DONE THAT: As if taking off your shoes, measuring your liquids and separating your laptop weren't enough, travelers will soon have to start putting all electronics

larger than a cell phone in bins for screening. TSA announced Wednesday that the new procedure, already piloted at 10 airports, will spread to all U.S. airports "during the weeks and months ahead." That means putting tablets, e-readers and handheld game consoles in a bin with nothing on top of or beneath it, the way laptops are handled. PreCheck travelers will be exempt.

LOBBYING UPDATE: Uber hired two firms - Peck Madigan Jones and Chambers, Conlon and Hartwell - to lobby for the company on self-driving car issues and FAA reauthorization, Pro Technology's Li Zhou reports.

ARRIVALS AND DEPARTURES: Joe McAndrew, former aide to Sen. Brian Schatz on transportation and housing issues, has started as the transportation policy director for the Greater Washington Partnership, a new coalition of CEOs seeking to economically revitalize the Greater Washington region from Baltimore to Richmond. Kate Geldaker will step down as deputy director of congressional affairs at the National Telecommunications and Information Administration to join Alaska Airlines' government affairs office in D.C.

THE AUTOBAHN:

- "Top Metro Officials Tried to Stem Excessive Overtime, Months Before Fraud Investigation." WAMU.

- "New Ethics Chief Has Fought to Roll Back Restrictions." The New York Times.

- "Britain to ban sale of new diesel and gasoline cars by 2040." Los Angeles Times.

- "A different kind of car factory is opening up in Los Angeles." Bloomberg.

- "Tech's most dubious promises, from Bill Gates to Elon Musk." Wired.

THE COUNTDOWN: DOT appropriations run out in 65 days. The FAA reauthorization expires in 65 days. Highway and transit policy is up for renewal in 1,161 days.

**** A message from American Public Transportation Association:** Our nation's public transit systems do more than carry Americans to work-they're a critical part of an integrated transportation network that drives our economy forward. That's why states and localities have partnered with the federal government for more than 35 years to repair and expand services. But President Trump's budget would eliminate funding for vital public transportation projects-and put 800,000 jobs at risk, including more than 500,000 construction-related jobs. Communities can't improve public transportation alone. To protect our future, we need continued federal investment in public transportation. Congress: Fully fund the FAST Act, and include public transportation in any infrastructure bill. Visit APTA.com/InvestNow to learn more. **

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