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Highway and Transit Program Reauthorization Legislation in the 2nd Session, 108th Congress

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Summary

This report discusses significant legislative provisions in the two principal bills that are likely to be the subject of congressional discussion in the coming weeks and months to reauthorize federal highway, highway safety, and transit programs. These are the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA)(S. 1072)("Senate bill") passed by the Senate on February 12, 2004, and the not yet acted upon Transportation Equity Act: A Legacy for Users (TEA-LU)(H.R. 3550)("House bill").

At this juncture, as was the case a year ago, the congressional reauthorization debate is focused largely on money issues. Identified unmet national transportation needs and the large funding increases provided by TEA21 have resulted in an expectation within the highway community that new reauthorization legislation should also contain significantly higher funding levels. No ready source of new revenue is available, however, although the Senate has identified several fees and other revenue raising devices that can be made available to the trust fund.

Other than funding, the provisions of these bills that seem likely to engender the most controversy are their environmental provisions and the long-standing donor-donee state problem. The House bill and the Senate bill each has (or is likely to have) provisions designed to streamline the environmental review process required for highway and transit projects. Both bills try to resolve the tension between so-called donor and donee states, by seeking to increase funding and creating mechanisms to guarantee each state a higher rate of return on their proportional contribution to the highway trust fund (95% in both bills). Without significant new funding it is unlikely that this adjustment will be possible without taking future funds away from donee states, a politically unpopular alternative that could complicate final action on this legislation.

As now proposed, neither bill makes major structural changes to the core highway programs. Both bills, however, add new highway programs. This is especially the case in the House bill which creates, among other things, a multi-billion dollar program to construct projects of national/regional significance. One area in both bills where significant changes are suggested is in highway safety, through the creation of a new consolidated highway safety program.

This report does not contain extensive background information about the operation of the highway, highway safety, and transit programs. Those seeking this information should consult CRS Report RL31665, *Highway and Transit Program Reauthorization*, which also provides a discussion of the major issues under consideration as part of the reauthorization process.

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Division abbreviations: RSI = Resources, Science, and Industry Division.

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While Congress continues to consider reauthorization proposals, all existing programs continue to operate on the basis of a five-month extension (P.L. 108-88) that terminates on February 29, 2004. It was hoped at the time this extension was passed that this would give Congress sufficient time to complete action on a reauthorization bill early in the second session.[1] It is now apparent that this will not be the case. On February 11, 2004, the House passed a further four month extension of the program, H.R. 3783, the Surface Transportation Extension Act of 2004. Given the Senate's passage of its own reauthorization bill it is unclear whether the Senate will agree to further extension legislation, and if so, for how long a period.

From the public's perspective the ongoing surface transportation reauthorization debate is taking place against the backdrop of growing concern about congestion and sprawl in urbanized areas and increased concern about maintaining access to markets and the rest of the national transportation system in rural areas. The congressional debate focuses primarily on money. Given the large increase in funding made available by the last reauthorization bill, the Transportation Equity Act for the 21st Century,[2] better known as TEA21, there appears to be an expectation in some quarters that the reauthorization under discussion should also provide for a large increase in funding. At the time TEA21 was passed, a confluence of circumstances provided for a considerable boost to highway trust fund revenues. Unfortunately, for those seeking extensive new funding, no similar confluence of events appears likely during the next year.

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[1] For more information on extension legislation, see CRS Report RS21621, *Surface Transportation and Aviation Extension Legislation: A Historical Perspective*. by John Fischer and Robert Kirk.

[2] P.L.105-178 and P.L. 105-206. Federal highway law is codified in 23 U.S.C. Other transportation provisions included in TEA21, such as transit, are codified in 49 U.S.C.

As a result, much of the discussion in the coming months will turn on whether significant additional funds can be found for federal surface transportation programs, or whether funding for these programs will be limited to the modest growth forecast for the highway trust fund over the next 6 years. If new funds can be found, many of the provisions put forth in House and Senate legislation may be adopted in some form during the reauthorization process. Without significant new funding sources, however, a competition for the existing pot of funds will almost surely ensue amongst the various state, regional, and programmatic stakeholders. It is possible that this competition could stifle the reauthorization debate and lead to further extension of the TEA21 framework or, alternatively, to more modest reauthorization bills than the ones currently under consideration in the House and the Senate.

This report begins with a brief overview of the House and Senate bills followed by an examination of how the two bills deal with the problem of constrained budgetary resources and donor-donee state issues. It then examines the proposed programmatic changes for the Federal-Aid Highway programs. Environmental and Safety provisions and issues are then discussed. Finally, the bills' mass transit and intermodal provisions are examined.

Overview of Legislative Proposals

This report focuses on the two pieces of legislation under consideration in the House and the Senate that are likely to be the principal vehicles for the reauthorization debate, SAFETEA and TEA-LU. At the time of this writing, the Senate has completed action on its bill, S. 1072. In the House, much of the detail about H.R. 3550 remains unknown as major sections of the bill have been reserved for completion during committee markup that is now expected in early March 2004.

Prior to House and Senate consideration, the Bush Administration submitted a bill of its own indicating the Administration's reauthorization views and priorities. This bill was introduced by request in both the House and the Senate as S. 1072 and H.R. 2088, respectively, which are hereafter referred to as the Administration bill. It should be noted that the Senate bill carries the title Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA) originally proposed by the Administration bill. The Senate Committee on Environment and Public Works further chose to use S. 1072 as their markup vehicle and amended the bill by including their own provisions in the nature of a substitute. S. 1072 in its Senate passed form, however, is the Senate bill, and although it contains provisions proposed by the Administration, the bill itself is dramatically different from the introduced version of the bill.

In both the House and the Senate, multiple committees have a role in reauthorization. In the House, most of the bill is under the control of the Committee on Transportation and Infrastructure. The House Committee on Science contributes to the research title of the bill and the House Committee on Ways and Means has jurisdiction over the revenue title.

In the Senate, all titles of the bill were combined during floor action. The Senate Committee on Commerce, Science, and Transportation had previously marked up its own bill, S. 1978 (S.Rept. 108-215), which authorizes Motor Carrier Safety Administration and National Highway Traffic Safety Administration (NHTSA) programs under its jurisdiction. This bill, with a manager's amendment, became part of S. 1072 during floor consideration. The Senate Committee on Banking, Housing, and Urban Affairs, which has jurisdiction over Federal Transit Administration (FTA) programs, marked up its portion of the reauthorization bill, which was also attached to S.1072 as an amendment. Finally, the Senate Committee on Finance has jurisdiction over the revenue title of the bill. The Committee title, the Highway Reauthorization and Excise Tax Simplification Act of 2004 was marked up in committee on February 2, 2004. This title was also added by amendment to the now Senate passed version of S. 1072.

Much of the discussion about the reauthorization bills has centered on the total spending envisioned in each proposal. The Senate bill is believed to contain $318 billion in total spending authority for the period FY2004 - FY2009. The House bill provides a more generous $375 billion over the same period, although discussion about lowering this total to something near the Senate-passed version is apparently underway. Either bill is well above the Administration's stated position that total spending be set at $256 billion over the next six years.[3] A break-out of expected program authorizations by major activity is shown in **Table 1**. Neither the House nor the Senate proposal can be funded by current revenues projected for the programs' normal funding sources. As will be discussed later in this report, the Administration bill could be financed with current revenue sources.

The Bush Administration has gone on record against the level of spending proposed by S. 1072 and has indicated its intent to veto any bill of such size that Congress might generate.[4] A letter signed by the Secretary of the Treasury and the Secretary of Transportation on February 11, 2004, indicated that they would recommend a presidential veto of any bill that included new taxes, bonding, or unrelated provisions dealing with issues like Amtrak (which is included in the Senate bill). The Senate passed its bill by a vote of 76-21. Senate bill managers, therefore, believe that barring changing the Administration's mind on this issue, they could override a veto.[5]

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[3] The Administration bill as introduced allowed for $247 billion in total funding. The President's budget submission for FY2005 adjusts this figure upward to the $256 billion amount.

[4] The full text of the Administration's letter, indicating its objections to the bill, can be found at http://www.whitehouse.gov/omb/legislative/sap/108-2/s1072sap-s.pdf

[5] Rothman, Heather M. Senate Reducing Extension as House Works to Scale Back Transportation Bill. *Daily Report for Executives.* BNA Inc. Washington. February 25, 2004. p. A-34

Table 1. Authorizations for Surface Transportation Programs in Selected Reauthorization Legislation FY2004-FY2009

($ billions)

Bill Title	Administration Bill	House Bill	Senate Bill (estimate)
Highways	192.5	289.7	255.0
Highway Safety	3.4	4.2	4.4
Transit	45.8	69.2	56.5
Federal Motor Carrier Safety	2.8	3.2	3.4
Research	2.6	3.9	2.6
Total Authorization	256.0*	375.0*	318.0*

Source: Legislation as introduced and/or Committee and Administration documents

*As introduced the Administration proposed total funding of $247 billion. This total was raised to $247 billion as part of the Administration's FY2005 budget proposal.

* H.R. 3550 as introduced does not include funds for minimum guarantee, emergency relief, and other features in the highway title that constitute the difference between the $370 billion shown here and the announced total of $375 billion.

*The Senate Manager's announced total for the bill is $318 billion. The bill, however, contains funds in excess of this amount as reflected, in part, in the table above. Some of the numbers above were changed as part of the bill as passed by the Senate.

Highway and Transit Finance

Highway Trust Fund Background

The highway trust fund consists of two separate accounts — highway and transit — which are sometimes mistakenly referred to as separate trust funds. In practice, the highway account and the transit account are discussed as though they were separate entities, with the highway trust fund being synonymous with the highway account.

The highway trust fund is the oldest and largest of the transportation trust funds. The fund was created by a separate revenue title in the Federal-Aid Highway Act of 1956 (1956 Act) (P.L. 84-627). The 1956 Act provided funding for construction of the now virtually complete Dwight D. Eisenhower System of Interstate and Defense Highways. In addition, the 1956 Act provided some funding for other federal highway programs. Over the last 40 plus years, the highway trust fund and the federal programs it supports have been changed numerous times.[6] In almost every instance, Congress has chosen to expand the scope of the federal highway program.

[6] For a more detailed history of the trust fund see CRS Report RL30304, *The Federal Excise Tax on Gasoline and the Highway Trust Fund: A Short History*, by Louis Alan Talley.

The transit account was created by the Surface Transportation Assistance Act of 1982 (P.L. 97-424). The transit account gave transit providers a consistent federal funding source for capital spending on new and rehabilitated infrastructure and for other purposes.

The highway trust fund is financed by sales taxes on tires, trucks, buses, and trailers, as well as truck usage taxes, and approximately 90% of trust fund revenue comes from excise taxes on motor fuels.[7] The majority of the motor fuel revenue dedicated to the trust fund is derived from an 18.4 cents per gallon tax on gasoline (24.4 cents on diesel). The highway account receives an allocation equivalent to 15.44 cents of the tax and the transit account receives the revenue generated by 2.86 cents of the tax. The remaining 0.1 cents goes into the leaking underground storage tank (LUST) trust fund.

Trust Fund Budgetary Treatment

TEA21 changed the way the highway trust fund relates to the Federal Unified Budget in two ways: first by creating new budget categories and second by setting statutory limitations on obligations. The Act amended the Balanced Budget and Emergency Deficit Control Act of 1985 to create two new budget categories: highway and mass transit. The Act further amended the budget process by setting the limitation on obligations for each fiscal year from FY1999 to FY2003 in authorizing rather then appropriations legislation. In addition, TEA21 provided a mechanism, Revenue Aligned Budget Authority (RABA), to adjust these amounts in the highway account, but not the transit account, so as to correspond with increased or decreased receipts in highway generated revenues. RABA issues will be discussed in greater detail in the next section of this report. It should be pointed out, all of the above notwithstanding, that annual revenues and expenditures affecting the balances in the trust fund accounts remain part of the overall annual federal deficit calculation.

The net effect of the changes was to set a predetermined level of funding for core highway and transit programs, referred to in TEA21 as a discretionary spending guarantee. These categories are separated from the rest of the discretionary budget in a way that prevents the use of funds assigned to these categories for any other purpose. These so called “firewalls” were viewed, in the TEA21 context, as guaranteed and/or minimum levels of funding for highway and transit programs. Additional funds above the firewall level could be made available for highway and transit programs through the annual appropriations process, but for the most part this did not occur except in FY2003.

Coming into the reauthorization debate there are reports that some Members would like to revisit the special budget status of the trust fund. At the time of this writing, however, no specific objections to continuation of the current system have

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[7] For a discussion of federal transportation fuel taxes see: CRS Report RS20281, *Transportation Fuel Taxes and Legislative Issues*, by Bernard A. Gelb.

arisen. Both S. 1072 and H.R. 3550 would maintain the existing system. The only change in the bills is in the RABA computation.

Reforming Revenue Aligned Budget Authority (RABA).[8] When RABA was created it was done with the understanding that highway funds would be increased if revenues to the trust fund increased above expectations and reduced if the opposite occurred. In 1998 it was viewed as unlikely that revenue would decrease, since growth in trust fund revenues had increased continuously during the almost all of the 40-plus year life of the trust fund.

Between FY2000 and FY2002, RABA provided almost $9 billion in additional funding for designated highway programs. The RABA adjustment in the FY2003 budget, however, a negative $4.3 billion, surprised even those who expected a small decline in RABA as a result of the recession that began in 2001. The $4.3 billion negative RABA would have resulted in an actual year over year decline of $8.6 billion in federal highway assistance provided to the states. (The previous year's total had been dramatically increased by a positive RABA adjustment.)

This year-over-year drop in the program was more than Congress was willing to allow. As part of the FY2002 second emergency supplemental bill (P.L. 107-206), the RABA adjustment for FY2003 was eliminated. In fact, Congress eventually provided a full adjustment of spending by adding sufficient funds from the unexpended balance in the trust fund to fund the program at its authorized level.

The events of FY2003 created interest in amending the RABA mechanism during reauthorization to reduce the chance of very large annual swings in RABA adjustments. Both the House and Senate bills try to eliminate these swings. In both instances this is done by changing the way RABA is computed by the Office of Management and Budget. This is done by eliminating what has been a required "look ahead" computation that tried to predict the direction of the national economy. In addition the Senate bill suspends a RABA adjustment until FY2006. This is likely due to concerns about the level of unexpended balances in the trust fund, among other technical considerations. In addition, S. 1072 requires that no reduction under RABA be allowed so long as the cash balance in the highway account of the trust fund exceeds $6 billion. This again could be viewed as a way to mitigate against a possible repeat of what happened in FY2003.

Revenue Raising Proposals

Much of the debate about the need for new revenues focuses on the concept of unmet highway and transit system needs as detailed in a report authored by the FHWA and Federal Transit Administration (FTA).[9] The report indicates that the

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[8] For more information see CRS Report RS21164, *Highway Finance: RABA's Double-edged Sword*, by John W. Fischer.

[9] There is general acceptance of the idea that there are significant unmet surface transportation capital infrastructure needs. There are, however, numerous questions about their measurement. The FHWA and the Federal Transit Administration (FTA) needs studies

(continued...)

costs required to improve the surface transportation system far exceed the projected ability of federal, state, and local governments to pay for them.

Transportation organizations, while not advocating major structural changes in the federal highway and transit programs, are advocating an increase in funding comparable to that in TEA21 (which was 40% plus larger then its predecessor, ISTEA, P.L. 102-240). They do not, however, have a ready source of funds to accommodate this increase. Many, but not all, in the transportation community are reluctant to seek fuel tax increases at this time. The Bush Administration has made it clear for well over a year that it will oppose any increase in federal fuels taxes. A number of Members of Congress, including much of the House Republican leadership, is also on record against fuel tax increases. As a result, the transportation community has been seeking alternative sources of new revenues for the highway and transit program.

The discussion below addresses many of the proposed revenue sources that have been under discussion during the 108th Congress. At this juncture the Senate Committee on Finance has agreed to a proposal identifying several sources of additional funding for reauthorization purposes.[10] Supporting documents provided during Finance Committee markup on February 2, 2004, indicate that an additional $35 billion in revenues could be identified during the reauthorization period if committee provisions were to be adopted. As amended to S. 1072 during floor debate several of the provisions in the markup version were changed. No further discussion as to how these changes effect revenue estimates has been provided. In the discussion that follows, reference is made to the amounts estimated during committee markup. As of this writing, there has been no outside examination as to the accuracy of the revenue estimates assumed in the committee's documents. Also, several of the revenue sources identified do not provide "new" money to the Treasury and are instead redistributions between Treasury general funds and the trust funds. In the Senate proposal each of these redistributions is offset by other changes in tax law that are primarily not transportation related and are beyond the scope of this report.

The House Committee on Ways and Means has not yet detailed how, or if, it will seek additional revenues for reauthorization legislation. When its positions are known they will be added to the discussion.

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[9] (...continued)
of the last few years are viewed as much improved in this regard over the studies done a decade ago. Questions still arise as to how needs are determined, how the costs associated with these needs are derived, and how state "wants" are separated from actual state "needs." As a result, the issue of highway and transit system conditions and needs is complex and beyond the scope of this paper. Additional information can be found at the DOT website, [http://www.fhwa.dot.gov/pressroom/test020926.htm] and at the AASHTO website, [http://www.transportation.org/bottomline/]

[10] As discussed in U.S. Congress. Joint Committee on Taxation, *Description of the "Highway Reauthorization and Excise Tax Simplification Act of 2004" (JCX-5-04), January 29, 2004.*

Redirecting a Portion of the Gasohol Tax (2.5 cents) to the Trust Fund and Increasing Trust Fund Receipts by an Amount Equivalent to the Existing Gasohol Exemption (5.2 cents). As part of federal policy to promote the use of ethanol as a substitute for gasoline, fuel that is up to 10% ethanol (gasohol) has been exempt from a portion of the federal fuels tax, usually 5.2 cents per gallon. In addition, 2.5 cents of the tax levied on gasohol based fuels has been deposited into the U.S. Treasury's general funds. From the perspective of the transportation interest community, these factors are depriving the trust fund of income that it deserves. Gasohol users use the highway system and in this view, are not paying their fair share for its upkeep and improvement.

According to some estimates, transferring the 2.5 cents currently deposited in the general fund to the trust fund would net the fund $700 million per year. Crediting the trust fund with the equivalent of the 5.2 cent exemption, not currently collected in any form, would result in an additional $1.5 billion per year.[11] This $2.2 billion per year would obviously make a significant potential contribution to the highway program. In both instances, it should be pointed out that while there is a significant net increase to the trust fund there is a concomitant opposite effect on Treasury general funds.

The problem for those supporting changes in gasohol taxation is the unified budget. With the budget back in a deficit situation any action that will potentially increase the overall deficit will be greeted with a certain amount of caution and potential opposition. Diverting the 2.5 cents is a straightforward decision about the appropriate destination for these funds in the budget. Crediting the trust fund with funds equivalent to the 5.2 cent exemption is more problematic. The $1.5 billion would likely have to be derived from funds already deposited in the Treasury from non-transportation sources. Those who perceive that a redirection of an annual $1.5 billion might come at the expense of other government programs important to them can be expected to object to such a move.

The ethanol issue was a part of the 1st Session's as of yet unresolved debate about federal energy policy.[12] A part of that debate concerned the proposed "volumetric ethanol excise tax credit" (VEETC), which essentially would have taxed ethanol at the full transportation fuels tax rate and deposited these funds in the highway trust fund. Ethanol producers would be offered a tax credit equivalent to the increase in taxation from the general funds. The Senate Finance Committee adopted this provision in its February 2, 2004 markup, estimating that it would provide $14 billion for the trust fund during the six-year reauthorization period.

Paying Interest on Highway Account Unexpended Balances. All U.S. Treasury managed trust funds, with the exception of the highway trust fund, receive interest payments on their unexpended balances. One of the changes made

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[11] Rothman, Heather. New Bill Seeks to Adjust Method of How Revenues are Credited to Highway Trust Fund. *Daily Report for Executives.* BNA Inc. Washington. July 3, 2002. p A-4.

[12] For detailed information, see CRS Report RL30369, *Fuel Ethanol: Background and Public Policy Issues*, by Brent D. Yacobucci and Jasper Womach.

as a result of TEA21 was to stop paying interest on the unexpended balance in the highway trust fund. The rationale behind this decision was the creation of RABA, which is supposed to reduce growth in the unexpended balance by making funds more immediately available for highway projects.

For a number of reasons that are beyond the scope of this report, the unexpended balance in the highway trust fund continued to grow, albeit at a much slower rate, during most of the TEA21 reauthorization period. Interest payments could be source of additional funds for the trust fund. According to Congressional Budget Office (CBO) testimony in May 2002, interest payments to the fund for FY2004 alone have been expected to amount to $550 million (this assumes that the gasohol taxes described above have been redirected as discussed).[13] While interest rates would remain positive in the near term, it is doubtful that they would approach the predictions of 2002. An intervening drop in the trust fund's unexpended balance, combined with historically low interest rates on treasury bonds has lowered the expectations of those expecting large annual returns from this revenue raising proposal.

The whole issue of paying interest on trust funds is a controversial subject. Interest payments are essentially intergovernmental fund transfers. The federal funds needed to pay interest do not represent new revenues for the federal treasury. Proponents of paying interest on the highway trust fund believe it is only fair for the Treasury to pay for the use of money derived by special purpose revenues, in the same way a bank pays interest on savings accounts. Opponents of this practice, however, believe that such payments only raise the cost of government in general and that all federal revenues should be treated the same, regardless of how they are collected.

The Senate Finance Committee has adopted a provision that will allow for payment of interest on highway trust fund balances. This provision is expected to provide $2 billion over six years. It should be pointed out that most of these interest payments are expected to accrue in the early years of this period as balances in the trust fund are expected to decline if S. 1072's increased spending provisions are enacted.

Spending Down Trust Fund Balances. Related to the interest issue is the fact that both the highway account and the mass transit account continue to carry positive unexpended balances. Spending down these balances has been an issue in the past and was an important part of the TEA21 debate. It should be pointed out, however, that the unexpended balance is not a "surplus," as it is frequently and incorrectly referred to by some in the transportation community. Rather, a considerable portion of these funds are reserved to cover the fund's existing obligations.

Both the Senate Finance Committee and the Administration proposals rely on spending down the unexpended balance in the trust fund. The Senate Finance

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[13] U.S. Congressional Budget Office. *Status of the Highway Trust Fund.* CBO Testimony, by Kim P. Cawley. May 9, 2002.

Committee proposal expects to spend down the balance to an amount no lower than $6.5 billion in any year during the next reauthorization period. There is, however, a limit to how low the balance in the trust fund can go. The trust fund has a fiduciary protection measure know as the Byrd rule (for former Senator Harry Byrd of Virginia) that has been a feature of the highway finance system for most of the last four decades. In simple terms the Byrd rule prevents the further obligation of federal highway funds if the current and expected balances in the trust fund fall below a certain level. The Senate Finance proposal, in a potentially controversial move, changes the Byrd rule to allow the spending proposed in S. 1072 to occur at a rate that otherwise could have triggered the rule's spending restrictions.

Tax Fraud and Abuse. An issue of long standing is the concern that all fuel tax revenues are not being collected as required. Alternately there is a concern that illegal tax avoidance activities are reducing total revenue collections. A discussion about tax compliance has been a feature of each of the last several reauthorization bills, including ISTEA and TEA21. The resultant provisions in ISTEA and TEA21 focus on improving revenue collection activities and on identifying additional problems with revenue collections. Funding has been provided in the past to FHWA and Internal Revenue Service (IRS) efforts to improve collections and reduce fraud.

Hearings held in the 107th Congress by the Senate Committee on Finance identified continuing collection issues. As a result the Committee has concluded that improved collections could raise an additional $4 billion over the six-year life of the authorization and has included related provisions aimed at raising this amount of additional revenues.

During markup, the Senate Committee on Finance added a provision that redirects over $2.1 billion from the airport and airway trust fund to the highway trust fund. Of this amount 89% is directed into the highway account and the remaining 11% is directed into the mass transit account. According to the Committee, this is an amount that they believe corresponds to the use of aviation fuel, which is taxed at a lower rate, in surface transportation vehicles. This, in the Committee view, is an instance of tax avoidance and/or abuse that needs correction. During the amendment process this provision was modified. Instead of a fixed annual amount, the Secretary of the Treasury is tasked with identifying and estimating the amount of aviation fuel being used in surface transportation vehicles and crediting the highway and transit accounts appropriately. No estimate of the amount of revenues this will provide has been made at this time.

Ending Fuel Tax Exemptions. An issue not discussed in detail during the last year is the concept of ending fuel tax exemptions for a wide range of fuel users, such as; local governments, certain agricultural interests, and school bus operators. The Senate Finance Committee markup estimates that it will be able to increase trust fund revenues by $8 billion over the next six years by changing the manner in which exemptions have been collected or funded and by changing a number of other tax provisions. A major change proposed at markup appears to require all fuel users to either pay the federal fuels tax and seek a refund or to immediately document their exemption from payment. Under the provision, these groups remain exempt from taxation, but reporting as to what would have been paid in the form of fuel taxes is required where it was not before. All of the funds identified here are not new money.

Rather, they are transfers from Treasury general funds that are offset elsewhere in the bill by new revenue sources.

Additional Senate Finance Markup Provisions. During markup, the Senate Finance Committee considered a wide range of tax provisions. Some of these provisions have a relationship to transportation, e.g. redirecting the proceeds for the gas guzzler tax from Treasury general funds to the trust funds. The majority of the provisions in this portion of the Senate revenue title, however, especially those treated as offsets to increased highway spending, change federal excise tax laws in ways that are well outside the scope of this report.

Revenue and Other Forms of Bonding. After a year of somewhat public discussion the Senate Committee on Finance has decided not to include any bonding provisions in the revenue section of the bill. The American Association of State Highway and Transportation Officials (AASHTO) began consideration of a bonding mechanism by proposing the creation of a new $59.5 billion bond program as an alternative vehicle for financing surface transportation projects. Its plan would have created a organization to be know as the Transportation Finance Corporation (TFC) that would be established by Congress to issue bonds. The TFC would issue tax credit bonds for sale in the open market.

Senate Finance actively considered a proposal that would have created a bonding mechanism for transit funding during the 1st Session of the 108th Congress.[14] Under the proposal the 2.86 cents dedicated to the mass transit account would have been redirected to the highway account and tax credit or other bonds would have been issued to fund the transit program. This proposal was met with considerable criticism from the transit community. It was also met with a veto threat from the Bush Administration which viewed the issue of bonds as a "grave threat to the general fund and the government's ability to control spending."[15] Although Senate Finance dropped its proposal, the use of bonds continues to be discussed in the context of reauthorization and may reappear as an issue later in the congressional debate, and as will be discussed later in this report, bonding provisions were added to S. 1072 during the floor amendment process.

Increasing and/or Indexing the Federal Fuels Tax. The American Road and Transportation Builders Association (ARTBA) took the lead in actively promoting an increase in the federal fuels tax.[16] Its "two cents makes sense" proposal would raise the federal fuels tax two cents per year during the life of the next reauthorization. According to ARTBA raising the tax by 8 cents would raise an additional $ 17 billion for highways and transit. This, in ARTBA's view, would go a long way to meeting the unmet needs of the system.

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[14] Details of Senate Highway/Transit Revenue Plan Emerge. *Transportation Weekly*. Vol. 4, issue 26. May 13, 2003, p. 1.

[15] Bush Administration Announces Veto Threat of TEA-21 Successor. *Daily Report for Executives*. BNA Inc. No. 144. July 28, 2003. p. G-6.

[16] [http://www.artba.org/government/tea-21/tea_21.htm]

Depending on the source of the estimate, a one cent increase in the fuel tax will add between $1.5 billion and $1.8 billion to the trust fund on an annual basis. It has been argued that if Congress and the President are unwilling to raise the fuels tax they should at least consider indexing it in the future. Supporters of this idea believe that the trust fund should be indexed to the consumer price index (CPI) or some other measure of national economic activity to allow revenues to the trust fund to keep pace with inflation. Over the last decade indexing would likely have added a few cents to the fuel tax with a concomitant increase in revenues. This mechanism, however, may provide the greatest benefit during periods of high inflation, which has not been the case in recent years.

Although not specifically endorsing the ARTBA proposal, Chairman Don Young of the House Committee on Transportation and Infrastructure, as well as other Members of the Committee leadership, have endorsed an increase in the federal fuels tax.[17] This has mostly been proposed in the context of indexing. At first, discussion of this idea centered on retroactively indexing the fuels tax back to the last time it was raised in 1993. More recently the indexing under consideration has been prospective for the next six-year authorization period. In either case, it was hoped that the fuel tax increase would amount to about 8 cents.

Long Term Viability of the Trust Fund System. Many observers are concerned that the funding uncertainties created by the FY2003 RABA debate and increasing interest in identifying alternative power sources in the auto industry, e.g., fuel cells and hybrid power, should alert Congress and the transportation industry to the fact that its long-standing trust fund revenue sources should be reviewed. There is a growing recognition of this problem, but specific suggestions as to how the long term health of the trust fund could be ensured are few in number. Both H.R. 3550 and S. 1072 contain provisions that would create a commission, or in the case of S. 1072 commissions, to study this issue so that its recommendations might be acted upon during the next reauthorization cycle.

No New Funding

Much of the lobbying in preparation for reauthorization is, as shown above, predicated on the belief that some significant level of new funding can be identified for the highway, highway safety, and transit programs. Given the existing state of the economy and concerns about the costs associated with the war on terrorism, homeland security, and the costs of sustaining our effort in Iraq, such a conclusion, however, is far from foregone.

If none of the revenue raising proposals discussed above are ultimately adopted, income to the trust funds is still predicted to increase. According to one estimate the additional income available for the trust fund during the 6-year reauthorization could be between $10 billion and $17.6 billion. This increase, however, is modest by comparison with the program growth experience during TEA21. In addition, this increase is subject to revision and is closely related to the fate of the national

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[17] Wolfe, Kathryn A. *Young May Drop Bid to Hike Gas Tax to Get Highway Authorization Moving.* CQ Today. November 6, 2003.

economy during the expected 6-year reauthorization period.[18] This increase will not provide the funds that many highway program advocates view as essential to improving highway and transit infrastructure. This is especially true in the current environment with states facing their own budget crises.

Neither S. 1072 nor H.R. 3550 can survive in their current form without significant new funding. Among pending bills, only the Administration bill, or some derivative thereof, could be enacted and stay within the no new revenue test. The most significant potential problem that could result from a no new funding scenario is the likelihood of an enhanced donor/donee struggle that might very well spill over from the highway program into the transit program. There also would likely be enhanced competition between programmatically focused interest groups, e.g., highway safety vs. transit, etc. This competition for scarce resources could, in the extreme, divert attention from any of the many new programmatic initiatives under discussion and change the whole tenor of the reauthorization debate. **(CRS contact: John Fischer)**

Donor-Donee State Remedies

How closely a state's annual return, in the form of federal-aid highway funds, should match a state's highway user tax payments is a long-standing and on-going controversy, as are attempts to guarantee a minimum "return" on these payments.[19] Often referred to as the "donor-donee" state debate, the controversy pits "donor" states (states that receive less than a dollar in highway funds for each dollar the state's highway users pay to the highway account of the highway trust fund (HTF)) against the "donee" states (states that receive more than a dollar for each dollar their highway users pay to the highway account). TEA21 guaranteed a minimum 90.5% return from the highway account of the HTF on each state's estimated payments to the highway account (based on the latest fiscal year for which data are available, generally two fiscal years earlier). Both the House Transportation and Infrastructure Committee (T & I) and the Senate Environment and Public Works Committee (EPW) leadership have pledged to work toward a guaranteed 95% return. The House T& I bill, as introduced, includes language detailing how and under what conditions the minimum guarantee will be increased to 95%. The Senate bill would use an "equity bonus" mechanism to bring all states up to 95% by the last year of the authorization.[20]

While the House Minimum Guarantee (MG) program continues to be a work in progress, the Senate-passed bill settled on an Equity Bonus program. The main difficulty faced in both the House and Senate is that a bill that simply reduces the

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[18] [http://www.transportation.org/publications/HTMLJournal.nsf/ViewItems/]

[19] This section only examines the existing minimum guarantee program in brief, focusing on the donor-donee and minimum guarantee debate within the context of the House bill and the Senate bill. For a background and issue discussion of the donor-donee/minimum guarantee debate see CRS Report RL31735, *Federal-Aid Highway Program: "Donor-Donee" State Issues*, by Robert S. Kirk.

[20] See *Congressional Record*, v. 150, Feb 3, 2004: S508-509.

shares of donee states to increase the shares of donor states may have difficulty overcoming a filibuster in the Senate. To construct an MG mechanism that can overcome this obstacle, ISTEA and TEA21 both had provisions that could be seen as "hold harmless" provisions that maintained certain base shares for all states. This meant that part of the process of bringing donor state shares up to the MG percentage required increasing the overall federal highway program size (since donee state funding could not be reduced). This process has been very expensive. The MG program under TEA21 became the largest Federal-Aid Highway program in the final years of the TEA21 authorization cycle. The TEA21 MG framework will have to be altered unless significant new revenue sources can be found to support the HTF.

The TEA21 Minimum Guarantee Program

The TEA21 minimum guarantee had three components:

Guaranteed Base Share. TEA21 guaranteed each state a percentage share of the total program, defined as all the apportioned (formula) programs: Interstate Maintenance Program(IM), National Highway System Program (NHS), Surface Transportation Program (STP), Highway Bridge Replacement and Rehabilitation Program (HBRRP), Congestion Mitigation and Air Quality Program (CMAQ), Metropolitan Planning, Recreational Trails Program, Appalachian Development Highway System Program, and Minimum Guarantee, as well as High Priority Projects. The State base percentages are in a table set forth in title 23 U.S.C. 105 (b).

Minimum State Payment. Each state was guaranteed that as part of the minimum guarantee it would receive at least $1 million in Minimum Guarantee funds.

Guarantee of a 90.5% Return on Tax Payments. Each state was guaranteed at least a 90.5% share return on its share of tax contributions to the highway account of the HTF (based on the most recent year for which the data are available — generally from two fiscal years before). If the guaranteed base share was less than a 90.5% return to a state, then the share was adjusted upward until the 90.5% share was reached. Other states' base shares (but not their apportioned dollars) were squeezed down to make room for these share increases and to prevent the national share total from exceeding 100%. At this point each state had a new adjusted percentage share and no share was lower than 90.5%.

As mentioned earlier, to accomplish states' adjusted base shares, without taking money away from any of the states, required increasing the entire national MG program size to the point it was large enough to drop the share of the state that needed the largest national MG program to achieve its adjusted base share (under TEA21 the District of Columbia determined the national program size). This increase in the program size in turn determined the distribution amount of the MG funds needed to fulfill all aspects of the MG including the 90.5% minimum. This adjustment process required a great deal of money. During the last years of TEA21 the MG program was the largest Federal-Aid Highway program.

Minimum Guarantee Distribution. Each year, the first $2.8 billion of Minimum Guarantee funds were administered as Surface Transportation Program

(STP) funds, except that set-asides for Transportation Enhancements, Safety Construction, and certain population-based sub-state allocations did not benefit from this distribution. Any Minimum Guarantee funds above $2.8 million were distributed to the five core programs: STP, IM; HBRRP; NHS; CMAQ. The distributions to the states were based on the ratio of each core program's apportionment to the total apportionment of all five programs for each state.[21]

The House Minimum Guarantee Proposal

As introduced, TEA-LU would amend the existing MG program (23 U.S.C. 105), rather than replace it. The bill provisions would make changes in the guaranteed return, the list of programs under the MG program umbrella, and the distribution of MG funds.

Guaranteed Specified Return. TEA-LU would achieve a guaranteed 95% state return on payments to the HTF by guaranteeing 90.5% for FY2004, 91% for FY2005, 92% for FY2006, 93% for FY2007, 94% for FY2008, and 95% for FY2009. As was true under TEA21, the estimated state highway user tax payments to the HTF (other than the Mass Transit Account) are based on statistics from the latest fiscal year for which data are available (usually two fiscal years prior).

The phasing in of the 95% return over the life of the authorization is advantageous in the current authorization cycle but could pose problems for authorizers when they face the next reauthorization cycle. The big advantage of phasing in the increase is that it saves money while fulfilling the promise to raise the guaranteed return to 95%. On the other hand, it shifts the heaviest burden on the trust fund to the last year of the authorization, possibly constraining future authorization increases in FY2010 and beyond.

As introduced, TEA-LU includes a budgetary escape valve on the ramp-up to 95%, which suspends the provision if the annual obligation limitations listed in the bill are not fully funded. Should this happen in any fiscal year of the authorization, the guaranteed return would default back to 90.5%.

Highway Programs Under the MG Umbrella. TEA-LU maintains the base share guarantee that the apportioned funds for the listed highway funds be allocated among the states in a way to guarantee each state percentage of the total apportionment for the listed programs be equal to the percentages set forth in section 23 U.S.C. 105(b). In the past, state shares have been adjusted during the authorization debate for a variety of reasons, including garnering support for the bill.

TEA-LU, however, does make changes in the list of programs that are included under the MG umbrella. It adds a number of new and modified existing programs to the MG program group: the Coordinated Border Infrastructure; Infrastructure, Freight Intermodal Connectors; Safe Routes to School; Highway Safety Improvement; and High Risk Rural Road Safety Improvement. The bill moves the High Priority Projects Program (HPP) out from under the MG umbrella. In addition, a number of

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[21] 23 U.S.C. 105(c)(1).

new or greatly expanded programs are placed outside the MG: including Projects of National and Regional Significance; Dedicated Truck Lanes; Highways for Life; Pedestrian and Cyclist Equity; 511 Traveler Information; Congestion Pricing Pilot Program; Hydrogen Infrastructure Deployment, as well as the expanded National Corridor Infrastructure Improvement Program.

TEA-LU's categorization of programs under or not under the MG umbrella is controversial and is believed by some observers to create problems for the functioning of the MG. By placing a significant number of new and expanded programs outside the MG umbrella, the House bill would restrict the impact of the MG calculation of guaranteed apportionment shares to roughly 80% of the total program. Donor states are concerned that this situation would mean that they will have to successfully compete for earmarks in the allocated (non-MG programs) to achieve the 95% level relative to the all the highway programs. This arrangement has the advantage of keeping down the overall program costs. It also means, however, that when donor states eventually compare their dollar returns on dollar contributions to the HTF, many will still fall below 95%.

Another issue concerns earmarking. Because the MG sets the overall amount of funds that states get for the programs under the MG umbrella, any earmarking within this group of programs does not actually bring new money to the state. These earmarks merely allow Members of Congress to set project priorities. The core formula program totals for each state adjust for the impact of the designation. An earmark outside the MG group of programs will actually increase the amount of money going to the state. This makes shifting the HPP out of the MG group especially controversial because the $15 billion authorized would, through earmarking, significantly impact the state shares. The $17.6 billion Projects of National/Regional Significance Program could also impact state shares. With over $50 billion of the nearly $300 billion provided for Federal-Aid Highway programs outside the MG program, it is doubtful that donor states will favor TEA-LU's MG proposal unless some, if not most, of the non-MG programs are brought under the MG umbrella.

The concern over the large amount of program funding outside the MG umbrella may be premature. As mentioned earlier, TEA-LU is considered to be a work-in-progress and it is likely that the number of component programs under the MG will be increased. The initial versions of what became TEA21 did not place the HPP program under the MG umbrella but the enacted version did.

Minimum Guarantee Distribution. TEA-LU keeps the basic TEA21distribution paradigm, with one major exception: the bill raises the portion of the MG funds reserved for STP, under the "remaining distribution" provision, from $2.8 billion under TEA21 to $3.1 billion for FY2004, $3.35 billion for FY2005, $3.7 billion for FY2006, $4.0 billion for FY2007, $4.4 billion for FY2008, and $4.8 billion for FY2009. STP is the highway program with the broadest eligibility criteria. Its formula also is least dependent on total lane miles and most dependent on estimated tax payments to the highway account of the HTF. This also squeezes down the relative MG amounts going to the other core formula programs (IM, NHS, CMAQ, HBRR).

The Senate's Proposed Equity Bonus (EB) Program

The Senate has taken a different approach from the House. The Senate bill would replace the entire MG program with an "Equity Bonus" program (EB).[22] As is true with the House bill, the Senate bill would achieve a 95 % return on payments to the highway account of the HTF by FY2009, the final year of the authorization. It would eliminate the base state share percentage table used in TEA21 and in the House bill. Basically, the individual program formulas would determine the initial apportionment and the equity bonus would be added to these levels.

The Equity Bonus. The Senate bill directs the Secretary of Transportation to allocate to the states for each of the fiscal years 2004 through 2009 sufficient funds to ensure that each state receives at least a 95% return (to EB specified programs) on its estimated payments to the highway account of the HTF (subject to a number of rules and limitations discussed below). The Senate bill would keep nearly all the programs subject to MG under TEA21 (IM, NHS, STP, CMAQ, HBRR, Recreational Trails, Appalachian Development Highway System, and metropolitan planning) subject to the equity provision. In addition the Senate bill, as passed, also includes the new Highway Safety Improvement Program, the infrastructure performance and maintenance program, the safe routes to schools program, the rail-highway grade crossing program, as well as the EB program itself, under the EB program umbrella. As of Senate passage, the HPP program has not been included among the EB programs.[23]

The bill protects some states that would lose percent share under the EB's 95% share. States with a population density of less than 20 people per square mile, a population under one million, or a median household income under $35,000 would get either the 95% share or their average share of allocations under TEA21.

Equity Bonus Special Rules and Limitations. The EB is also subject to certain rules and limitations which taken together can be seen as placing a floor and a number of ceilings on the program.

Special Rules.

- All states are to be allocated enough funds to ensure that each state gets at least 110% of its TEA21 annual average.
- No negative adjustment may be made to any state's apportionment during the EB allocation.

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[22] The Equity Bonus provision was introduced as a modification to the EPW committee amendment in the nature of a substitute during initial floor consideration on February 3, 2004. See *Congressional Record*, Feb. 3, 2004: S506-09. See also *Transportation Weekly*, v. 5, Jan. 27, 2004: 1, 5-10, and *Washington Letter on Transportation*, v. 23, Jan. 26, 2004: 3-4.

[23] Historically, EPW has held its HPP list of projects out of its reported bill only to add it during conference negotiations.

- Not withstanding the limitations (see "Limitation on Adjustments" below) the amendment requires that no state in any year may drop below 90.5%.

Limitation on Adjustments. EB allocations are not to be given to states under certain conditions. If a state's total apportionments of all the designated EB programs exceeds the state's average TEA21 apportionments by the following percentages the state gets no bonus.

- FY2004 ceiling: 120% of state's TEA21 average
- FY2005 ceiling: 130% of state's TEA21 average
- FY2006 ceiling: 134% of state's TEA21 average
- FY2007 ceiling: 137% of state's TEA21 average
- FY2008 ceiling: 145% of state's TEA21 average
- FY2009 ceiling: 250% of state's TEA21 average

This is the main mechanism that phases in the 95% share goal by the final year of the authorization. It also holds down the cost of the EB program.

Equity Bonus Distribution. The distribution of the EB is to the core formula programs (IM, NHS, STP, CMAQ, HBRR, the Highway Safety Improvement Program and Metropolitan Planning). The bonus would be distributed to each program based on the relative share each state received for each program based on the program formulas. Metropolitan Planning, however, would receive no bonus. The initial $2.8 billion that under TEA21 went to STP is not in the EB proposal.

EPW committee staff produced a table that projected the state percentage share return on payments over the life of the bill.[24] The process of ramping the donor states up to 95% return appears to have a variable impact on states. For example, Michigan and Indiana achieve a 95% return in FY2004 while California and Texas remain at 90.5% until FY2009. As mentioned earlier some sparsely populated, low population, and low income states receive some protection under the proposal. However some donee states, New York and Pennsylvania, for example, face significant share reductions.

Statistical Caveats

A number of statistical issues have an impact on MG and EB proposals. The use of non-current data (i.e., revenue estimates from two years prior) may skew the state donor-donee ratios and lead to conclusions about donor or donee status that are questionable. Also state-by-state data on payments to the highway account of the HTF are estimates based on extrapolations from state tax data and may not always be accurate or up to date. The economic cycle can have an impact on revenues and the budgetary process that can lead to years when revenues and spending levels differ significantly from each other: this can have an impact on rate of return. Finally, the

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[24] This table was reproduced in modified form in *Transportation Weekly*, v. 5, Jan. 27, 2004: 10.

MG and EB proposals attempt to achieve a specified "share" return on two year old payments data. Distribution equity, however, is almost always judged by Table FE-221 in the annual FHWA *Highway Statistics Report*[25], which compares estimated dollars paid and apportionments and allocations received in the same year. This statistical disconnect means that even an effective MG or EB program will face criticism when the same year dollar for dollar return data are released. **(CRS contact: Bob Kirk)**

Highway Program Structural Changes

Apportioned Programs

Funds for all of the programs discussed here are apportioned to the states on an annual basis using formulas found in TEA21. As a result they are sometimes referred to as the "apportioned" programs. In some instances, apportioned programs are also referred to as formula programs.

Under TEA21 most highway funding is reserved for five major programs, which are usually referred to as the core programs. They, along with the minimum guarantee, accounted for the vast majority of highway spending: 86% of the FY2003 authorized amount. These programs are: the national highway system program (NHS); the interstate maintenance program (IM); the surface transportation program (STP); the bridge replacement and rehabilitation program; and the congestion mitigation and air quality improvement program (CMAQ). Each of these programs provides funding for specific segments of the federal-aid highway system and/or other statutorily enunciated activities, e.g., congestion relief projects using CMAQ funds. In addition to the "so-called" core programs there are a couple of additional and much smaller apportioned programs in TEA21, e.g.: metropolitan planning and the recreational trails program.

Because the minimum guarantee program is so large it could also be thought of as a core program; it provides additional apportioned funds for each of the five core programs. By the last year of TEA21, the minimum guarantee was, in fact, the largest highway program. In the FY2003 authorization, for example, it provided fully 20% of all funding.

New Apportioned Programs — House and Senate. Both the House and the Senate bills add one new program to the core, the Highway Safety Improvement Program (HSIP). Originally proposed by the Bush Administration, this program consolidates a number of existing safety programs into a new formula grant program. (HSIP is discussed in greater detail in the safety section of this report.) The Senate HSIP contains a new "safe routes to school" program. The House creates a much larger safe routes to school program as a separate formula program. (This program is discussed in greater detail in the pedestrian and bicycle mobility section of this report.)

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[25] [http://www.fhwa.dot.gov/policy/ohpi/hss/index.htm]

The House bill continues the existing minimum guarantee program, leaving that aspect of the core program structure unchanged. The Senate bill adopts a new "equity bonus" program that apparently will only provide funds to those states whose annual highway program funding falls below a certain level. (It also restricts funding above a certain level for all states). Details of this program were added to the Senate bill during initial floor consideration on February 3, 2004.

The House creates additional apportioned programs that would not necessarily be considered core programs. Among these is a new freight intermodal connectors program, with $3 billion in funding over the next six years. The Senate creates a similar program for freight transportation gateways, but does not fund it separately. Rather S. 1072 requires each state to use up to two percent of its NHS funding for intermodal freight terminals and other freight related activities. (These programs are discussed in more detail in the intermodal section of this report.)

New Apportioned Programs — Senate. As introduced the border planning, operations, technology, and capacity program in S. 1072 was an allocated program. As amended on the floor, however, it has become a formula program. This program is a successor to the TEA21 created National Corridor Planning and Development Program (part of the CORBOR program), now limited to specific border states, but with broadened project eligibility.

New Apportioned Programs — House. The House breaks up the existing national corridor planning and development and coordinated border infrastructure program (CORBOR) program (which is currently an allocated program) and creates a new formula coordinated border infrastructure program. This program provides funding for new and improved infrastructure within 20 miles of the Mexican and Canadian borders. The program receives almost $2 billion over the life of the legislation.

One other large formula program is created in H.R. 3550, a high risk rural road safety improvement program, which receives $1.5 billion over six years. This program is focused on fixing problems on rural roads with higher-than-average fatal accident rates.

A significant new apportioned program in the House bill is not a separate program. H.R. 3550 creates a new congestion relief program, but funds it from existing core program obligations. States are required to reserve a computed portion of their total apportionments for specified congestion relief activities.

Allocated (Discretionary) Programs

All remaining highway programs are subject to allocations that are based on criteria established in highway authorization and appropriation law. They also may be, and usually are, subject to congressional earmarking. In TEA21 all of the programs in this category were smaller than the core programs, although there were some programs with significant funding levels. The largest allocated program in TEA21 was for congressionally mandated high priority projects (earmarks) that were specifically designated in the Act. Other relatively large programs in the allocated category are the federal lands program, the aforementioned national corridor planning

and development and coordinated border infrastructure program (CORBOR), the interstate maintenance discretionary program, the bridge discretionary program, and the transportation and community and system pilot preservation program (TCSP).

New Allocated Programs — Senate. The Senate bill creates one large new allocated program, the infrastructure performance and maintenance program (IPMP). The IPMP, which was also part of the Administration bill, is for so-called "ready to go projects." Funding is limited to projects that improve operations and/or preserve or maintain existing highways or other infrastructure. The Secretary of Transportation is charged with developing an allocation program that provides for funding of projects that can be obligated within 180 days. The bill initially provided $12 billion for this program over the 6-year authorization period, with the money front-loaded, i.e., more funds are available in the first few years than in later years. As a result of floor amendments, however, IPMP is now funded at the $2 billion level, and only for FY2004. During floor consideration a new, but unfunded, multistate international corridor development program was added to the bill. This provision is focused on the movement of freight from ports through and to the interior.

New Allocated Programs — House. The House bill contains several large new allocated programs. In fact, much of the new money in the House bill is for the allocated programs. The largest new program is for projects of national or regional significance. This program receives $17.6 billion, or almost $3 billion annually. These funds are reserved for very large projects costing over $500 million or the equivalent of 75% of a state's annual total program apportionment. The criteria for selection are to be determined by the Secretary of Transportation and the Secretary is empowered to provide selected recipients with formal "letters of intent" in the same manner that new-start transit projects are funded. Considerable latitude is provided in this program, which can, for example, be used to fund multi-state projects that are difficult to arrange under the existing highway program.

The other large new allocated program is for congressional high priority projects (earmarks). H.R. 3550 provides just over $15 billion for these projects, which are widely distributed amongst Members. As introduced, the bill does not list projects. It is expected that a project list will be added during markup. The Senate does not have a comparable provision in its bill. Senate earmarks have been added, however, to previous reauthorization bills, normally at the conference stage. **(CRS contacts: John Fischer and Bob Kirk)**

Highway Program Formula Changes

Under TEA21, most of the funds distributed by the Federal-Aid Highway program were apportioned to the states based on apportionment formula factors set forth for the individual programs under Title 23 of the U.S. Code. The major existing formula programs are IM, NHS, STP, HBRR, CMAQ, Recreational Trails Program, and Metropolitan Planning.[26] Some program formulas include a

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[26] The MG program and the proposed Equity Bonus program also apportion funds by (continued...)

combination of weighted factors such as lane miles, vehicle miles traveled, and estimated tax payments to the highway account of the HTF. Other programs are primarily based on a single factor such as the relative state share of total cost to repair or replace deficient bridges (HBRR) or weighted non-attainment and maintenance area population under the Clean Air Act (CMAQ).

Existing Formula Program Changes

Neither the House nor Senate bills make major changes in the existing program formulas. The bills do, however, make some adjustments that are of note. The Senate makes adjustments to the underlying calculation under CMAQ of weighted non-attainment and maintenance area population, in part to add the Clean Air Act's new particulate matter standard into the underlying calculation. The Senate bill would require each state to set-aside 2% of its NHS apportionment to carry out the proposed Freight Transportation Gateways/Freight Intermodal Connections program. S. 1072 also provides a number of formula program set-asides for the New Strategic Highway Research Program, including set-asides of $15 million from IM, $19 million from the NHS, $13 million from the HBRR, $20 million from STP, and $5 million from CMAQ. The House bill (section 1205) includes a provision that requires that $3 billion of amounts authorized under NHS, IM, STP, and CMAQ be utilized to expand deployment of intelligent transportation systems. The House bill also creates a $20 million NHS set-aside for the construction of ferry boats and ferry terminal facilities in Alaska, New Jersey, and Washington.

New Programs' Formulas

House and Senate. The proposed Highway Safety Improvement Program (HSIP) formula distribution is weighted 25%, in the ratio of total federal lane miles in each state to the total lane miles of the federal-aid highways (FAHP) in all states; 40%, in the ratio of total FAHP vehicle miles traveled (VMT) in the state to total VMT on all FAHP highways; 35%, in the ratio of estimated tax payments from users in each state to the estimated tax payments by highway users in all states. The minimum payment is set at 0.5%.

Senate Bill. The Senate bill includes only one significant new formula program that does not appear in the House bill.

Border Planning, Operations, Technology, and Capacity Program. Funds are distributed on the basis of four factors, each of which receives equal weight. First is a ratio of the average annual weight of all cargo entering a border state (defined in the bill) from Canada or Mexico to the total of such cargo entering all border states. The second factor is a similarly computed ratio using the average trade value of cargo. The third factor is a ratio of the number of commercial vehicles entering a border state to the total number of such vehicles. And the final factor is the same computation using passenger vehicles.

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[26] (...continued)
formula. For a discussion of these programs see the "Donor-Donee Remedies" section.

House Bill. In addition to HSIP, discussed above, the House bill includes a number of new or changed programs whose funds are to be apportioned according to formula.

Coordinated Border Infrastructure Program. Under TEA21, this was an allocated (discretionary) program. Under TEA-LU, the funds are to be apportioned under the following formula: 20% in the ratio of incoming commercial truck crossings in a state to the total incoming commercial truck crossings in all border states; 30% in the ratio that incoming personal vehicle and bus crossings into a state to the total of incoming personal vehicle and bus crossings in all border states; 25% in the ratio of total weight of incoming cargo in a state to the total weight of incoming cargo in all border states; and 25% of the ratio that the total number of ports-of-entry in a state bears to the total number of ports-of-entry of all border states.

Freight Intermodal Connectors. Sums are to be distributed as follows: 33.3% in the ratio of the freight intermodal connectors in a state to the number of freight intermodal connectors in all states; 33.3% in the ratio that a state's estimated payments by the state's highway users to the highway account of the HTF bears to the total of such payments by all states; and 33.4% in the ratios apportioned for the NHS.

Motor Vehicle Congestion Relief. The portion of a state's apportionments from core programs to be obligated for congestion relief activities is determined by multiplying the amount apportioned to the state under IM, NHS, STP, and CMAQ by 10% and then by the percentage of the state's population residing in urbanized areas of the state with a population of over 200,000 people.

High Risk Rural Road Safety Improvement. Funds are to be apportioned as follows: 1/3 in the ratio that each state's public road lane mileage for rural minor collectors and rural local roads bears to the total for all states; 1/3 in the ratio that the population of non-urbanized areas in a state bears to the non-urbanized area population for all states; 1/3 in the ratio of the total vehicle miles traveled on public roads in each state bears to the total vehicle miles traveled on public roads in all states.

Safe Routes to School. Fund are to be apportioned among the states in the ratio that the total student enrollment in primary and middle schools in each state bears to the total student enrollment in primary and middle schools in all the states. No state is to receive an apportionment of less than $2 million. **(CRS contact: Bob Kirk)**

Highway Program Issues

Flexibility/Transferability

Flexibility as used in the context of the highway and transit programs refers to the ability of states to transfer funds apportioned in one program, e.g., STP, and use these monies to finance activities funded primarily by other federal programs, e.g., transit.[27] These conditions are also known as transferability provisions. Increased funding flexibility has been an important part of the last two highway reauthorizations, TEA21 and ISTEA.

There are often statutory limits on how much funding in any given program can be transferred to another activity. There are also additional rules preventing certain types of program transfers.

States and localities have usually sought the widest possible latitude for transferability. The authors of highway and transit legislation, however, have believed that a national purpose is served by requiring that each state spend at least a portion its federal funding for programs that they view as having national importance.

Both the House and Senate bills contain provisions that enhance transferability. The Senate bill includes several such provisions, two of which are particularly notable. First is a provision that allows highway funds to be transferred to other Federal agencies and allows them to administer projects in certain instances. A second provision allows the Secretary of Transportation to approve transfers of funds between states for the funding of one or more specific projects and, in addition, to allow states to transfer funds to FHWA for the same purpose.

The House bill also contains multiple instances that allow for greater transferability of funds between programs and jurisdictions. For example, transportation systems management and operations activities are considered eligible uses for STP, NHS, and CMAQ funds. In another instance, recreational trails funds can be used to provide what is normally the state or local matching requirement. Finally, an important aspect of the new proposed program to fund projects of national/regional significance is the ability of multiple states, local governments, and in some cases private firms to enter into agreements to pool funds from multiple sources. **(CRS contact: John Fischer and Bob Kirk)**

High Priority Projects (Earmarking)

In the view of some industry observers, the most controversial feature of TEA21 is found in Section 1601, which establishes the "high priority projects program." This section lists 1,850 specifically identified projects throughout the United States and provides a specific dollar authorization for each project. In total,

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[27] The highway programs have limitations on how funds can be transferred among programs. Further information on the TEA21 structure can be found on the DOT website at [http://www.fhwa.dot.gov/tea21/factsheets/transfer.htm].

almost $9.4 billion in authorizations are provided for this program. This compares with 538 congressionally designated projects in ISTEA that were provided with $6.2 billion in funding.

The growth in earmarking, however, is not isolated. Earmarking in transportation appropriations legislation has also grown dramatically in the last decade. In fact, certain programs, such as CORBOR and TCSP that were established as competitive discretionary funding programs in TEA21 are now entirely earmarked in appropriations legislation.

Earmarks have some significant effects on policy questions that arise as part of the reauthorization debate. Earmarking in TEA21 does affect the donor/donee computation. Within the context of a state's total program spending, for example, if the state receives a significant number of earmarks, the state will see its discretion over total program spending somewhat reduced.

At this juncture only H.R. 3550 specifically identifies funding for high priority projects. Approximately $15 billion is reserved for projects. The projects themselves, however, have not yet been identified. A project list is expected as part of a manager's amendment to be considered as part of committee markup of the bill. The Senate bill does not reserve funding for earmarks. There are, however, two set-asides for specific bridge projects in the bill that might be construed by some as earmarks. During TEA21 consideration the Senate bill was devoid of earmarks. Senate high priority projects were added in conference. **(CRS Contact: John Fischer and Bob Kirk)**

Innovative Financing Provisions

Created by highway legislation primarily in the 1990s, innovative financing mechanisms attempt to use the guarantee of future highway funds as a way to speed project completion and to leverage additional funds for highway projects. There are three mechanisms currently in use: grant anticipation revenue vehicles (GARVEEs); credit assistance available as a result of the Transportation Infrastructure Finance and Innovation Act (TIFIA); and state infrastructure banks (SIBs). Each of these mechanisms has specific strengths and weaknesses that have been studied and described by GAO, CBO, and FHWA.[28]

The House and Senate bills make changes in two of the federal innovative finance programs: TIFIA and the SIB program. Most of the changes may be viewed as perfecting changes in the programs but other changes are more significant.

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[28] U.S. GAO. *Transportation Infrastructure: Alternative Financing Mechanisms for Surface Transportation.* Testimony before the Committee on Finance and Committee on Environment and Public Works. September 25, 2002. Available online from the GAO website at [http://www.gao.gov/new.items/d021126t.pdf]. See also the FHWA website at [http://www.fhwa.dot.gov/innovativefinance/] and U.S. CBO, Innovative Financing of Highways: An Analysis of Proposals, January 1998 online at the CBO website at [ftp://ftp.cbo.gov/3xx/doc320/finhways.pdf].

TIFIA. This program provides three types of federal financial assistance for major transportation projects: secured loans, loan guarantees, and standby lines of credit. Both the House and Senate bills reduce the minimum project size threshold from $100 million to $50 million. The House bill also lowers the minimum project threshold for intelligent transportation system projects from $30 million to $15 million. The Senate bill would provide $130 million annually to support TIFIA's leveraging activities; the House bill would provide $150 million annually.

SIBs. Under the SIB program, federal funds are used to help capitalize state infrastructure revolving funds. Under TEA21, the program was limited to four states, Missouri, Rhode Island, California, and Florida. Both the House and Senate bills would allow any state to enter into an agreement with DOT to establish SIBs eligible to be capitalized with federal funds.

Public-Private Partnerships. It has long been contended that enhanced use of public-private partnerships in the creation of transportation infrastructure could result in reduced overall costs and more efficient project delivery. The concept has been discussed for some time and is already allowed in certain instances. S. 1072 contains a provision that tries to force the Secretary to broaden the use of these arrangements by creating a public-private partnerships pilot program. This program requires that the Secretary identify at least 10 public-private partnership projects as part of the already existing innovative finance program framework. To accomplish this, the bill provides funding of $10 million per year for the six year reauthorization period. **(CRS contacts: John Fischer and Bob Kirk)**

Toll Projects. As introduced, H.R. 3550 does not include specific reference to toll projects. S. 1072 contains two provisions dealing with toll projects. The first changes the eligibility provisions in the TEA21 created interstate system reconstruction and rehabilitation pilot program. The TEA21 provision required an analysis that found tolls to be the only practical way to pay for a reconstruction project. The SAFETEA substitute requires that the analysis show that using tolls would be "the most efficient, economical, or expeditious way to advance the project."

The second provision is the Senate's inclusion of the Fast and Sensible Toll (FAST) Lanes Program. Although it uses the same name, it varies significantly in detail from stand-alone legislation that had been introduced earlier in the 108th Congress.[29] The program would allow the use of tolls to create new high occupancy lanes on existing interstate highways in urbanized areas. These lanes, also known as HOT lanes (high occupancy toll), are viewed as a tool useful for potentially reducing urban congestion. The tolls collected could be used to pay for the debt service incurred by their construction and for certain other purposes. S. 1072 provides $11 million per year for this program.

Bonding Proposals

The Senate bill, as passed, includes two bonding provisions. One amends the Internal Revenue Code of 1986 to allow the issuing of tax-exempt private activity

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[29] H.R. 1767 and S. 1384.

bonds to finance highway projects and rail-truck transfer facilities. Any surface transportation project that receives assistance under any Title 23 program would qualify, as would any international tunnel or bridge that likewise receives federal assistance under Title 23. Any truck-train transfer facility project would also qualify. A $15 billion limit is placed on the aggregate face amount of the bonds that can be issued. The bill includes spending offsets for federal revenue losses under the provision. The second bonding provision would establish a Build America corporation that would be able to issue Build America bonds to support eligible highway, mass transit, or congestion relief projects. Funding, however, is not provided and there are no provisions amending the U.S. Tax Code to provide for any special tax treatment of Build America bonds. **(CRS contacts: John Fischer and Bob Kirk)**

Transportation Enhancements (TE) Program

Under the House and Senate bills, the Transportation Enhancements program would be similar to the program under TEA21. Currently, 10% of the funds apportioned under the Surface Transportation Program (STP) must be allocated to transportation enhancement activities, e.g. bike paths, landscaping and scenic beautification, and historic preservation. Because STP funding is set to rise under both bills, the 10% set-aside for TE activities ensures that additional funding will become available for enhancement projects.

The Senate bill contains one revision to the definition of TE activities. Under acquisition of scenic easements and scenic or historic sites, historic battlefields would be included. The House bill does not propose a revision of TE activities. Neither bill contains any other modifications to the TE program.

Table 2. Proposed Funding: Transportation Enhancements Program, FY2004-2009

(millions)

	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	Total FY2004-09
H.R. 3550	629	695	746	794	815	845	4,524
S. 1072	688	812	842	844	886	899	4,971

Note: Figures for both the House and Senate bills were generated by assuming that the existing 10% set-aside for transportation enhancements will be continued.

Transportation and Community and System Preservation (TCSP) Program

The TCSP program, established under TEA21, was designed to assist in planning, developing, and implementing strategies to integrate transportation and community and system preservation plans and practices. TCSP funding was authorized for projects that aimed to improve the efficiency of the transportation system; reduce environmental impacts of transportation; reduce the need for costly future public infrastructure investments; ensure efficient access to jobs, services and

centers of trade; and examine development patterns and identify strategies to encourage compatible private sector development patterns.

Under TEA21, TCSP spending was authorized at $20 million for FY1999 and $25 million per year for FY2000 through FY2003. As envisioned in TEA21, state and local governments, metropolitan planning organizations (MPOs), and tribal governments would be eligible to apply for competitive TCSP grants. Competitive grants were awarded in FY1999. For FY2000 to FY2003, TCSP projects were earmarked in the annual transportation appropriations bills. TCSP funding amounted to $13.5 million in FY1999, $31.1 million in FY2000, $46.9 million in FY2001, $273 million in FY2002, and $89.5 million in FY2003.

Sec. 1113 of H.R. 3550 would provide a six-year total funding authorization of $250 million for the TCSP program. The House bill proposes no other changes to the program.

Sec. 1814 of S. 1072 would provide $50 million per year, or a six-year funding authorization of $300 million for the program. The Senate bill would codify the TCSP program in 23 U.S.C. S. 1072 also amends 23 U.S.C. 133(b) by allowing states to obligate funds apportioned under the STP for TCSP activities.

Table 3. Proposed Funding: Transportation and Community and System Preservation (TCSP) Program, FY2004-2009

(millions)

	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009
H.R. 3550	30	35	40	45	50	50
S. 1072	50	50	50	50	50	50

Pedestrian and Bicycle Mobility

The House and Senate bills continue to provide a significant level of funding for bicycle and pedestrian programs that encourage a greater number of non-motorized trips, and pedestrian and cyclist safety, health, and education.

The major federal program that has supported pedestrian and bicycle mobility since the passage of ISTEA is the Transportation Enhancements (TE) program (23 USC §133(b)(8)), which is unchanged with respect to provisions for bicyclists and pedestrians in both the House and Senate bills. That program permits states to allocate TE funds for (1) provision of facilities for pedestrians and bicycles, (2) provision of safety and educational activities for pedestrians and bicyclists, and (3) preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).[30] Between FY1992 and FY2002, 54% of TE funds were programmed for these three activities. Provision of pedestrian and bicycle facilities accounted for 44.6% of programmed TE activities through

[30] There are 12 enhancement activities in all.

FY2002.[31] A number of other programs within TEA21 also provide for the construction of bicycle and pedestrian facilities associated with road and transit projects.

Safe Routes to School Program. Both the House and Senate versions of the surface transportation bills contain a Safe Routes to School Program (H.R. 3550, Sec. 1118(b) and S. 1072, Sec. 1405), which would require the Secretary of Transportation to establish and carry out a program to enable and encourage children to walk and bicycle to school; to make bicycling and walking a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and to facilitate the planning, development, and implementation of projects and activities.

In H.R. 3550, the stand alone Safe Routes to School Program would be funded at $250 million per fiscal year. Funding for each state would be based on the ratio of total student enrollment in primary and middle schools in each state relative to the total student enrollment in primary and middle schools in all the states. Each state would receive a minimum apportionment of no less than $2 million per fiscal year and the Secretary is directed to set aside not more than 2% for the administrative expenses of the Secretary in carrying out the program. Each State's apportionment would be administered by the State's department of transportation. In H.R. 3550, the federal share of the cost of projects and activities under the Safe Routes to School Program is 100%. The Senate bill provides a federal share of 90%. In both bills, funds would remain available until expended. In H.R. 3550, funds would not be transferable.

S. 1072 provides $70 million per fiscal year for the program, with funding apportioned to the states in accordance with the formula provided in Sec.104(b)(5).[32] That formula is identical to the current formula for apportioning Surface Transportation Program funds (23 U.S.C. §104(b)(3)). Each state would receive a minimum apportionment of one-half of 1% of the program funds.

In H.R. 3550, agencies eligible for funding under this program include state, local, and regional agencies, including nonprofit agencies, that demonstrate an ability to meet the requirements of the program. S. 1072 is similar, but does not specifically mention nonprofit agencies. Funds apportioned under the program may be used for planning, design, and construction of infrastructure-related projects that will substantially improve the ability of students to walk and bike to school. In H.R. 3550, projects include sidewalk improvements, traffic calming and speed reduction improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities,

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[31] National Transportation Enhancements Clearinghouse. *Transportation Enhancements: Summary of Nationwide Spending as of FY2002*. May 2003. p. 18.

[32] Subsection 1401(b) of S. 1072 amends Section 104(b) of Title 23 to include a new paragraph 5, which contains the formula for apportioning Highway Safety Improvement Program Funds.

and traffic diversion improvements in the vicinity of schools.[33] Additionally, S. 1072 includes pedestrian and bicycle crossing improvements, secure bicycle parking facilities, traffic signal improvements, and pedestrian-railroad grade crossing improvements. However, it does not include traffic diversion improvements in the vicinity of schools.

Funds allocated to states under this program may also be used for noninfrastructure-related (or behavioral) activities to encourage walking and bicycling to school. In H.R. 3550, activities include public awareness campaigns and outreach to press and community leaders, traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety, health, and environment, and funding for training, volunteers, and coordinators of safe routes to school programs. S. 1072 does not include funding for training, volunteers, and coordinators for safe routes to school programs. In the House version, noninfrastructure-related spending would amount to not less than 10% and not more than 30% of the amount apportioned to a state for the program. S. 1072 provides that not less than 10% shall be used for behavioral activities. In the House bill, each state receiving an apportionment under this program would be required to use a sufficient amount of the apportionment to fund a full-time position of coordinator of the state's safe route to school program. The Senate bill has no similar provision.

In H.R. 3550, but *not* in S. 1072, the Secretary is required to make grants to a national nonprofit organization engaged in promoting safe routes to schools to operate a national safe routes to school clearinghouse; to develop information and educational programs on safe routes to school; and to provide technical assistance and disseminate techniques and strategies used for successful safe routes to school programs. Funding for the clearinghouse would come from the Secretary's 2% administrative expenses set aside. Section 1118(b) of H.R. 1072 also establishes a task force to study and develop a strategy for advancing safe routes to school programs nationwide. The results of the study are to be transmitted to Congress not later than March 30, 2005.

In addition to the Safe Routes to School Program, H.R. 3550 introduces two other new (as yet undefined) programs: the Transportation and Active Living Program and the Nonmotorized Transportation Pilot Program. **(CRS contact: Glennon Harrison)**

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[33] The definition of "in the vicinity of schools" means the area within bicycling or walking distance of the school (approximately 2 miles) (Section 1118(b)(10)(b)(A)).

Table 4. Proposed Funding for the Safe Routes to School Program, FY2004-2009

(millions)

	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	Total FY2004-09
H.R. 3550	250	250	250	250	250	250	1,500
S. 1072	70	70	70	70	70	70	420

Recreational Trails Program (RTP)

TEA21 authorized and expanded the RTP as a state-administered, federal-aid grant program to help states develop and maintain recreational trails for motorized and non-motorized trail uses. The RTP replaced the National Recreational Trails Funding Program (also known as the Symms Act), which was first authorized in ISTEA and amended by the National Highway System Designation Act of 1995. The RTP provides funds for all types of recreational trail use, including hiking, running, bicycling, equestrian use, wheelchair use, snowmobiling, four wheel driving, off-road motorcycling, all-terrain riding, and other off-road vehicle use.

Funding/Formula. In §1101(a)(7), TEA21 authorized $270 million in contract authority for the RTP for FY1998-2003. Funds are allocated to the states by formula: 50% equally among all eligible states and 50% in proportion to the amount of off-road recreational fuel use. The RTP is subject to the same annual obligation limitation as other federal-aid highway programs. S. 1072 would fund the program at $60 million per year through FY2009 ($360 million total for 6 years). H.R. 3550 would increase funding to a total of $700 million for FY2004-2009.

Both H.R. 3550 and S. 1072 would amend the program to change the federal share for RTP projects from a strict 80% to the sliding scale share used in some other federal-aid highway programs.

S. 1072 would amend current law to *require* states to spend at least 10% of RTP funds for grants, cooperative agreements, or contracts with qualified youth conservation or service corps to perform recreational trail activities. H.R. 3550 would *encourage* the use of youth conservation or service corps in the construction and maintenance of recreational trails.

Eligibility. S. 1072 would amend the existing category of permissible uses[34] for RTP funding to expand use of educational funds for non-law enforcement trail safety, trail use patrols, and trail-related training. Both S. 1072 and H.R. 3550 would amend current law to permit trail assessment for accessibility and maintenance.

Exemption. Typically, states require RTP sponsors to complete environmental compliance documentation before applying for RTP funds. Under current law, the costs incurred to obtain documentation are not eligible for credit. Both S. 1072 and

[34] 23 U.S.C. §206(d)(2)

H.R. 3550 would permit pre-approval planning and environmental compliance costs to be credited toward the non-federal share for RTP projects, limited to costs incurred less than 18 months prior to project approval.

S. 1072 would exempt RTP projects from several requirements more appropriate for large highway projects. H.R. 3550 does not propose this change. **(CRS Contact: Sandra L. Johnson)**

Congestion Mitigation and Air Quality Improvement Program

The primary purpose of the Congestion Mitigation and Air Quality Improvement Program (CMAQ) is to reduce emissions from highway travel, as a means to assist states in complying with the National Ambient Air Quality Standards (NAAQS) for carbon monoxide, ozone, and particulate matter. The program is based on the fundamental concept that lowering the number of miles traveled by motor vehicles, and reducing congestion to make vehicles operate more efficiently, can reduce emissions and improve overall air quality.

Under current law, states with areas that are in nonattainment with the NAAQS, and those that must maintain them, receive CMAQ funds according to a formula based on the severity of air pollution in those areas and the population residing in them. States that do not have any nonattainment or maintenance areas each receive 0.5% of the total annual CMAQ apportionment. Categories of project eligibility include: (1) mass transit; (2) traffic flow improvements; (3) rideshare programs; (4) traffic demand management programs; (5) bicycle and pedestrian projects; (6) public education; (7) vehicle inspection and maintenance programs; or (8) conversion of vehicles to burn alternative fuels. According to the Federal Highway Administration (FHWA), more funding has been obligated for conventional mass transit projects than for any other activity, approximately 44% of total CMAQ funds since FY1992.

After more than a decade of implementation, the difficulty in quantifying the overall emissions benefits of CMAQ projects has caused some to question whether the program has improved air quality significantly enough to help states comply with the NAAQS. Due to the uncertainty of the program's benefits, some advocate that its focus should be shifted away from air quality to reducing traffic congestion in general. Others argue that areas on the verge of attainment may benefit from the continued use of CMAQ funds for air quality projects, even if the emission reductions are relatively small. They also argue that more areas will be in need of emission reductions in order to comply with stricter federal standards for ozone and fine particulates, scheduled for implementation in 2004, and that air quality benefits from CMAQ projects, no matter how small, would be helpful.

Neither H.R. 3550 as introduced, nor S. 1072 as passed, would shift the CMAQ program's main focus away from reducing emissions from motor vehicles. Rather, both bills would retain the program's basic structure and increase its funding overall. However, the House bill would require each state to redirect a relatively small portion of its CMAQ funds to general congestion relief activities that would not require an evaluation of air quality benefits as a condition of approval. The bill also would require each state to redirect a portion of its funds for the National Highway

System, Surface Transportation Program, and Interstate Maintenance to general congestion relief activities.

As mentioned earlier in this report, the amount that would be redirected from each of these four programs would be determined by a statutory formula based on 10% of a state's apportionment for each program, multiplied by the percentage of a state's population residing in urbanized areas with a population in excess of 200,000. The total amount of funding redirected from each program would likely be less than 10%, as a state's entire population would have to reside in urbanized areas of this size in order for the full 10% to be diverted.

Environmental organizations have expressed concern about the House proposal, arguing that a portion of CMAQ funds could be diverted away from states with serious air quality needs to those that have relatively good air quality. Proponents of the House proposal counter that the questionable impact of CMAQ projects on improving overall air quality warrants freeing up some of these funds for reducing traffic congestion based on transportation needs, rather than air quality considerations.

Prior to the redirection of funds, the House bill would authorize a total of $11.0 billion in guaranteed funding for CMAQ projects from FY2004 through FY2009. The Senate bill would authorize about $13.4 billion over this same time frame and would not divert any CMAQ funds to general congestion relief activities. Both amounts are significantly higher than the Administration's proposal of $8.9 billion and the previous authorization of $8.1 billion. However, assessing the adequacy of the proposed funding levels is difficult because of the lack of quantitative data on the overall emissions benefits of CMAQ projects and the current uncertainty of the extent to which states will need to reduce emissions from various sources in order to attain the stricter federal air quality standards for ozone and fine particulates.

In addition to authorizing funding, each bill would expand project eligibility, although in differing ways. The House bill would clarify CMAQ eligibility for certain types of projects that would improve traffic flow as a means to reduce congestion and thereby lower emissions. Specifically, the House bill would allow the use of CMAQ funds for projects that "improve transportation systems management and operations." There has been some confusion over the availability of CMAQ funds for these types of projects, and the House bill would specify their eligibility in federal statute. The bill also would require states to dedicate a portion of their CMAQ funds to support the deployment of intelligent transportation systems (ITS). While such projects are already eligible for funding, states are not required to set aside funding for them under current law.

Unlike the House bill, the Senate bill would expand eligibility to allow the use of CMAQ funds for the purchase of alternative fuels, as defined in the Energy Policy Act of 1992, as well as the purchase of biodiesel. Similar proposals have been introduced in stand-alone legislation in the 108th, 107th, and 106th Congresses. The House bill does not include such provisions. Proponents of the Senate proposal argue that making CMAQ funds available for the purchase of alternative fuels would provide additional incentive for the use of cleaner burning fuels and thereby help to improve air quality. Others counter that the proposed change in eligibility would, in

effect, be a subsidy for the alternative fuel industry and that the air quality advantages of these fuels will likely diminish as stricter diesel fuel standards are phased-in beginning in 2006.

The Senate bill also would make CMAQ funds available for two other new purposes, one related to highway construction in general and one specific to the purchase of certain types of equipment. First, states would be allowed to use CMAQ funds in order to ensure the deployment of strategies that would reduce emissions from fleets of vehicles that are used in highway construction projects in nonattainment and maintenance areas. The bill would require states to ensure that such strategies are in place and that they are consistent with applicable guidance. The purpose of these strategies would be to help control emissions that occur during the construction phase, primarily from the operation of heavy-duty vehicles, whereas the current focus has been on controlling emissions resulting from highway travel after the road is built. Second, the Senate bill also would expand eligibility to include projects or programs that involve "the purchase of integrated, interoperable emergency communications equipment." However, it is unclear how CMAQ funds could be approved for these types of projects, as the approval of funding is contingent upon whether a project has the potential to reduce emissions and thereby assist a state in attaining or maintaining a federal air quality standard.

Unlike the House bill, the Senate bill also would amend the statutory funding formula for determining how CMAQ funds are distributed among the states. The formula would be revised to include factors for new nonattainment areas that do not meet the stricter federal air quality standards for ozone and fine particulates. The structure of the current formula is based on classifications of nonattainment under the previous ozone standard, and does not include any funding factors for either fine or coarse particulates. Because the classification system for the designation of new ozone nonattainment areas is not yet determined and because there currently is not a funding factor for particulate matter nonattainment areas, states with new nonattainment areas designated under the stricter standards for these pollutants would not receive a greater share of CMAQ funds without the proposed revisions to the statutory formula.

In response to continuing questions about the air quality benefits of CMAQ projects, the Senate bill would require further study of the program's effectiveness. The Secretary of Transportation would be required to consult with the Administrator of the Environmental Protection Agency to evaluate a representative sample of CMAQ projects, and determine their impact on emissions and congestion levels. The purpose of the study would be to assist states and metropolitan planning organizations in selecting the most effective types of projects in the future. The House bill does not include similar provisions.[35] **(CRS Contact: David Bearden)**

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[35] For additional information see CRS Report RL32057, *Highway and Transit Program Reauthorization: Environmental Protection Issues and Legislation.* by David Bearden.

Environmental Streamlining

Before final design, property acquisition, or construction on a highway or transit project can proceed, the FHWA must comply with certain environmental review requirements, including those of the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.). NEPA requires all federal agencies to consider the environmental impacts of proposed federal actions. To ensure that environmental impacts are considered before final decisions are made, NEPA requires FHWA to prepare an environmental impact statement (EIS) for any federally funded action that *significantly* affects the quality of the human environment. Projects for which it is not initially clear whether impacts will be significant require the preparation of an environmental assessment (EA). If, it is determined, at any time during the assessment, that a project's impacts will be significant, an EIS must be prepared. Projects that do not individually or cumulatively have a significant social, economic, or environmental effect, and which FHWA has determined from past experience have no significant impact, are processed as categorical exclusions.

In addition to meeting NEPA requirements, any given transportation project may require compliance with a wide variety of legal requirements, enforceable by multiple agencies. For example, impacts of a highway project may trigger requirements under the Endangered Species Act of 1973 (16 U.S.C. 1536), the National Historic Preservation Act (16 U.S.C. 470), or the Clean Water Act (33 U.S.C. 1251). FHWA regulations require that compliance with all applicable environmental laws, executive orders, and other legal requirements be documented within the appropriate NEPA documentation (a concept referred to as the "NEPA umbrella"). (For more detailed information about the NEPA process, see CRS report RL32024, *Background on NEPA Implementation for Highway Projects: Streamlining the Process*.)

Some Members of Congress have expressed concerns that the interagency coordination of the environmental review process for large, complex FHWA projects can be inefficient, leading to delays in completion of those projects. To address this concern, "Environmental Streamlining" provisions were included in TEA-21. The streamlining provisions required DOT to implement a "coordinated environmental review process" to encourage full and early participation of all agencies required to participate in environmental reviews for certain highway project.

Since the passage of TEA-21, numerous administrative activities have been undertaken to facilitate streamlining. However, regulations to implement the streamlining provisions of TEA-21 have not been promulgated. As a result, some Members of Congress have expressed the need for further legislation to expedite the environmental review process required of highway construction and transit projects. In response to that need, SAFETEA (as passed by the Senate) would repeal TEA-21's streamlining provisions and establish a new "transportation project development process" that includes the following elements:

- A statutory designation of DOT as the lead federal agency for the environmental review process.
- A statutory delineation of the roles and responsibilities of the lead agency and cooperating agencies.

- A requirement to establish a "coordination plan" to coordinate agency and public participation and to develop a schedule for completion of the environmental review process.
- Provisions for the collaborative development of the project's statement of purpose and need and project alternatives as required under NEPA or any other applicable statute.
- A requirement to follow specified dispute resolution procedures in the event a cooperating agency identifies "major issues of concern" regarding the potential environmental or socioeconomic impacts of a project.

Further, SAFETEA would authorize states to assume responsibility for determining whether certain designated activities may be included within the class of actions currently identified in FHWA regulations as categorical exclusions. The criteria for making such a determination would be established by the Secretary and would apply only to projects designated by the Secretary. Such authority would be determined through a mutual agreement between the state and the Secretary and delineated in a memorandum of understanding. SAFETEA also proposes the establishment of a "surface transportation project delivery pilot program" that would delegate certain additional federal environmental review responsibilities to no more than five states, including Oklahoma. Responsibility could be assumed for environmental reviews required under NEPA, or any federal law, for one or more highway projects within the state. The program would be administered in accordance with a written agreement between the participating state and the Secretary. The Secretary is directed to promulgate regulations to implement the pilot program within 270 days of enacting SAFETEA.

Also included in SAFETEA are revisions to Section 4(f) of the Department of Transportation Act of 1966. "Section 4(f)" applies to the use of publicly owned parks and recreation areas, and wildlife and waterfowl refuges.[36] It also applies to public *or* privately owned historic sites of national, state, or local significance. Under current law, any use of such a resource for a transportation project is prohibited unless there is no prudent and feasible alternative to do otherwise, and the project includes all possible planning to minimize harm to the resource. SAFETEA would amend the current law to include conditions under which such resources could be used for transportation projects. In particular, it would allow the use of a Section 4(f) resources if it is determined that such use would result in "de minimus impacts." Revisions to Section 4(f) requirements have been viewed as a high priority to some transportation construction stakeholders.

Unless otherwise specified, SAFETEA directs the Secretary to promulgate regulations to implement each of the provisions discussed above within one year of enacting the law.

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[36] This provision was set forth at section 4(f) of the DOT Act at 49 U.S.C. 1653(f). In 1983, as part of a general codification of the DOT Act, 49 U.S.C., 1653(f), was formally repealed and recodified with slightly different language in 49 U.S.C. 303. Given that over the years, the whole body of provisions, policies, and case law have been collectively referenced as "section 4(f)" matters, DOT has continued this reference for this requirement.

H.R. 3550 contains a title on Planning and Project Delivery. However, when the bill was introduced, no language was included under that title. It is anticipated that provisions related to the environmental review process will be included under that title when the bill is marked up in committee. (For more information, see CRS Report RL32032, *Streamlining Environmental Reviews of Highway and Transit Projects: Analysis of SAFETEA and Recent Legislative Activities*.) **(CRS contact: Linda Luther)**

Conformity of Transportation Plans and State Implementation Plans (SIPs)

Under the Clean Air Act, areas that have not attained one or more of the six National Ambient Air Quality Standards must develop State Implementation Plans (SIPs) demonstrating how they will reach attainment. As of December 2002, 107 areas with a combined population of 97.8 million people were subject to the SIP requirements. Section 176 of the Clean Air Act prohibits federal agencies from funding projects in these areas unless they "conform" to the SIPs. Specifically, projects must not "cause or contribute to any new violation of any standard," "increase the frequency or severity of any existing violation," or "delay timely attainment of any standard." Because new highways generally lead to an increase in vehicle miles traveled and related emissions, both the statute and regulations require that an area's Transportation Improvement Program (TIP), which identifies major highway and transit projects an area will undertake, demonstrate conformity each time it is revised (i.e., at least every 2 years). Highway and transit projects cannot receive federal funds unless they are part of a conforming TIP.

While conformity has been required for more than a decade, the impact of the conformity requirements is expected to grow in the next few years for several reasons. The growth of emissions from SUVs and other light trucks and greater than expected increases in vehicle miles traveled have both made it more difficult to demonstrate conformity; recent court decisions have tightened the conformity rules; and the scheduled implementation in 2004 of more stringent air quality standards (both for ozone and for fine particles such as those found in diesel exhaust) will mean that additional areas are subject to conformity. Thus, numerous metropolitan areas could face a temporary suspension of highway and transit funds unless they impose sharp reductions in vehicle, industrial, or other emissions. In a recent survey, the General Accounting Office (GAO) found that, over the past 6 years, only 5 metropolitan areas have had to change transportation plans in order to resolve a conformity lapse; but about one-third of local transportation planners surveyed expected to have difficulty demonstrating conformity in the future. (See U.S. GAO, *Environmental Protection: Federal Planning Requirements for Transportation and Air Quality Protection Could Potentially Be More Efficient and Better Linked*, April 2003.)

The Clean Air Act provides no authority for waivers of conformity, and the only grace period allowed is for one year following an area's designation as nonattainment. Only a limited set of exempt projects (mostly safety-related or replacement and repair of existing transit facilities) can be funded in lapsed areas.

The rules do not even allow funding of new projects that might reduce emissions, such as new transit lines. These limitations are among the issues of concern. In addition, many have raised concerns about a mismatch between the SIP, TIP, and long range transportation planning cycles, and have called for less frequent, but better coordinated demonstrations of conformity. In its recent report, the GAO recommended that "relevant federal agencies (1) consider extending the 3-year time frame between required [long range] transportation plan updates and asking the Congress to amend the Clean Air Act to change the conformity rules to match, and (2) assess the advantages and disadvantages of statutorily requiring that the emissions budgets in air quality plans be regularly updated with new travel data and emissions models." At least the first of these recommendations appears to be generally supported by transportation planners and highway builders, but opposed by environmental groups and air quality planning officials.

As passed on February 12, S. 1072 would require less frequent conformity demonstrations (at least every 4 years instead of every 2), and would shorten the planning horizon over which conformity must be demonstrated to 10 years in most cases, instead of the current 20 years. The bill would allow replacement of Transportation Control Measures in SIPs without triggering new conformity determinations; would allow new nonattainment areas to use such tests as the Administrator may determine in demonstrating conformity until an emissions budget is determined to be adequate; and would grant areas two years following approval of a new motor vehicle emissions budget before they would need to demonstrate conformity with the new budget. The bill also provides additional resources to MPOs and State DOTs for planning purposes, increasing the resources available for conformity determinations. An Administration proposal to combine the TIP and long range transportation plan was not adopted, nor were any changes made to the SIP time frame.

As introduced, the House bill (H.R. 3350), which as of late February had not yet been marked up, would not change the conformity requirements; but it is expected to be amended to address conformity as it moves through committee. (For additional information, see CRS Report RL32106, *Transportation Conformity Under the Clean Air Act: In Need of Reform?)* **(CRS contact: Jim McCarthy)**

Highway and Commercial Vehicle Safety Programs

Existing surface transportation law defines the federal role in numerous aspects of highway safety. Title I of TEA-21 authorizes billions of dollars each year for federal-aid highway categorical grants to improve the design, throughput, and overall performance of the highway infrastructure. In particular, Title I authorizes the Surface Transportation Program (STP), which includes mandatory set asides to eliminate hazards (such as by installing barriers and guard rails) and to improve the infrastructure at highway/rail grade crossings (such as by installing signals and signs). Collectively, investments in the STP and other categorical programs are intended to improve safety and meet other transportation objectives. Title II of TEA-21 contains an authorization to conduct research and development related to traffic safety, as well as authorizations for state grants to increase occupant protection, reduce

alcohol-impaired driving, improve the collection of highway safety data, and operate the National Driver Registry. For example, the National Highway Traffic Safety Administration (NHTSA) deploys Title II funds to pay for the development of new strategies for traffic enforcement (e.g., research to advance drug recognition techniques and train detection experts). Title II funds are used by the states to deploy innovative highway safety programs (e.g., the Section 402 program), to encourage occupant protection (Section 405), and to reduce alcohol-impaired driving (Section 410). Also, NHTSA uses Title II funds to conduct evaluations of the effectiveness of different traffic safety strategies (the Section 403 program). Title IV includes authorization for numerous state motor carrier safety programs and for the operation of the Federal Motor Carrier Safety Administration (FMCSA). And Title V includes authorization for various research, technical assistance and deployment programs and for the Intelligent Transportation Systems (ITS) program (discussed subsequently), which supports activities intended to promote highway safety and mobility.

As part of the reauthorization process, funding levels for the safety-oriented grants and programs administered by the FHWA (Title I), NHTSA (Title II) and FMCSA (Title III) may likely be set. Debate over the purpose, structure, funding level, and eligibility for these activities is being conducted within the larger context of federal surface transportation reauthorization. Various interest groups and some Members of Congress seek additional funding to improve highway infrastructure and operations affecting safety, increase seat-belt use rates, reduce impaired driving, strengthen commercial driver licensing, and improve the federal/state partnership affecting commercial motor vehicle safety. Competition for funds is intense among various safety programs. Decisionmakers also face the difficult challenge of balancing funds used to achieve safety objectives against funds needed to meet other national objectives, such as reducing congestion.

Key bills that would authorize major highway and commercial motor vehicle safety programs and grants include the Senate-passed reauthorization bill (S. 1072), and the key House bill (H.R. 3550). These bills propose various changes in federal safety programs and grants that directly affect the eligibility criteria and amount of funds provided to the states from the Federal Highway Trust Fund. Each of these bills, to varying degrees, includes some provisions taken or modified from the Administration's SAFETEA proposal. In general, the House bill would authorize more funds for safety-oriented activities than would the Senate bills. Four major categories of interest are:

Infrastructure. As part of the reauthorization process, Congress may decide the authorization levels and eligibility criteria for obtaining and using various federal-aid highway categorical grants, and whether a separate categorical grant for safety is authorized. Based on the key bills under consideration, it appears likely that a new separate grant for safety may be authorized. Both the House and Senate bills would place particular emphasis on funds to enhance safety at grade crossings and reduce road hazards. The set aside for highway safety infrastructure projects now specified as part of the STP may be eliminated.

S. 1072 creates a new apportioned grant program called the Highway Safety Improvement Program (HSIP), which would include funds for a wide array of highway safety projects, including hazards elimination (e.g., pavement and shoulder

widening, installation of certain rumble strips, and infrastructure improvements for pedestrians) and grade crossing improvements. For FY2004-FY2009 (the funding period covered in that bill), a total of about $8.2 billion is authorized for this new program, but a state may flex up to 25%, in any fiscal year, of these infrastructure-oriented funds for other safety activities, (e.g., education and enforcement), that are authorized under Title 23 of the U.S. Code. Furthermore, at least $200 million per year must be spent by the states on the elimination of road hazards and the installation of protective devices at grade crossings. Some have questioned whether the amount of this set aside is justified given the relatively small number of deaths — typically 430 or less per year — that occur at such crossings.[37]

In order to obligate HSIP funds, S. 1072 requires the states to have a program that implements a strategic highway safety plan that identifies and analyzes highway safety problems and opportunities and describes a program of projects or strategies to reduce identified safety problems.[38] Also a state's strategic plan must adopt performance-based goals that focus resources on areas of greatest need and establish and implement a schedule for conducting safety projects for hazards correction and prevention. Developed with input from many sources and coordinated with several other transportation planning mechanisms, the plan is intended to guide the expenditure of funds authorized under the HSIP.

Before apportioning funds to carry out the HSIP, the Secretary is to set aside $70 million per year for the new Safe Routes to School program. These funds are to be used for the planning, design, and construction of projects to encourage children to bike and walk to school safely. S. 1072 specifies that a state must allocate for bicycle and pedestrian improvements a certain amount of funds that is related to the percentage of all fatal crashes in the states involving bicyclists and pedestrians. Also, S. 1072 specifies that $25 million for each of the fiscal years FY2004 through 2009 shall be used for projects in all states to improve traffic signs and pavement markings, consistent with the recommendations in a FHWA publication, to accommodate older drivers and pedestrians. The bill also includes provisions intended to improve work zone safety. For example, the Secretary would be required to issue regulations requiring workers whose duties place them on, or in close proximity to, a federal-aid highway to wear high-visibility clothing and implement other safety measures as the Secretary deems appropriate.

S. 1072 also includes a sanction that would be used against any state that does not enact or is not enforcing an " open container law." Basically, such a law prohibits the possession of any open alcoholic beverage container or the consumption of any alcoholic beverage in the passenger area (including driver's area) of any motor vehicle located on a public highway or right-of-way of a public highway of a state. Starting in FY2008, a state could lose up to 2% of specified federal aid highway funds if it does not have or enforce such a law. If, during a four-year period starting

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[37] This same point can be made with respect to the new Highway Safety Infrastructure Improvement Program proposed in H.R. 3550.

[38] S. 1072 specifies that, if a state has not adopted a strategic safety plan two years after the date of enactment of the reauthorization statute, its HSIP funds are to be redistributed to other eligible states.

on the date the apportionment for that state is reduced, the Secretary determines that the state is enacting and is enforcing such a provision, its apportionment would be increased by an amount equal to the amount of the reduction made during the four-year period.

H.R. 3550 authorizes a new federal-aid highway program also to be called the Highway Safety Improvement Program. For FY2004-2009, H.R. 3550 would authorize a total of $7.5 billion for infrastructure construction directed toward improving the safety of grade crossings (1/3 of the available funds) and eliminating highway hazards (2/3 of the available funds). In addition, H.R. 3550 creates a new High Risk Rural Road Safety Improvement Program, which would authorize a total of $1.5 billion during the reauthorization period for construction and operational improvements on selected rural roads. Like S. 1072, H.R. 3550 also authorizes a new Safe Routes to School program to encourage communities to adopt strategies and fund projects designed to allow children to bike and walk to primary and middle school safely. But the House bill authorizes a total of $1.5 billion during the reauthorization period for this formula program. H.R. 3550 also authorizes a new program to help finance dedicated truck lanes to improve the efficient and safe movement of freight by separating truck traffic from non-commercial traffic in regular lanes. This program is funded at a total of $2.0 billion during the reauthorization period.

The policy issues that are likely to be debated in this area include: the total amount that will be authorized for a separate categorical grant for safety-related infrastructure; how much funding to authorize for a new Safe Routes to School Program; the nature and purposes of a strategic plan that may be mandated to help guide safety investments; and whether to authorize the provision in S. 1072 which allows up to 25% of the funds from the proposed Highway Safety Improvement Program to be used to pay for activities authorized by other sections of Title 23, (e.g., traffic enforcement and public educational activities).

Federal Traffic Safety Program and Associated State Grants. As part of the reauthorization process, Congress is to set the overall authorization level and additional priorities for NHTSA's traffic safety program. Also the structure, funding level, and eligibility criteria for the various state safety grants that NHTSA administers may be specified in the reauthorization statute. In many respects, H.R. 3550 proposes reauthorized traffic safety grants that are similar to the TEA-21 grants and specify many of the same eligibility criteria. (H.R. 3550 does propose some changes as discussed below.) On the other hand, S. 1072 authorizes grant programs with considerably different structures and eligibility criteria from those in TEA-21 to encourage the states to adopt and enforce primary safety belt laws and to increase safety-belt use rates and programs to combat alcohol-impaired driving.[39] For many of the key grant programs, H.R. 3550 proposes substantially larger funding amounts than those authorized in S. 1072.

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[39] A primary safety belt law allows police officers to stop a vehicle simply when a violation of a safety belt use law occurs; no other violation of law is required to initiate a traffic stop.

S. 1072 authorizes a new grant program to replace the existing Section 405 program that is intended primarily to encourage states to adopt primary safety belt laws and secondarily to increase safety belt use rates.[40] That program is similar to that proposed by the Administration. Both proposals would initially reserve most of the grant funds to encourage states that did not have a primary law as of December 31, 2002, to adopt and enforce such a law, and both would authorize similar amounts of funding for FY2004 to FY2009 for state occupant protection grants starting in the $120 million to $125 million range in FY2004, with slight increases in subsequent years.

On the other hand, the House bill differs significantly from the Senate's and the Administration's initiatives. The House bill would keep the basic structure of the Section 405 occupant protection grant, but would now allow states with a safety belt use rate of 85% or greater to receive funds. For FY2003, H.R. 3550 would provide $140 million for occupant protection grants, and would increase that amount by $5 million per year through FY2009. That bill also would authorize $10 million per year to support national enforcement campaigns to improve occupant protection (as well as to reduce impaired driving) whereas, the Senate bill would provide $24 million for advertising and educational initiatives to support those campaigns.

With respect to grant funds intended to help states combat drunk driving, S. 1072, if enacted would result in many substantive changes to current law. The Senate bill would substantially revise the eligibility criteria used to determine which states receive funding under the Section 410 alcohol-impaired driving countermeasures program. In addition, S. 1072 would provide twice the financial incentive that a state would otherwise receive to each of the 10 states with the highest impaired driving-related fatality rate for the preceding fiscal year. H.R. 3550 proposes several new eligibility criteria for a state to receive Section 410 (alcohol-impaired driving countermeasures grant) and adds a new performance-based criterion to reduce traffic fatalities involving alcohol.

Both H.R. 3550 and S. 1072 authorize grants for states to improve their traffic safety information systems. The Senate bill also authorizes specific funds to aid states in conducting coordinated emergency medical services and 911 programs. H.R. 3550 does not include authority for such a new grant program.

With respect to the reauthorization of programs or grants administered by NHTSA, the issues that may be debated include: the criteria used to determine which states qualify for the various types of traffic safety grants, the amount of funding authorized for these grants, and whether a new grant program for emergency response will be authorized.

Truck and Bus Safety. Congress continues to debate the specifics of a reauthorization bill that may set the funding level and modify the scope and nature of the federal role in motor carrier safety. Key concerns include determining funding levels for various enforcement and regulatory activities conducted or administered

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[40] As specified in S. 1072, if a state does not have a primary belt use law, it can also qualify for funding if it has a belt use rate of 90% or more for the preceding year.

by the FMCSA. With respect to many provisions pertaining to motor carrier safety, S. 1072 and H.R. 3550 are similar to each other and to the Administration's proposal. These bills seek to strengthen the enforcement powers of the FMCSA, authorize a new grant program to improve state commercial driver licensing (CDL) efforts, establish a Medical Review Board to provide advice on driver physical standards, and continue funding for various state and federal commercial vehicle information systems and networks (called CVISN) that support safety and regulation of the industry. S. 1072 seeks to expedite FMCSA's responses to a list of some 30 statutory provisions or congressional directives pertaining to motor carrier safety, establishes a working group to improve the national CDL program, and freeze current length limits of commercial motor vehicles operating on federal-aid highways. Compared to S. 1072, H.R. 3550 provides for substantially more funds for FMCSA's administrative operations for FY 2004-2009, and for a larger program intended to encourage motorists to share the road safely with commercial drivers and vice versa. Both of these bills would authorize roughly the same amount of funds for various state commercial motor vehicle safety grants.

The issues that are likely to be debated in this area include the amount of funding for core FMCSA activities, the scope, nature, and funding amount for a "share the road" education and enforcement program, and whether to establish a working group to help guide the CDL program. **(CRS contact: Paul Rothberg)**

Intelligent Transportation Systems (ITS)

ITS, often consisting of communication systems, sensors or monitoring equipment, and computers, is used in highway or transit projects, facilities, or operations with the intention of improving their performance or safety. For example, ITS enables traffic management centers to receive real-time video and other measures or indicators of traffic flow, incidents, events, or crashes, as well as roadway and weather conditions. Such information can help operators redirect traffic, coordinate emergency response, or improve the operation and coordination of the surface transportation system.

TEA-21 specifies the current federal role regarding ITS research, development, testing and technical as well as deployment assistance. During the later years of TEA-21, the direct federal investment in ITS totaled about $230 million per year, but slightly less was authorized in the early years of TEA-21. (That amount does not include federal aid highway funds allocated by the states to deploy ITS.) The reauthorization process provides an opportunity to consider ways to improve ITS-related federal policies and programs. The focus of this debate is not on whether there should be a federal role. Rather, attention is concentrated on deciding the scope, direction, goals, and funding level for future federally-sponsored ITS activities.

House and Senate hearings on these programs reflect the view that much of the surface transportation community generally would favor continued: 1) federal investment in ITS research, development and technical assistance, focused on advancing and testing new technologies, improving ITS standards and architecture,

and conducting training; 2) federal investment to help states deploy the CVISN in order to increase the efficiency of the truck and bus inspection process and to yield other regulatory cost savings; 3) federal support of the Intelligent Vehicle Initiative to expedite deployment of crash avoidance technologies; and 4) deployment of a nationwide, integrated or coordinated ITS infrastructure by the states to provide more reliable and comprehensive data needed to better manage and operate highway and transit systems and measure their performance. There remains substantial disagreement on how a deployment effort should be funded.

H.R. 3550 would authorize more than $4.1 billion during the FY2004-FY2009 reauthorization period for various ITS efforts, with roughly 3/4 of those funds used to expedite ITS deployment. More specifically, the bill requires that a minimum of $500,000,000 must be expended each year to deploy ITS from the total amounts authorized for specified federal aid highway programs. Thus, this major change in law, if enacted, would require that at least a total of $3 billion of specified federal aid funds be allocated by the states to deploy ITS projects during the reauthorization period. (Under TEA-21 about $120 million of discretionary funds were earmarked annually by the Appropriations Committees for specified ITS projects.) With respect to the federal role in ITS research, development, standards and testing, H.R. 3550 would continue dedicated federal support for a program similar to that authorized in TEA-21, but with increased funds. During the reauthorization period, H.R. 3550 authorizes a total of $150 million for deployment of CVISN and $828 million for ITS research, development, testing, and standards work.

Various other sections of H.R. 3550, if enacted, would likely expedite the deployment of ITS. For example, H.R. 3550 sets aside $25 million per year for the deployment of 511(telephone) traveler information systems. The bill authorizes significant dedicated new funding for a previously mentioned congestion relief program. Many of the projects funded under this program would likely use ITS, especially those designed for "transportation systemwide operational improvements" targeted at increasing motor vehicle travel and improving traffic monitoring, surveillance, and traveler information. H.R. 3550 also establishes a Commission on Intelligent Transportation System Procurement Policy, and directs the Secretary to establish a management information program to provide in all states the capability to monitor, in real-time, the traffic and travel conditions of the Nation's major highways. The acquired information would be shared to improve highway security, address congestion problems, support improved response to weather events and surface transportation incidents, and facilitate national and regional highway traveler information.

The amount of funding specified for ITS is less in S. 1072 than that proposed in the H.R. 3550. S. 1072 authorizes a total of $150 million for CVISN and $765 million for ITS research, operational tests, and development during the FY2004-2009 period. S. 1072 specifies a detailed list of objectives and goals that would likely influence the scope and direction of the federal role in advancing ITS. The Senate bill does not specify a specific amount of funding to support ITS deployment activities, but, the states would be allowed to use certain federal aid highway funds to finance ITS deployment activities. In addition, S. 1072 directs the Secretary to carry out a transportation systems management and operations program. That program would be intended to promote coordination and real-time information

sharing at a regional and statewide level and help manage and operate the federal aid highway to preserve capacity and maximize performance of transit and highway facilities. Furthermore, the Secretary is to encourage the states to establish a system of real-time monitoring for the surface transportation system and to provide the means for sharing that information. S. 1072 authorizes the use of certain federal aid funds to provide assistance for regional operations collaboration and coordination activities that are associated with regional improvements.

The issues that may be debated in this area include the amount of funding for and purposes of the federally-supported ITS research, development and testing program and whether there should be a required ITS deployment program funded out of allocated federal aid highway funds. **(CRS contact: Paul Rothberg)**

Research and Development and Technology Deployment

In both the short- and long-term, research and development as well as technology deployment activities (RD and TD) have a role in helping to reduce the various challenges that affect the performance or operation of the Nation's surface transportation systems. These challenges include: congestion, security of infrastructure, loss of life and injury due to traffic crashes, degradation of environmental or life quality (e.g., suburban sprawl), and the continual need for infrastructure rehabilitation. The federal role in RD and TD seeks to advance and accelerate the use of improved or safer technologies, processes, policies, vehicles, and infrastructure to reduce these challenges. In the surface transportation arena, the federal role is primarily administered or overseen by the FHWA, Federal Transit Administration (FTA), NHTSA, and the Research and Special Programs Administration (RSPA). In terms of the transportation budget, two of the largest efforts of RD and TD pertain to ITS and FHWA's RD and TD program (discussed below). This section deals primarily with funds used to support FHWA-administered programs.

FHWA conducts an extensive RD and TD program that involves all aspects of the highway system. For these activities, Title V of TEA-21 provides an authorization level of roughly $200 million per year. These FY2003 RD&TD funds were authorized in the following amounts: $103 million for surface transportation research, $50 million for technology deployment, $20 million for training and education, and $26 million for University Transportation Research. (As discussed below, many of these same activities are expected to continue, with some changes and at an increased funding level, during the period covered by the next reauthorization cycle.) Research funds are used primarily to advance and deploy technologies intended to improve highway pavements, structures, roadway safety, and highway policies. Some of the technology deployment funds are earmarked for specific types of research or projects, and much of the university-oriented funds are earmarked for specific institutions. Many state and industry experts assert that FHWA's RD and TD funds are of fundamental importance to the states and their long-term ability to maximize the effective use of federal aid funds. The states support continuation of the FHWA program as well as the Strategic Planning and

Research Program, which is a takedown off of the federal aid program that provides R&D funds directly to the states.

As part of the reauthorization process, Congress is addressing how much money should be authorized for the core RD and TD activities conducted or supported by the FHWA, and which objectives should receive emphasis or dedicated funding. Also, the reauthorization statute may include a specific funding amount for the Local Technical Assistance Program, the National Highway Institute, and the University Transportation Research (or Centers) Program (which is administered by RSPA). In addition, various bills propose ways to strengthen and improve federal involvement in surface transportation RD and TD activities. There are several issues of continuing concern: how to increase and improve stakeholder input into the RD and TD process, ways to foster more effective accounting for and use of federal expenditures in these activities, and methods to improve the strategic planning and coordination of a diverse RD and TD activities implemented by decentralized and diverse participants. Also, many groups are concerned over the extent of earmarking that historically occurs using federal funds allocated for this activity.

H.R. 3550 and S. 1072 include numerous provisions that would reauthorize federal research, development, and technology deployment activities. Also, Representative Vernon Ehlers, Chairman of the Subcommittee on Environment, Technology, and Standards, House Committee on Science introduced legislation, H.R. 3551, to authorize appropriations for surface transportation research and development and technology transfer programs. This legislation has been marked up and reported to the House.

For each of the years FY2004-2009, H.R. 3550 authorizes the following amounts for transportation research and education: roughly $355 million for surface transportation research, development, and deployment, $40 million for training and education, $35 million for the Bureau of Transportation Statistics, and $90 million for the University Transportation Research Program. (H.R. 3550 also authorizes research, development, and testing funds for transit and motor carrier activities as well as for a variety of other technological objectives. These provisions, however, are not discussed in this report.) Compared to the House bill, S. 1072 authorizes smaller amounts for each of the years covered in the reauthorization cycle: about $238 million for surface transportation research and development and a cooperative transportation-environmental research program, about $30 million for training and education, $28 million for the Bureau of Transportation Statistics, and about $43 million for the University Transportation Research Program.

H.R. 3551 proposes authorization levels (e.g., a percentage of the total funds made available from the Highway Trust Fund or a minimum of $500,000,000 whichever is greater) for specified surface transportation research,and development activities. Each of these bills, (H.R. 3550, H.R. 3551, and S. 1072), in general, seeks improvements in the strategic planning, design, management, stakeholder input, selection of participants, and implementation of the RD and TD process (including peer review.).

The issues that are likely to be debated include the amount of funding for the various types of research, development, training, and deployment activities; the scope

and nature of non-federal oversight and review over these activities; the selection of additional University Transportation Centers and the amounts they would receive; and the mechanism used to fund the proposed new Strategic Highway Research Program, which would likely be managed by the Transportation Research Board. **(CRS contact: Paul Rothberg)**

Transit Reauthorization Proposals

The various reauthorization bills propose relatively minor changes to the existing transit program structure; the major change proposed (in the case of the House and Senate bills) is a significant increase in transit funding. The Administration has proposed $45 billion for transit over the six-year reauthorization period, of which $38 billion would be guaranteed. The House has proposed $69 billion for transit, and the Senate bill provides $56.5 billion, all of which is guaranteed. The source of the funding for the guarantee remains an issue in both the House and the Senate.

From the funding perspective, the Administration, Senate, and House bills can be summarized thus: the Administration bill provides virtually no increase in transit funding over the 6-year authorization period, and with inflation and the possibility that transit would receive no more than the guaranteed level of funding (as happened under TEA-21), transit funding could actually decline from its FY2003 level; the Senate bill provides the level of federal transit capital funding the Federal Transit Administration (FTA) estimates[41] is needed to maintain the status quo level of transit service in the nation; the House bill provides the level of federal transit capital funding that FTA estimates is needed to accommodate the growing demand for transit service in the nation.

Formula (Apportioned) Transit Programs

Funds for the programs discussed here are apportioned to the states annually using formulas found in authorization legislation. They are collectively referred to as "apportioned" or "formula" programs. These programs account for roughly two-thirds of the FY2003 authorized transit spending. The largest of these programs under TEA21 is the Urbanized Areas Formula Program; it provided 47% of total federal transit funding in FY2004. Other formula programs include the Fixed Guideway Modernization Program, the Elderly and Persons with Disabilities Formula Program, the Non-Urbanized Area Formula Program, and the metropolitan and state planning programs.

New Formula Programs — House and Senate.

High Intensity Small-Urbanized Area Formula Grant. In the Urbanized Area Formula Program, the formula used to apportion funds to areas with populations between 50,000 and 200,000 uses only population and population

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[41] In the transit sections of the DOT's *2002 Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance Report* [http://www.fhwa.dot.gov/policy/2002cpr/].

density. As a result, it does not give additional consideration to those areas that provide a higher than average level of transit service. Both the House (Section 3041) and Senate (Section 3035(11)) bills create a new category within the Urbanized Area Formula program for small cities that provide relatively high levels of transit service. Small cities that meet or exceed the average measure for larger areas (population 200,000 to 1 million) in one or more performance categories based on passenger miles and vehicle revenue miles would receive funding through this program. This funding would go directly to the transit agency or other government entity in the small city, not to the state (unlike Urbanized Area Formula Program funding for cities with populations of 50,000 to 200,000, which go to the governor of each state for redistribution).

New Formula Programs — House.

Job Access and Reverse Commute Program. This program is currently a discretionary program, which in recent years has been completely earmarked in the annual appropriations process. The House bill (like the Administration bill) would convert this program to a formula basis (Section 3017). The program would be authorized at $1.2 billion, an average of $200 million annually. The division of the funds would remain the same as now: 60% of the funds to urbanized areas over 200,000 in population, 20% to urbanized areas between 50,000 and 200,000 in population, and 20% to non-urbanized areas. The recipients would be local agencies (for the largest population tier) or states (for the second and third tiers). Within those allocation tiers, funding would be apportioned according to each urbanized or non-urbanized area's share of all low-income individuals and welfare recipients in that tier of communities. States would have the flexibility to transfer funds from the second and third tiers to the first tier, to their Non-Urbanized Area Formula program, or to other formula programs, but the funding would have to be used for projects that meet the Job Access and Reverse Commute program eligibility requirements.

New Formula Programs — Senate. The Senate bill creates two new apportionment categories; although they are not designated as programs, they receive a separate authorization and have new formulas, so they are described as programs here. As their labels indicate, these two programs would provide additional funds to those states with rapidly growing populations and to those with high levels of population density.

Growing States. The Senate bill (Section 3038(a)) creates a funding set-aside and a separate formula to provide additional assistance to growing states. The formula is based on state population forecasts for the year that is 15 years after the most recent decennial census (i.e. the year 2015). Each state's population forecast is divided by the total of all states' population forecasts; the resulting ratio for each state is that state's share of the apportioned funds. Within each state, the funds are to be divided between urbanized areas and non-urbanized areas according to the forecast of their shares of the state's forecast population. This program would be authorized for $1.1 billion for FY2005-2009.

High Density States. The Senate bill (Section 3038(a)) also creates a funding set-aside and formula to provide additional assistance to states with a

population density greater than 370 persons per square mile.[42] For each eligible state, the urbanized land area in the state is totaled and multiplied by 370; the result is then subtracted from the total population of that state. This figure is then divided by the total population of all eligible states, then multiplied by the available funding to produce the share for each state. Within the recipient states, the money would be divided between urbanized and non-urbanized areas according to their share of the total state population. This program would be authorized for $1.1 billion for FY2005-2009.

Discretionary (Allocated) Programs

The funds in all remaining transit programs are, in theory, distributed through grants made at the discretion of the Secretary of Transportation, using criteria established in transit authorization and appropriation law. They also may be, and usually are, subject to congressional earmarking. The largest of these are the New Starts, Bus and Bus Facilities, and Job Access and Reverse Commute programs.

New Discretionary Programs — House and Senate.

Small Starts. This would be a component of the New Starts program, which provides funds to metropolitan areas for the construction of new fixed guideway systems (e.g, subways, light rail, etc.) or extensions to existing systems. New Starts projects are evaluated by FTA at several stages, and must be receive a recommendation from to proceed to the next stage. Projects with a federal share under $25 million are exempted from the approval requirement, but must still meet FTA's program management requirements. Both the House (Sec. 3010(a)) and Senate (Sec. 3011(f)) bills would eliminate the exemption for projects with a federal share under $25 million and replace it with a program for New Starts projects whose federal share is less than $75 million (the Administration bill has a similar provision). These "Small Starts" projects would have a simpler evaluation process than New Starts projects, with fewer review stages and fewer justification requirements. The House authorization is $1.35 billion; the Senate bill does not provide a separate authorization limit for the Small Starts program, apart from the overall authorization limit of the New Starts program. The way the House bill funds the program would slightly increase the share of total transit funding that goes to New Starts (including Small Starts) projects; the Senate bill would not.

Transit Program for National Parks. The House bill (Sec. 3021) proposes a pilot program to alleviate congestion, pollution, and related impacts in national parks by providing public transportation within the parks; the total authorization is $100 million, to be distributed by grant to national park transit projects. The Senate

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[42] According to the United States Census Bureau, *Statistical Abstract of the United States: 2003*, and Microsoft's *Encarta* encyclopedia (used for information on non-state populations), those are, in descending order of population density, the District of Columbia, New Jersey, Puerto Rico, Rhode Island, the Virgin Islands, American Samoa, Massachusetts, Connecticut, Guam, Maryland, the Northern Mariana Islands, Delaware, and New York. The District of Columbia and other areas on this list are considered states for transit purposes (49 USC 5302(a)(13)).

bill has a similar program that covers not only national parks but also national wildlife refuges and recreation areas managed by the Bureau of Land Management and Bureau of Reclamation; it is authorized at $125 million for the six year authorization period, also to be apportioned through grants. The Administration bill also proposes a transit program for national parks and public lands.

New Discretionary Programs — House.

New Freedom Initiative. This program has been proposed by the Administration in their last several transportation budget requests; it is found in both the Administration proposal (H.R. 2088) and the House bill (Sec. 3018). The Administration's analysis of this proposal notes that 70% of persons with disabilities are unemployed, due in part to difficulties with transportation. This program would increase the availability of transportation services to persons with disabilities for the purpose of helping them get to jobs. The House bill would authorize $820 million, to be allocated to states by formula: 60% to urbanized areas over 200,000 in population, 20% to urbanized areas whose populations fall between 50,000 and 200,000, and 20% to non-urbanized areas. Each state would receive funding proportionate to their aggregate share of the total disabled population in these three population groupings. The federal share would be 80% for capital projects and 50% for operating costs. To be eligible, projects would have to be included in a locally-developed plan that coordinates the transportation services provided by public transit and human services providers. Note that the Senate bill also contains a "New Freedom for the Elderly and Persons with Disabilities" program (Section 3012), this program is essentially a renaming of the existing formula program for the elderly and persons with disabilities, and emphasizes transportation assistance for access to health care rather than to employment.

Changes to Existing Discretionary Programs — House and Senate.

Additional Project Justification Requirement. In order to qualify for funding under the New Starts program, a transit project has to satisfy a variety of justification criteria (among other requirements). The House (Section 3010) and Senate (Section 3011) bills add a new justification requirement for potential New Starts projects (with a federal share of more than $75 million). Applicants would have to demonstrate the presence of transit-supportive policies and existing land use before the Secretary could approve funding for the project; currently, transit supportive policies and existing land use are only something the Secretary has to consider in evaluating a project.

Changes to Existing Discretionary Programs — House. As noted in the New Formula Programs section above, the House bill would convert the existing Job Access and Reverse Commute program from a discretionary program to a formula program, a proposal also found in the Administration bill.

Other Changes

New Definitions for 'Capital Projects'. The House (Section 3003) and Senate (Section 3004) bills add new items to the definition of "capital projects", thus

making these activities eligible for federal funding (most federal transit funding is limited to activities that are defined as capital projects). These items include

- intercity bus stations or terminals;
- crime prevention and security projects, including emergency response drills and security training (this change was also in the Administration proposal);
- establishment of a debt service reserve (this change was also in the Administration proposal); and
- short-range planning and management activities and projects that improve coordination between public transportation agencies and other transportation service providers (a similar provision was also in the Administration proposal). The Senate bill does not add this provision to the definition of "capital projects," but as a new term ("mobility management"); then in other sections, 'mobility management' is described as an activity eligible for funding.

Transit Security. The House (Section 3027) and Senate (Section 3027) bills adds security risks to safety hazards as issues the Secretary of Transportation can investigate in local transit systems; it also empowers the Secretary to withhold federal transit funds until a local agency has developed and implemented a plan to mitigate problems found by the investigation. The Senate bill also requires the Secretary of Transportation to sign a Memorandum of Understanding with the Department of Homeland Security within 90 days of enactment of this bill. The Memorandum of Understanding should define the respective roles of DOT and the Department of Homeland Security regarding public transportation. The Department of Homeland Security now contains the Transportation Security Administration, which is charged with transportation security; but the FTA has long had and still has an Office of Safety and Security which works with transit agencies on safety and security issues. In a recent report[43], the General Accounting Office noted that the division of responsibilities for transit security between these two agencies was not clear, and recommended that they sign a Memorandum of Understanding to clarify their roles.

Rural Transit. Both the House and Senate bills would significantly increase funding for transit in rural areas. This is true not only in dollars — from the $1.25 billion in TEA-21 to $2.8 billion (House) and $2.5 billion (Senate) — but also in rural transit's share of the total federal transit budget — from 3.5% in TEA-21 to 4.0% (House) and 4.4% (Senate). **(CRS contact: Randy Peterman)**

Rail Provisions

Amtrak Reauthorization. The Senate bill includes a provision reauthorizing Amtrak at $2 billion for FY2004-FY2009 (Section 4601). Amtrak's authorization lapsed at the end of FY2002, and its reauthorization has stalled due to disagreement

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[43] General Accounting Office, *Transportation Security: Federal Action Needed to Help Address Security Challenges*, GAO-03-843, June 2003.

over whether to reauthorize it in its current form or to significantly restructure federal passenger rail policy.

Bonds for Transportation Infrastructure. The Senate bill would also create a corporation authorized to issue bonds to fund qualified federal transportation projects, including highway, transit, freight and intercity passenger rail projects (Sections 4602 and 4603). These three provisions (Sections 4601-4603) are related to S. 1505, the American Rail Equity Act of 2003. No authorization figure is given for bonds to be issued.

Use of Highway Account Monies for Rail Projects. The Senate bill would prohibit the use of Highway Account monies for rail projects beginning after the date the act is enacted, "except for any rail project involving publicly owned rail facilities or any rail project yielding a public benefit" (Section 5001(g)). Since virtually any rail project could be represented as providing a public benefit, this prohibition might have little practical effect. **(CRS contact: Randy Peterman)**

Intermodal Issues

Intermodal Freight Connectors

Both the House and Senate bills establish a new program for financing improvements to intermodal connectors. Intermodal connectors are the access routes to airports, coastal or river ports, and rail or pipeline terminals.[44] The access routes are typically short segments of road (generally less than two miles in length) and are usually local, county, or city streets that connect the freight terminal to the National Highway System. Many of the connectors, especially those leading to seaports, are in older, industrialized urban areas. Two recent DOT surveys have found that these access roads, in many cases, are inadequate to accommodate the heavy truck traffic they handle.[45] The pavement may be in poor condition or the intersections and width of the roads may not be designed to handle large trucks. In some cases, there may be a preponderance of at-grade rail crossings which impede traffic flow.

Intermodal connectors have been described as "low hanging fruit," a metaphor used to express the notion that relatively modest investment in these road segments could yield substantial returns in freight movement and reliability. However, several reasons have been cited as to why projects involving intermodal connectors may be difficult to advance. One reason may be that urban priorities typically emphasize commuter concerns over freight concerns. Financing these projects may be difficult because there is no dedicated funding source and each mode tends to jealously guard

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[44] For further information, see CRS Report RL31887, *Intermodal Connectors: A Method for Improving Transportation Efficiency?*

[45] U.S. DOT, FHWA, *NHS Intermodal Freight Connectors, A Report to Congress*, July 2000, available at [http://ops.fhwa.dot.gov/freight/] (viewed 1/20/04) and U.S. DOT, MARAD, *Intermodal Access to U.S. Ports - Report of Survey Findings*, August 2002, available at [http://www.marad.dot.gov/publications/ports.htm] (viewed 1/20/04).

the use of their mode specific trust funds. Projects designed to improve the exchange between modes, therefore, may "fall through the cracks." Existing potential funding sources have as their primary focus addressing some other transportation concern. Also, while the cost of improving the intermodal connections to a local freight hub will be born locally, the benefits in improved freight mobility may flow to shippers scattered outside the local municipality.

To address the issue of intemodal connectors, the House and Senate bills create a "Freight Intermodal Connectors" program. Both proposals would allow states to set aside a portion of their NHS funds to improve access routes to cargo hubs. Both proposals also allow states to opt out of the program if they do not have intermodal connections or their intermodal connectors are already in adequate condition. Projects are to be chosen based on the criteria specified in a 1996 DOT report to Congress entitled *Pulling Together: The NHS and its Connections to Major Intermodal Terminals.*[46] In this report, primary criteria is based on a national comparison of the volume of truck traffic to and from a terminal while a secondary criteria allows for consideration of the importance of a terminal within a specific state. The federal share of the cost of these projects would be 80% according to the House bill and 90% according to the Senate bill. The Senate bill specifically mentions projects to eliminate railroad crossings or make railroad crossing improvements as an eligible use of funds under this program. While neither the House nor Senate proposals establish a dedicated funding source for intermodal connectors, these proposals essentially represent a formal recognition in legislative language of cargo hub access problems as an eligible use of NHS funds.

Freight Planning. A recent GAO report on freight transportation stated that "the fundamental limitation to overcoming freight mobility challenges is that the public-sector process at the state and local levels for planning and financing transportation improvements is not well suited to address freight projects."[47] The GAO recommended that the DOT help state and local planners consider freight when determining investment levels for transportation projects. Both the House and Senate bills include language intended to ensure greater consideration of cargo hubs and freight transport in state and MPO transportation planning processes. The approaches, however, are somewhat different. The Senate bill requires each state DOT to designate a "freight transportation coordinator" whose responsibility will be to ensure that freight considerations are integrated into the planning process, coordinate with other states to solve regional transportation problems, foster collaboration between public and private interests, and build professional capacity to better understand freight transportation needs within a state. The House bill requires the U.S. DOT to establish a "Freight Capacity Building Program" in order to better target investments in freight transportation systems and to strengthen the decision making process of state and local transportation agencies with regard to freight transport. The program would include research and education in the

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[46] This report is available at [http://ops.fhwa.dot.gov/freight/FPD/Docs/NHSITSConn.pdf] (viewed 1/20/04).

[47] U.S. General Accounting Office, *Freight Transportation: Strategies Needed to Address Planning and Financing Limitations,* GAO-04-165, Dec. 2003, p.3.

following areas: best practices, peer exchange, data analysis and tools, technical assistance, and public-private partnerships.

Rail Freight Infrastructure

Grants for Short Lines. The Senate bill would create a grant program for short line railroads to upgrade their track so that they can handle heavier 286,000 pound rail cars. Short line railroads often act as a feeder network to the larger, mainline railroads. Mainline railroads have adopted the use of larger and heavier 286,000 pound cars and short line railroads, in order to maintain their role as collectors and distributors of mainline traffic, need to improve their track structures to handle these new cars.

The bill would authorize $350 million in grants for each year FY2004 - FY2006. The grants would cover 80% of the project cost with the remaining 20% covered by a non-federal source. Grants would be awarded on a competitive basis to either the railroad directly or to a State or local government with the concurrence of the railroad. In prescribing regulations for administering the grant program, the Secretary of Transportation is required to "condition the award of a grant to a railroad on reasonable assurances by the railroad that the facilities to be rehabilitated and improved will be economically and efficiently utilized," and "ensure the award of a grant is justified by present and probable future demand for rail service by the railroad," among other criteria.

Federal aid to short line railroads may generate debate during congressional consideration because unlike other modes, rail infrastructure is privately owned. In addition to the heavier car issue, supporters of government aid to railroads have argued that it is justified because, in some instances, it may be cheaper to upgrade rail lines than to expand highways. Others have argued that rail aid is needed to offset the effect of truck operators not paying the full cost of providing highway infrastructure to them. They cite a DOT highway cost allocation study that estimates that fuel taxes, registration fees, and taxes on equipment that the heaviest trucks pay into the Highway Trust Fund amount to 80% of their full cost of highway use.[48] Opponents of public aid to railroads argue that it would be better to refine truck user fees so that they cover the full cost of their infrastructure rather than provide offsetting subsidies to railroads. Opponents also question the government's ability to choose rail projects that will generate the highest economic returns. They worry that states will compete with one another to assist railroads in their state in order not to lose economic development to a neighboring state.[49]

Rail Line Relocation. The Senate bill establishes a grant program to assist municipalities in relocating rail track in order to improve public safety, the flow of motor vehicle traffic, or for economic development reasons. The Secretary of Transportation is required to conduct a costs-benefits analysis before awarding a

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[48] U.S. DOT, FHWA, *Federal Highway Cost Allocation Study*, 1997, with addendum in May 2000. Available at [http://www.fhwa.dot.gov/policy/hcas/addendum.htm] (viewed 1/20/04).

[49] For further arguments for and against public aid to freight railroads, see CRS Report RL31834, *Intermodal Rail Freight: A Role for Federal Funding?*

grant to any particular project. The federal share of the cost of a project would be 90%, and at least half of all grants awarded would not be more than $20 million each. Also, no one grant awarded would account for more than 25% of the total amount available in a given year. The bill authorizes $350 million for this grant program for each fiscal year 2004 through 2008.

Appendix 1: Transportation Budget Terminology

Transportation budgeting uses a confusing lexicon (for those unfamiliar with the process) of **budget authority** and **contract authority** — the latter, a form of budget authority. Prior to TEA21, changes in spending in the annual transportation budget component had been achieved in the appropriations process by combining changes in budget/contract authority and placing **limitations on obligations**. The principal function of the limitation on obligations is to control outlays in a manner that corresponds to congressional budget agreements.

Contract authority is tantamount to, but does not actually involve, entering into a contract to pay for a project at some future date. Under this arrangement, specified in Title 23 U.S.C., which TEA21 amends, authorized funds are automatically made available to the states at the beginning of each fiscal year and may be obligated without appropriations legislation. Appropriations are required to make outlays at some future date to cover these obligations. TEA21 greatly limited the role of the appropriations process in core highway and transit programs because the Act enumerated the limitation on obligations level for the period FY1999 through FY2003 in authorizing legislation.[50]

Highway and transit grant programs work on a **reimbursable basis**: states pay for projects up front and federal payments are made to them only when work is completed and vouchers are presented, perhaps months or even years after the project has begun. Work in progress is represented in the trust fund as obligated funds and although they are considered "used" and remain as commitments against the **trust fund balances**, they are not subtracted from balances. Trust fund balances, therefore, appeared high in the past in part because funds sufficient to cover actual and expected future commitments must remain available.

Both the highway and transit accounts have substantial short- and long-term commitments. These include payments that will be made in the current fiscal year as projects are completed and, to a much greater extent, outstanding obligations to be made at some unspecified future date. Additionally, there are unobligated amounts that are still dedicated to highway and transit projects, but have not been committed to specific projects. Two terms are associated with the distribution of contract authority funds to the states and to particular programs. The first of these, **apportionments,** refers to funds distributed by the FHWA to the states under formulas set by TEA21. For example, all national highway system (NHS) funds are apportioned to the states. **Allocated** funds, are funds distributed by FHWA, typically to programs under direct federal control. For example, federal lands highway program monies are allocated; the allocation can be to another federal agency, to a state, to an Indian tribe, or to some other governmental entity. These terms do not appear in the congressional budget, but often provide a frame of reference for highway program recipients, who may assume, albeit incorrectly, that a state apportionment is part of the federal budget per se.

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[50] Because the limitation on obligations is still included in appropriations limitations the funds provided are still considered discretionary for purposes of the congressional budget.