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Transportation Issues in the 108th Congress

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SUMMARY

Transportation Budget. The FY2004 Department of Transportation (DOT) budget was signed into law on January 23, 2004, as part of the Consolidated Appropriations Act, 2004 (P.L. 108-199). It provided DOT $58.8 billion, minus a 0.59% across-the-board rescission (about $58.5 billion). The President requested $58.4 billion for DOT for FY2005. The House passed its DOT appropriation bill (H.R. 5025) on September 22. The Senate Committee on Appropriations reported out a bill (S. 2806) on September 15, 2004, with $59.6 billion for DOT. DOT is operating under a continuing resolution (H.J.Res. 107/P.L. 108-307) until November 20, 2004.

Surface Transportation Reauthorization. Authorizing legislation for federal highway and transit programs was scheduled to expire at the end of FY2003. Congress has extended the existing authorization six, times, most recently to May 31, 2005 (H.R. 5183/P.L. 108-310). Disagreement over funding issues has delayed reauthorization: the White House has insisted on a total authorization of $256 billion; the Senate passed a $318 billion bill (SAFETEA; S. 1072 as amended) on February 12, 2004, while the House passed a $275 billion bill (TEA-LU, H.R. 3550) on April 2, 2004. Both House and Senate bills propose more spending than can be supported by current revenues to the Highway Trust Account; proposals to provide additional revenues have met with veto threats from the White House.

Aviation Reauthorization. Congress-approved H.R. 2115 (P.L. 108-176), reauthorizing key Federal Aviation Administration (FAA) functions. A key issue was protecting certain air traffic control functions from privatization. The conference agreement omitted controversial protection provisions, accepting an FAA commitment not to pursue privatizing these functions during FY2004.

Transportation Security. The 9/11 Commission's final report included recommendations for transportation security. H.R. 10 would enact some of the Commission's recommendations for aviation security; S. 2845 would enact Commission recommendations on surface transportation security as well. Two passenger rail and transit security bills (S. 2273 and S. 2884) were passed by the Senate on October 1, 2004. A central policy issue in transportation security is balancing security improvements with the operational needs of transportation systems.

Amtrak Issues. For FY2004, Congress provided $1.225 billion for Amtrak, and deferred repayment of a $100 million loan. The Administration had requested $900 million, while Amtrak had asked for $1.8 billion; the same requests were made for FY2005. The House Committee on Appropriations has recommended $900 million for FY2005, the Senate Committee on Appropriations has recommended $1.2 billion. Amtrak's authorization expired in 2002; reauthorization has been stalled by disagreement over the future of federal passenger rail policy.

Airline Industry Turmoil. The economy and world events have dramatically affected the airline industry. The airlines lost record amounts of money in 2002, which followed what had been the previous record loss experienced in 2001. Congress provided some short-term relief for the ailing airline industry in 2003.

MOST RECENT DEVELOPMENTS

On October 11, 2004, Congress passed legislation (H.R. 4520) that includes a transfer of ethanol taxes to the Highway Trust Fund and provisions to reduce evasion of the federal fuel excise tax; these changes are estimated to add $24 billion to the Trust Fund over the next six years. This bill also outlaws sale-in, lease-out (SILO) transactions, which have provided local governments with an additional source of revenue through selling capital assets such as trainsets and buses to corporations, then leasing the assets back from the corporations.

On September 30, 2004, Congress passed a sixth extension (H.R. 5183/P.L. 108-310) of current funding authorization for surface transportation programs (TEA-21), to May 31, 2005. TEA-21 was scheduled to expire on September 30, 2003, but has been repeatedly extended.

On September 29, 2004, Congress passed a continuing resolution (H.J.Res. 107/P.L. 108-309) to fund most non-defense programs of the federal government through November 20, 2004 at their FY2004 levels.

On September 22, 2004, the House passed its FY2005 Departments of Transportation and the Treasury and Independent Agencies appropriations bill (H.R. 5025). During floor debate, appropriators struck appropriations for programs not authorized for FY2005; at the time, that included highway, transit, and rail programs.

On September 15, 2004, the Senate Committee on Appropriations reported out S. 2804, recommending $59.6 billion ($1.2 billion more than the President requested).

On April 2, 2004, the House passed The Transportation Equity Act: A Legacy for Users (TEA-LU, H.R. 3550). The House reported bill reduced the funding level authorized by H.R. 3550 from an introduced $375 billion to $275 billion, responding to pressure from the Bush Administration and House leadership for spending restraint.

On February 12, 2004, the Senate passed S. 1072, as amended, reauthorizing federal surface transportation programs through FY2009. The Senate bill authorized around $318 billion in contract authority and $295 billion in obligation limitations.

BACKGROUND AND ANALYSIS

Introduction

This issue brief provides an overview of key issues on the transportation agenda of the 108th Congress. The issues are organized under the headings of budget; highway and transit reauthorization; transportation security; Amtrak; airline industry financial turmoil; and environmental issues, with the author of each issue identified. Relevant Congressional Research Service (CRS) reports are cited in the text. Consult the CRS Homepage [http://www.crs.gov/] or the *Guide to CRS Products*, or call CRS at (202) 707-5700 to obtain the cited reports or identify materials in other subject areas.

Department of Transportation Appropriations

Appropriations for the Department of Transportation (DOT) (Function 400 in the federal budget) provide funding to a variety of programs that include regulatory, safety, research, and construction activities. Money for over half of DOT programs comes from highway fuel taxes, which are credited to the highway trust fund. In turn, the trust fund supports two accounts: the federal-aid highway account and the mass-transit account. Aviation programs are also supported in part by fuel taxes, but rely more heavily on other user fees such as the airline ticket tax. The DOT annual appropriations also include significant monies from Treasury general-fund revenues.

Table 1 shows the FY2004 amounts proposed by the Administration and enacted by Congress, and the FY2005 Administration request and Congressional action.

Table 1. Department of Transportation Appropriations

(for selected agencies, in millions)

Agency	Enacted FY2004	Requested FY2005	House*	Senate Committe e
Federal Highway Administration	$34,545	$34,178	$35,090	$35,435
Federal Aviation Administration	13,850	13,966	14,021	13,548
Federal Transit Administration	7,266	7,266	7,249	7,758
Federal Railroad Administration	1,447	1,088	1,082	1,437
National Highway Traffic Safety Administration	448	689	448	453
Federal Motor Carrier Safety Administration	364	455	438	450
Maritime Administration	221	234	227	384
Office of the Secretary	165	336	164	166
Research and Special Programs Administration	112	123	115	120
Office of the Inspector General (OIG)	56	59	58	59
Surface Transportation Board (STB)	18	19	20	20
Budgetary Resources Net Total	**58,507**	**58,431**	**58,889**	**59,611**

Source: Figures in **Table 1** are drawn from budget tables provided by the House Committee on Appropriations, except Senate Committee figures are from the budget table in Senate Report 108-342. Due to differing treatments of offsets, rescissions, and the structure of appropriations bills, the Appropriations Committee's figures will at times differ from those in the Administration's Budget Request. Some figures include offsetting collections. Enacted FY2004 figures reflect the 0.59% across-the-board rescission.

*During House floor debate on the bill, funding for the Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration, Federal Motor Carrier Administration, National Highway Traffic Safety Administration, and some of the Federal Aviation Administration funding was struck on points of order. Observers expect that the figures reported out by the House Committee on Appropriations will be used as House benchmarks during conference negotiations, so those numbers have been retained in this table.

The President submitted his FY2005 DOT budget request to Congress on February 2, 2004. He requested $58.4 billion, virtually the same amount enacted for FY2004. On September 22, 2004, the House passed H.R. 5025, its version of the FY2005 DOT appropriations bill. During floor debate, funding for programs which were not authorized for FY2005 was struck in a series of points of order. At that time, surface transportation programs were not authorized for FY2005; as a result, funding for highways, transit, and rail was struck. Most observers expect the funding levels recommended by the House Committee on Appropriations to be used as the House's benchmarks during conference negotiations. The Senate Committee on Appropriations reported out S. 2804, its version of the FY2005 DOT appropriations bill, on September 15, 2004; it recommended $59.6 billion for FY2005. Congress passed a continuing resolution (H.J.Res. 107/P.L. 108-309) on September 29, 2004 to provide funding for DOT and other federal programs through November 20, 2004 at their FY2004 levels.

The FY2004 appropriation for the Department of Transportation, part of the Departments of Transportation and Treasury and Independent Agencies Appropriations bill, was signed into law on January 23, 2004, as Division F of the Consolidated Appropriations Act, 2004 (P.L. 108-199). Congress provided $58.8 billion for transportation programs, 8% more than the Administration requested for DOT for FY2004 ($54.3 billion) and 6% more than enacted in FY2003. The major difference between the Administration's request and the conference agreement was in highway funding; the Administration requested less funding than in FY2003, and the Congress provided more than in FY2003. Another significant difference was over Amtrak funding. The Administration requested $900 million, 14% below the FY2003 enacted level. The House agreed to this amount, the Senate proposed $1.35 billion, and conferees agreed on $1.225 billion. Aside from these issues, the House and Senate generally agreed to the Administration's requested levels. The Transportation-Treasury appropriations bill was delayed in part due to disagreements over policy provisions in the non-transportation sections of the bill; although a conference agreement was reached on November 25th, the decision was made to include that bill in the Consolidated Appropriations bill with six other appropriations bills. The House approved the Consolidated Appropriations bill on December 8, 2003; the Senate adjourned for the year without considering the bill, passing it on January 22, 2004. The Consolidated Act included a 0.59% across-the-board rescission. A series of continuing resolutions provided funding through January 31, 2004, at FY2003 levels. For more information see CRS Report RL32308, *Appropriations for FY2005: Transportation, Treasury, and Independent Agencies*, and CRS Report RL31808, *Appropriations for FY2004: Transportation, Treasury, Postal Service, Executive Office of the President, General Government, and Related Agencies*. **(CRS contact: David Randall Peterman)**

Surface Transportation Reauthorization

Highway and Transit Program Reauthorization Issues

Congress is currently conferencing two bills which are the major legislative vehicles for reauthorization of 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 Transportation Equity Act: A Legacy for Users (TEA-LU)(H.R. 3550)("House bill") passed by the House on April 2, 2004.[1]

While Congress continues to consider reauthorization proposals, all existing programs continue to operate on the basis of an extension (H.R. 4916/P.L. 108-310) to May 31, 2005. The existing authorization has been extended six times; the first extension was to February 29, 2004 (P.L. 108-88), the second until April 30, 2004 (P.L. 108-202), the third until June 30, 2004 (P.L. 108-224), the fourth until July 31, 2004 (P.L. 108-263), and the fifth until September 30, 2004 (P.L. 108-280). It was hoped at the time that the first extension was passed that this would give Congress sufficient time to complete action on a reauthorization bill early in the second session. This was not the case, and there is growing concern that reauthorization might not occur during the remainder of the 108th Congress.

Reauthorizing legislation is needed to replace the provisions of the Transportation Equity Act for the 21st Century (TEA-21)(P.L.105-178 & P.L. 105-206), which would have expired at the end of FY2003 if not for the aforementioned extension legislation. TEA-21 provided for a dramatic increase in funding for federal surface transportation programs: the total TEA-21 authorization was about 40% more than the amount that had been authorized in the previous six-year program authorization. Further, a mechanism created by TEA-21, Revenue-Aligned Budget Authority (RABA), provided the program with an additional $9.1 billion over TEA-21's six-year life.

Prior to House and Senate consideration, the Bush Administration submitted a bill indicating the Administration's reauthorization views and priorities. This bill was introduced by request in both the Senate and the House as S. 1072 and H.R. 2088, respectively. 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 mark-up 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; although it contains provisions proposed by the Administration, the bill as amended is dramatically different from the introduced version of the bill.

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 over $318 billion in total spending authority for the period FY2004 - FY2009. The House bill as introduced provided a more generous $375 billion over the same period. Under pressure from House leadership and the Bush Administration, the House Committee on Transportation and Infrastructure reluctantly reduced the size of its bill to roughly $275 billion during Committee markup. As passed by the House, however, the bill includes a so-called "re-opener" provision that would

[1] To accommodate the conference the Senate passed H.R. 3550 and incorporated the provisions of S. 1072 into it in the manner of a substitute. For purposes of this discussion the Senate bill is still referred to as S. 1072.

require Congress to revisit the bill before the end of FY2005 and perhaps raise its funding level. Either bill is well above the Administration's stated position that total spending be set at $256 billion over the next six years. Neither the House nor the Senate proposal can be funded by current revenues projected for the programs' normal funding sources, although both bills identify additional sources of revenue.

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. 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, reportedly believe that they could override a veto of this legislation.[2] The Administration, in a March 30, 2004, Statement of Administration Policy, is also threatening a veto of the House-passed version of H.R. 3550 at its $275 billion spending level. The Administration's veto threat, while focused on the overall funding level, also addresses the re-opener provision, which the Administration views as an attempt to require Congress to approve increased funding in the 109th Congress. The House bill also passed by a potentially veto-proof margin of 357-65.

As suggested above, much of the lobbying involving reauthorization is predicated on the belief that Congress will be able to find the additional revenues needed to fund a larger surface transportation program. Given the existing state of the economy, concerns about the federal budget deficit, the costs associated with the war on terrorism, and the cost of Iraq's reconstruction, such a conclusion is far from foregone. The money question aside, there appears to be little interest in making major changes to the overall structure of the highway, highway safety, and transit programs. Rather, the interest appears to be in refining these programs to allow spending for some additional activities, adding some new stand-alone programs, and consolidating several traffic safety programs into a single program. Among the issues being considered are: allowing states greater flexibility in how they use their transportation funds; maintaining the existing highway-trust-fund funding framework established by TEA-21; funding for physical infrastructure security; streamlining of environmental evaluations required by the project approval process; reducing the rate of drunk driving; and increasing the rate of seat belt use. For more information, see CRS Report RL32226, *Highway and Transit Program Reauthorization Legislation in the 2nd Session, 108th Congress*, and CRS Report RS21621, *Surface Transportation and Aviation Extension Legislation: A Historical Perspective*. **(CRS contact: John Fischer)**

Transit Reauthorization. Federal transit programs are authorized as part of the periodic authorization of surface transportation programs. The major issue in the transit reauthorization debate is money. The Administration has proposed to extend the current $7 billion annual transit funding level for the six-year authorization period ($44 billion over the six-year authorization period, though only $38 billion of that would be guaranteed). Both

[2] 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

the House and the Senate want more transit funding. The House bill proposes $51.5 billion for transit; the Senate $56.5 billion.

The Administration bill provides virtually no increase in transit funding over the six-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 decline from its FY2004 level. The House bill provides a slight increase in transit funding (considering inflation), though not enough to accommodate the projected growth in transit ridership; and the Senate bill provides the level of federal transit capital funding that the FTA estimates[3] is needed to maintain the status quo level of transit service in the nation in light of projected ridership growth.

Both House and Senate bills generally maintain the transit program structure of TEA-21. Both also propose new programs. Proposals in both bills would create: a formula program to reward small cities that provide relatively high levels of transit service; a discretionary program to fund new transit projects, such as bus rapid transit and commuter rail, requiring relatively small-scale capital investment (those with a federal share less than $75 million); and a discretionary pilot program to alleviate congestion, pollution, and related impacts in national parks by providing public transportation within the parks. Both bills would also make transit security projects, including drills and training, eligible for funding as capital projects, and would promote improved coordination between public transportation agencies and other transportation providers (such as social service agencies). And both bills would increase both the amount and percentage of transit funding that goes to rural areas. For more information, see CRS Report RL32226, *Highway and Transit Program Reauthorization Legislation in the 2nd Session, 108th Congress*. **(CRS contact: David Randall Peterman)**

Safety Issues. Key bills that would authorize major transportation safety programs include the Senate- and House-passed versions of highway and transit reauthorization legislation, S. 1072 and H.R. 3550, respectively. These bills propose various changes in federal grants that directly affect the amount of and conditions under which funds from the Federal Highway Trust Fund are provided to the states. Key challenges will be finding additional funds to increase federal support for safety-oriented activities, and evaluating the costs and benefits of changes in federal policy. Debate is also proceeding on the reauthorization of federal railroad safety law, including funding for the safety programs of the Federal Railroad Administration (FRA). Issue areas can be grouped into five categories:

Infrastructure. Billions of dollars derived from federal-highway categorical grants are used each year by state and local governments to improve the design, throughput, and overall performance and safety of the highway infrastructure. At issue are the authorization levels for various federal-highway categorical grants, the amount (if any) of set-asides for safety, and whether a separate categorical grant for safety is needed. S. 1072 creates a new grant program called the Highway Safety Improvement Program, which would include funds

[3] 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/].

for hazards elimination and grade-crossing improvements. H.R. 3550 authorizes a Highway Safety Improvement Program focusing on these areas as well, but also creates a new High Risk Rural Road Safety Improvement Program.

Traffic Safety and Associated Grants. At issue are how much funding to provide for the National Highway Traffic Safety Administration (NHTSA) driver/passenger (behavioral) program, and whether funding emphasis and priority setting regarding these activities should be changed. TEA-21 reauthorized two traffic-safety grants and authorized six new grant programs. In retrospect, many state officials maintain that TEA-21 authorized too many traffic-safety grants to administer effectively. Not surprisingly, the states seek a unified grant approach with financial rewards for a state's performance. Congress is debating how to structure such a unified traffic-safety incentive program, perhaps combining the existing Section 402 (state and community grants), alcohol countermeasures, and occupant protection enhancement grants. S. 1072 authorizes substantially revised new grant programs to combat alcohol-impaired driving and to encourage the states to adopt and enforce primary safety belt laws and to increase safety-belt use rates. The Senate bill also authorizes specific funds to aid states in conducting coordinated emergency medical services and 911 programs. H.R. 3550 keeps much of the structure of the current Section 405 (occupant protection incentive) grants and adds new performance-based incentives to encourage states to achieve a seat belt use rate of 85%. H.R. 3550 proposes several new eligibility criteria for a state to receive Section 410 (alcohol-impaired driving countermeasures) grants, including a new performance-based incentive to reduce traffic fatalities involving alcohol.

Truck and Bus Safety. Key concerns include determining funding levels for: various motor-carrier safety enforcement and regulatory activities conducted by the Federal Motor Carrier Safety Administration (FMCSA); Motor Carrier Safety Assistance Program (MCSAP) and the Commercial Driver Licensing (CDL) programs conducted by the states. S. 1072 and H.R. 3550 are similar with respect to many provisions pertaining to motor carrier safety. These bills seek to strengthen the compliance powers of the FMCSA, authorize a new grant program to improve state CDL efforts, establish a Medical Review Board to provide medical advice on driver physical standards, and continue funding for various state and federal information systems and communication networks (called CVISN) that support safety and regulation of the industry. The Senate bill seeks to expedite FMCSA's responses to past federal statutes and congressional directives, establishes a working group to improve the national CDL program, and freezes current length limits of commercial motor vehicles operating on federal-aid highways. Compared to S. 1072, H.R. 3550 authorizes for FY2005-2009 slightly more money for FMCSA's administrative operations, but slightly less money for MCSAP grants. H.R. 3550 also authorizes a substantially larger program intended to encourage motorists to share the road safely with commercial drivers and vice versa.

Intelligent Transportation Systems (ITS). ITS crash avoidance technologies offer much promise, but substantial costs and lead times are generally involved before widespread deployment. H.R. 3550 increases funding for the national ITS research and testing program. In addition, this bill creates a new ITS deployment program that will be apportioned to the states and a new 511 traveler information program. The bill requires that a minimum of $3 million of the total amounts authorized to be appropriated from specified federal aid highway programs for FY2004 through 2009 must be utilized to expand deployment of ITS. S. 1072 authorizes continued funding for a revised ITS research and development program and allows states to deploy ITS using qualified categorical funds. **(CRS contact: Paul Rothberg)**

Federal Rail Safety Program Reauthorization. The Senate has passed S. 1402, The Federal Railroad Safety Improvement Act, which would reauthorize federal rail safety activities for FY2004-2008. The bill seeks to improve the information contained in the national highway-rail grade crossing inventory; direct the FRA to develop a plan for a joint initiative with the states to reduce the number of public and private highway-rail grade crossings by 1% per year in each of the succeeding 10 years; create a working group to consider how to improve fatigue management for railroad employees subject to the hours of service law (title 49, chapter 211); and require the Department of Transportation (DOT) and the Department of Homeland Security (DHS) to execute a memorandum of understanding regarding railroad security matters. **(CRS contact: Paul Rothberg.)**

Key Environmental Issues

The impacts of transportation on the environment raise numerous issues. In the 108th Congress, legislation to reauthorize federal surface transportation programs includes environmental provisions that are controversial. The adequacy of funding for projects to mitigate air and water pollution from highway travel has received significant attention. Whether there is a need to improve the effectiveness of these projects in controlling pollution has also been subject to debate. The use of federal highway funds to promote alternative fuels and vehicles as means to improve air quality has received attention as well. See CRS Report RL32454, *Environmental Provisions in Surface Transportation Reauthorization Legislation: SAFETEA (S. 1072) and TEA-LU (H.R. 3550)* and CRS Report RL32057, *Highway and Transit Program Reauthorization: An Analysis of Environmental Protection Issues*. **(CRS contact: Linda Luther)**

Another major issue for surface transportation reauthorization has been whether to alter the time frame for states to demonstrate that their transportation plans conform to their air quality plans. Demonstrating conformity is a significant issue in areas with poor air quality, as a state's federal highway funds can be suspended if plans to expand highway capacity would cause vehicular emissions to rise above levels agreed to in the states's air quality plan. See CRS Report RL32106, *Transportation Conformity Under the Clean Air Act: In Need of Reform*? **(CRS contact: Jim McCarthy)**

Also included in reauthorizing legislation are provisions intended to expedite and streamline the process for complying with certain environmental requirements. In particular, changes would be made to the process for implementing the National Environmental Policy Act (NEPA) and the Department of Transportation Act of 1966, referred to as "Section 4(f)." NEPA requires federal agencies to prepare a detailed statement of environmental impacts for projects significantly affecting the environment. Section 4(f) restricts the use of parks, refuges, and historic sites for transportation projects. See CRS Report RL32032, *Streamlining Environmental Reviews of Highway and Transit Projects: Analysis of SAFETEA and Recent Legislative Activities*. **(CRS contact: Linda Luther)**

Aviation Reauthorization

Congress passed 'Vision 100 — Century of Aviation Reauthorization Act' (P.L. 108-176) on November 21, 2003, and the measure was signed by the President on December 12, 2003. The act reauthorizes the FAA through 2007 and provides $59.2 billion over four years for: airport improvements; airway facilities and equipment; FAA operations and maintenance (O&M); and aviation research, engineering, and development (R, E, & D). **(CRS Contacts: Bart Elias, John Fischer, and Robert Kirk)**

Transportation Security

Since September 11, 2001, transportation security has emerged as a key policy issue for Congress. On November 19, 2001, President Bush signed the Aviation and Transportation Security Act (ATSA, P.L. 107-071). The act established the Transportation Security Administration (TSA) that is responsible for the security of all modes of transportation, passenger and cargo. On November 25, 2002, President Bush signed the Homeland Security Act of 2002 (P.L. 107-296). The act created a new cabinet-level Department of Homeland Security (DHS) to consolidate the antiterrorist activities of 22 federal agencies, and transferred the TSA and the Coast Guard from the DOT to the new department. (See CRS Report RL31549, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*). A major challenge in transportation security policy-making is to increase security without excessively impeding commerce and travel. The 9/11 Commission's final report described the emphasis given to aviation security compared to other transportation modes as "fighting the last war", noted the vulnerabilities still present in the aviation system as well as in maritime and surface transportation, and called for a risk-based assessment of all transportation assets to ensure that "our transportation security resources are being allocated to the greatest risks in a cost-effective way."[4]

Aviation Security

The Homeland Security Act of 2002 allowed the TSA to implement interim, alternative baggage-screening methods at airports unable to meet the original December 31, 2002, deadline for deployment of explosive detection systems established under ATSA and to establish a plan for screening all checked baggage with explosive detection systems no later than December 31, 2003. While those deadlines have now passed, a few large airports are still not in compliance with the requirement to screen all checked baggage using explosive detection systems and continue to rely on alternate screening methods. Vision 100 (P.L. 108-176) established an Aviation Security Capital Fund, authorizing up to $500 million per year

[4] *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, New York: W. W. Norton, 2004, p. 391.

through FY2007 for funding the integration of explosive detection equipment into baggage handling systems. The 9/11 Commission recommended that the TSA expedite installation of these in-line baggage screening systems. The 9/11 Commission also recommended that the TSA and Congress give priority to improving checkpoint screening for explosives on passengers. In response, the House has included provisions to enhance checkpoint screening in H.R. 10, and the Senate passed amendments to S. 2845 addressing both checkpoint screening and the integration of baggage screening equipment.

The Homeland Security Act of 2002 also contained provisions for training and deputizing volunteer pilots of commercial passenger aircraft as federal flight deck officers, allowing such deputized pilots to carry firearms and use force, including lethal force, to protect the flight deck. TSA was appropriated $8 million for the program in FY2003 and began training about 50 pilots per week starting in late July, 2003. The program, which trains about 100 pilots per week, received $25 million in FY2004 and Congress has approved $25 million for FY2005. While the program was initially limited to pilots of passenger aircraft, Vision 100 (P.L. 108-176) expanded the program to include all-cargo pilots and other flight crew members such as flight engineers. Legislation (S. 2268; H.R. 4126) aimed at reforming the program to facilitate participation has been introduced.

In November 2003 the Federal Air Marshal program was taken out of the TSA and realigned with the Bureau of Immigration and Customs Enforcement. Under this realignment, DHS plans to cross-train border patrol and immigration officers to function as air marshals, thus expanding the pool of available air marshals. Oversight of this implementation may assess whether border protection and in-flight security mandates are being adequately met by this arrangement.

A provision of ATSA allows airports to submit proposals to the TSA to opt-out of the federal screening program and implement private screening contracts managed by the TSA beginning in November 2004. An evaluation of the ongoing private-screening pilot program in place at five airports assessed the comparative costs and effectiveness of private screening, and airports have been issued guidance regarding the opt-out program, which TSA refers to as the Screening Partnership Program (SPP).

Appropriations for air cargo security designated funds for expanding the known shipper program, increasing oversight of cargo security, and continuing research and development of technologies to improve air cargo security. Congress has approved increasing funding for air cargo security operations and research to $115 million in FY2005 compared to $85 million in FY2004. The 9/11 Commission recommended that TSA intensify its efforts to identify, track, and screen potentially dangerous cargo. In response, H.R. 10 includes a provision requiring the TSA to develop technologies to meet this objective, while the Senate passed language (S. 2845, Title V) similar to a measure previously passed in May, 2003, (S. 165) calling for enhanced screening and inspection of cargo transported on passenger aircraft as well as all-cargo aircraft and additional security measures at air cargo facilities. The 9/11 Commission also recommended deploying at least one hardened cargo container on each passenger airliner for carrying suspect cargo. H.R. 10 contains a provision that would establish a pilot program to evaluate this recommendation. Other legislation introduced in the House (H.R. 2455; H.R. 3798; H.R. 4312) seeks to require the screening of all cargo placed on passenger aircraft.

Amid extensive controversy over passenger privacy and civil rights, the TSA has scrapped its Computer Aided Passenger Prescreening (CAPPS II) program and announced a new program, Secure Flight, to replace the current airline-run passenger prescreening process. The 9/11 Commission recommended that implementation of such a system not be further delayed and the TSA should perform the prescreening function comparing airline supplied passenger data to the larger set of terrorist watchlists maintained by the U.S. government. In response, H.R. 10 and S. 2845 contain provisions for implementing such a system that protects the privacy and civil liberties of individuals and provides citizens with a process for correcting erroneous information. The TSA is also implementing trials of a registered traveler program designed to speed the passage of frequent fliers who voluntarily submit background information and biometric identifiers through security checkpoints. TSA is also exploring the use of biometrics and other identification technologies for credentialing transport workers, including airport workers with secured area access. Legislation has also been introduced (H.R. 2144, H.R. 3798) calling for the physical screening of all workers with access to aircraft.

Congress may also examine the effectiveness and impact of airspace restrictions. A provision in FY2003 consolidated appropriations (P.L. 108-7) and the Consolidated Appropriations Act of 2004 (P.L. 108-199) extends restrictions on stadium overflights during major events and also places tighter controls on the issuance of waivers to this restriction. While Vision 100 requires the DHS to implement a security plan permitting general aviation flights to resume at Washington Reagan National Airport (DCA), DHS has indicated that significant security concerns remain in the way of resuming general aviation flights at DCA.

Legislation (H.R. 580; S. 311) has also been introduced that seeks to protect U.S. airliners from terrorist missiles by installing missile countermeasure systems on aircraft, and, in the interim, deploying National Guard and Coast Guard units to patrol areas near airports. FY2004 appropriations (P.L. 108-90, H.Rept. 108-280) provided $60 million to develop and evaluate anti-missile systems based on similar military systems, to protect commercial airliners from shoulder-fired missiles. Congress has approved an additional $61 million to continue this program in FY2005. More recently introduced legislation (H.R. 4056; H.R. 10) would require administrative programs and international cooperation to thwart the proliferation of shoulder-fired missiles, an assessment of the vulnerability of aircraft to shoulder-fired missile attacks near U.S. airports, and expedited certification of anti-missile systems for commercial aircraft. See CRS Report RL31969, *Aviation Security: Issues Before Congress Since September 11, 2001*; CRS Report RL31151, *Aviation Security Technology and Procedures: Screening Passengers and Baggage*; CRS Report RL31150, *Selected Aviation Security Legislation in the Aftermath of the September 11 Attack*; CRS Report RL31741, *Homeland Security: Protecting Airliners from Terrorist Missiles;* CRS Report RL32022, *Air Cargo Security*; CRS Report RL32383, *A Return to Private Security Screening at Airports?: Background and Issues Regarding the Opt-Out Provision of the Aviation and*

Transportation Security Act; and CRS Report RL32541, *Aviation Security-Related Findings and Recommendations of the 9/11 Commission* **(CRS contact: Bart Elias, Aviation; Dan Morgan, Security Technology)**

Surface Transportation Security

The bombing of commuter trains in Madrid, Spain on March 11, 2004, highlighted the issue of passenger rail security. World wide, roughly one-third of terrorist attacks target transportation systems; the most common transportation mode attacked is public transit. The effectiveness of transit depends on ease of access to the systems. Consequently, security measures applied in aviation cannot be easily applied to transit. Likewise, the many miles of rail, highway, and pipeline networks are impossible to guard thoroughly. Of particular concern are the daily shipments by rail and truck of hazardous materials (especially flammable and poisonous gases). The overland crossings with Canada and Mexico are also a concern. Among the major concerns regarding rail security are the rail tunnels leading to the train stations in New York City, Washington, DC, and Baltimore. Congress passed H.R. 4567, the FY2005 Department of Homeland Security Appropriations bill, which provides $150 million for grants for rail and transit security. S. 2845, the intelligence reform bill passed by the Senate, would require the Secretary of the Department of Homeland Security to conduct a risk assessment of the nation's transportation assets, including surface transportation modes, and recommend actions to be taken to improve security. S. 2273 and S. 2884, both of which have passed the Senate, would require the Department of Homeland Security to promote the security of rail and transit, respectively, and would authorize security grant programs for those respective modes. See CRS Report RL32625, *Passenger Rail Security: Overview of Issues.* **(CRS contacts: David Randall Peterman, Transit and Passenger Rail; John Frittelli, Freight Railroads; Paul Rothberg, Highways and Pipelines)**

Ports and Maritime Security

Government leaders and security experts are concerned that the maritime transportation system could be used by terrorists to smuggle a weapon of mass destruction into the United States. Experts have found ports to be vulnerable to terrorist attack because of their size, easy accessibility by water and land, proximity to urban areas, and the tremendous amount of cargo that is typically transferred through them. On November 14, 2002, Congress passed the Maritime Transportation Security Act of 2002 (MTSA, P.L. 107-295). The act creates a U.S. maritime security system and requires federal agencies, ports, and vessel owners to take numerous steps to upgrade security. In the 108th Congress, debate has focused on whether current efforts to improve port security are proceeding at sufficient pace and whether the nation is devoting enough resources for this purpose. The Maritime Transportation Security Act of 2004 (S. 2279), as passed by the Senate, specifies in more detail some of the actions federal agencies should take to further improve port security. Responding to the recommendations of the 9/11 Commission, H.R. 10 and S. 2845 impose an urgency on DHS's efforts in strengthening maritime security by prescribing deadlines on the agency in planning and carrying out certain maritime security activities that were called for in MTSA.

With regard to improving the physical security of U.S. ports, the issue is not so much what needs to be done to improve security, but who should pay for it. Because of the relatively low level of security at most U.S. ports before September 11, 2001, the immediate response to the attack was to increase security to acceptable levels. The Coast Guard roughly estimates that the cost of implementing MTSA will be $1.51 billion the first year and $7.4 billion over the succeeding decade (see 68 *Fed. Reg.* 39271). Congress has provided over $500 million through FY2004 in direct federal grants to ports to improve their physical and operational security. This is in addition to the budgets of the Coast Guard, Bureau of Customs and Border Protection, TSA, and other federal agencies involved in port security. At issue is whether the taxpayer should pay for port security through general revenues or whether the maritime industry or its customers should pay through user fees.

Another area of concern is ensuring the integrity of cargo as it begins its transit to the United States from its overseas origin. Point of origin security is necessary because inspecting cargo on the high seas is practically impossible and inspecting cargo upon its arrival at a U.S. port could be too late to prevent a terrorist event. This issue is particularly relevant to containerized cargo because the containers are filled at the exporter's factory or at a warehouse consolidation facility. At the port of loading, a container ship will typically be loaded with containers that come from hundreds of different locations and from hundreds of different firms. Ensuring that the container was not filled with illegitimate cargo, that the loaded container was not tampered with while en route to the port, and that the cargo information reported to Customs agents at the port of loading is not fraudulent are all critical challenges in supply chain security. **(CRS contact: John Frittelli)**

Amtrak Issues

The Administration has requested $900 million for Amtrak for FY2005. Amtrak has requested $1.8 billion. These are the same amounts the respective parties requested for FY2004. The DOT Inspector General testified, regarding the Administration's FY2004 request for $900 million, that Amtrak could not survive on that amount. The House-passed FY2005 DOT appropriations bill (H.R. 5025) provides no money for Amtrak, after a series of points of order struck funding for programs lacking an authorization for FY2005; the House Committee on Appropriations had recommended $900 million. The Senate Committee on Appropriations recommended $1.2 billion for FY2005 (S. 2806), and expected Amtrak to receive another $330 million from S. 1637, for a total of $1.55 billion in FY2005; however, the version of S. 1637 which passed Congress did not include any funding for Amtrak. Currently a continuing resolution (H.J.Res. 107) is providing Amtrak funding at its FY2004 level through November 20, 2004.

Congress provided $1.225 billion for Amtrak for FY2004 (P.L. 108-199). In addition, Congress postponed Amtrak's repayment of a $100 million loan from the DOT. Combined with about $150 million in cash that Amtrak had available at the end of its 2003 fiscal year, that gave Amtrak the equivalent of $1.45 billion for FY2004. According to the Administration, its $900 million request was intended to send a message that Amtrak must be reformed. The House of Representatives approved $900 million for Amtrak for FY2004 (H.R. 2989), while the Senate approved $1.346 billion.

Amtrak's FY2004 appropriation continues changes made in Amtrak's FY2003 appropriation (in P.L. 108-7) designed to bring greater transparency to Amtrak's finances. Funding no longer goes directly to Amtrak, but is allocated to the Secretary of Transportation, who makes quarterly grants to Amtrak. Amtrak is required to submit grant applications for each route. The FY2004 appropriation also directs the Secretary of Transportation to develop and implement a procedure for fair competitive bidding between Amtrak and other operators for state-supported passenger rail routes. The Secretary is authorized to use $2.5 million of Amtrak's FY2004 funding to develop and implement this procedure.

Intercity passenger rail is an unprofitable activity virtually everywhere in the world. In the United States, private companies lost money on intercity passenger rail service for decades, subsidizing it from their freight rail profits. Congress created Amtrak in 1970 to preserve some intercity passenger rail service while allowing the rail companies to discontinue that money-losing service. Amtrak's revenues are around $2 billion a year, but its operations cost nearly $3 billion a year. In addition, Amtrak has nearly $5 billion in debt and capital lease obligations, and an estimated $6 billion in backlogged capital maintenance needs. Amtrak submitted a five-year Strategic Plan to Congress on April 25, 2003 and issued an updated version on June 29, 2004. The plan would both maintain current network operations and begin to address Amtrak's estimated $6 billion capital maintenance backlog; it calls for an average of $1.4 billion annually in federal capital and operating assistance over FY2005-FY2009. In addition to these amounts, for FY2005 Amtrak has requested $262 million for debt service and $175 million for loan repayment and working capital, for a total request $1.8 billion. The Amtrak Reform Council and the DOT Inspector General's Office have both estimated that Amtrak requires around $1.5 billion in operating and capital support annually. This is a higher level of funding than Amtrak has ever consistently received.

Amtrak's authorization expired at the end of FY2002. Reauthorization proposals introduced in the 108th Congress include bills that would authorize funding for Amtrak as it currently exists and bills that would restructure Amtrak. In the first category are: S. 104 and its companion H.R. 2726, which would authorize around $2.8 billion annually for Amtrak, with detailed allocations of that funding, and $1.55 billion annually to the DOT for high-speed rail planning and implementation grants to states; H.R. 2572, which would authorize $2 billion annually for Amtrak for FY2004-FY2006; S. 1072, the Senate surface transportation reauthorization bill, which would authorize $2 billion annually for Amtrak over FY2004-FY2009 (Section 4601); and S. 1961, which would authorize $2 billion annually for Amtrak and would create a non-profit agency to issue $30 billion in tax-credit bonds to finance the development of rail infrastructure. S. 1072 has been passed by the Senate, though its Amtrak provision has elicited a veto threat from the Administration; H.R. 2572 has passed out of committee.

In the second category are three bills that would restructure Amtrak: S. 1501, S. 1505, and S. 2306. S. 1501 and its companion H.R. 3211, the Administration's proposal for restructuring Amtrak and passenger rail services, would largely transfer responsibility for planning, managing and funding passenger rail service to the states, phasing out federal operating support (though federal matching grants for capital improvements would be available); it contains no authorization figures. S. 1505 would authorize $2 billion annually for Amtrak operations, divide Amtrak's infrastructure from its operations, create a federal passenger rail office with responsibility for the passenger rail system, and create a non-profit agency to issue $48 billion in tax-credit bonds to finance capital improvements to increase the speed of passenger rail trains throughout the nation. S. 2306 is similar in some respects to S. 1501: it would require states to provide more (but not all) of the operating support for Amtrak short-distance routes; it would reduce (but not eliminate) operating support to long-distance trains; it would require competitive bidding to provide service on routes; and it would create a grant program for rail capital improvements. It would authorize almost $2 billion annually for passenger rail operations and capital improvements. **(CRS contact: David Randall Peterman)**

Airline Industry Financial Turmoil

The March/April 2003 War in Iraq and subsequent reconstruction concerns; the outbreak of a virus known as Severe Acute Respiratory Syndrome (SARS) (now in apparent remission); increasing fuel prices; and a declining dollar have dramatically affected the airline industry. According to the Air Transport Association (ATA), air travel in the first half of 2003 dropped significantly and then recovered slightly over the remainder of the year. In summer 2004 traffic returned, but so far that traffic is not translating into profitability for most airlines. All of these events are occurring in the context of the events of September 11th, and continuing concern about possible future terrorist events, which continue to have a huge negative impact on the industry. The airline industry as a whole is expected to lose money in 2004. It also lost money in 2003, but did better than it had during its previous record loss years of 2001 and 2002, respectively.

Among major airlines, only Southwest was profitable in 2003; Southwest is the only major carrier that observers are sure will be profitable in 2004 as well. The industry's second largest airline, United, is operating in receivership, and there is always the possibility that other large carriers could find themselves in this position in the future. There is, therefore, considerable concern that the airline industry as we have known it over the last few years is likely to go through a period of major structural change, which has yet to fully play out. Since September 11, 2001, the airline industry has come to Congress seeking assistance, by way of tax relief, pension relief, or other means, in order to keep flying.

After September 11th, Congress and the Bush Administration moved swiftly to provide the airline industry with $15 billion in federal financial support (Air Transportation Safety and System Stabilization Act (Stabilization Act)(P.L. 107-42). The first $5 billion was direct aid to pay for industry losses associated with the results of the September 11th attacks. The vast majority of these funds have been distributed to the airlines [http://www.dot.gov/affairs/carrierpayments.htm]. A second source of funding, access to $10 billion in government-backed loans, required approval by the newly created Air Transportation Stabilization Board (ATSB). Thirteen airlines applied for the loan program. The majority received some form of assistance; but the largest single applicant, United, was denied a loan. United reapplied and was finally denied in June 2004. Of the $10 billion authorized by this program, less than $2.0 billion has actually been committed.

In the FY2003 Emergency Wartime Supplemental (P.L. 108-11)(April 12, 2003), Congress again provided the industry with short term relief. Specifically, the act provided $2.3 billion in immediate assistance to reimburse air carriers for security expenses (Transportation Security Administration (TSA) press release: TSA 03-26, May 15, 2003). Congress also provided the air carriers with an additional $100 million to reimburse them for expenses involved in hardening cockpit doors (TSA press release, September 24, 2003), and gave the industry a four-month tax holiday (June-September 2003) during which time passenger and airline security fees were not collected. Notwithstanding this assistance, there are many observers who believe that this aid will be insufficient to keep all U.S. airlines solvent. Rather, it is the hope that this assistance has bought the industry some time and that an improving economy will restore the industry to some semblance of health. **(CRS contact: John Fischer)**