# Surface Transportation Reauthorization Legislation in the 112th Congress: Major Provisions Pending in the Senate

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# Summary

The federal government's highway, mass transit, and surface transportation safety programs are periodically authorized in a multi-year surface transportation reauthorization bill. The most recent reauthorization act, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU or SAFETEA; P.L. 109-59), expired at the end of FY2009. Since then, the surface transportation programs and activities have been funded under a series of extension acts.

The main obstacle to passage of a new multi-year bill during the past two years has been the disparity between projected spending and the much lower projections of the revenue flows to the highway trust fund (HTF). Taxes on gasoline and diesel provide 90% of the revenues for the HTF, which historically has funded the entire highway program and roughly 80% of the mass transit program. The rates on these taxes, which are on a cents-per-gallon basis, have not been increased since 1993. In addition, the condition of the economy and improvements in fuel economy have held down fuel consumption and as a result are adversely affecting HTF revenues. Consequently, authorizers face a dilemma: how to pass a bill without cutting infrastructure spending, raising the gas tax, or increasing the budget deficit.

The Senate Environment and Public Works Committee marked up and reported favorably on the highway provisions of S. 1813, the Moving Ahead for Progress in the 21st Century Act (MAP-21), on November 9 2011. MAP-21 is a two-year reauthorization bill (FY2012-FY2013). As of February 7, 2012, all committees of jurisdiction had marked up their titles. These titles were titles were folded into Senate amendment SA 1761, " of a perfecting nature," to S. 1813, on March 1, 2012. To fully fund the bill, roughly $10.5 billion in new revenues or offsets (to allow for general fund transfers) is needed beyond anticipated HTF revenues and balances. MAP-21 proposes:

- A total Federal-Aid Highway Program authorization of $39.4 billion for FY2012 and $40.4 billion for FY2013 (reflecting rescissions), and $400 million for research and education in each fiscal year.
- To reduce the total number of highway programs from roughly 90 to 30. The overall Federal-Aid Highway Program would be structured around five large "core" programs, including a new National Freight Program. The existing Equity Bonus Program would be discontinued.
- To eliminate individual program formula factors. Instead, each state's initial amount of the bill's authorized contract authority would be based on its share of total apportionments and allocations during FY2005-FY2009.
- To accelerate project completion, speed up the environmental review process and increase the use of performance measures.
- $10.458 billion, annually, for FY2012-FY2013, for transit programs.

The Senate Finance Committee component of MAP-21 includes provisions to provide roughly $10.5 billion in offsets and revenue transfers to the HTF.

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# Introduction

Surface transportation authorization acts authorize spending on federal highway and mass transit programs, surface transportation safety and research, and some rail programs. The most recent multi-year authorization for federal surface transportation programs, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU or SAFETEA; P.L. 109-59), expired on September 30, 2009. Since then these programs have operated on a series of extension acts and continuing resolutions.

The budgetary environment has changed since the passage of SAFETEA in 2005. The financial resources available to authorizers are more constrained. The highway trust fund (HTF) has provided most of the funding for surface transportation authorization bills since the fund was created in 1956, but the revenues from highway taxes (mostly on gasoline and diesel fuel) that support the HTF have declined in recent years due to the condition of the economy and improvements in vehicle fuel efficiency. Consequently, how to pass a multi-year bill, without cutting infrastructure spending, raising the gas tax, or increasing the budget deficit is an underlying theme in the ongoing debate. Other issues such as alternative finance, tolling, public-private partnerships,[1] acceleration of project delivery,[2] and performance management are also being debated in this fiscal context. In addition, the question of equity in the distribution of federal spending among the states, which has been resolved in the past by providing large increases in funding for all states, cannot be solved so easily given currently forecast revenues.[3]

For a detailed review of the underlying issues, see CRS Report R41512, *Surface Transportation Program Reauthorization Issues for the 112th Congress*, coordinated by Robert S. Kirk.

On November 9, 2011, the Senate Environment and Public Works Committee (EPW) marked up and ordered reported favorably the highway provisions of S. 1813, the Moving Ahead for Progress in the 21st Century Act (MAP-21). By February 7, 2012, all the Senate committees of jurisdiction had reported favorably on their bill components, which are expected to be folded into MAP-21 by amendment. On March 1, 2012, Majority Leader, Senator Harry Reid introduced Senate Amendment 1761 to S. 1813, "of a perfecting nature," which adds the transit, rail, highway safety, and other provisions to MAP-21.[4] References in this report to MAP-21 are to S. 1813 as amended by SA 1761.

Following an explanation of the existing surface transportation programmatic framework, this report tracks and analyzes the major provisions of MAP-21.

In early February 2012, the House committees of jurisdiction over surface transportation reauthorization reported favorably on their contributions to H.R. 7, the American Energy and Infrastructure Jobs Act (H.R. 7), which have been consolidated and made available by the House

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[1] CRS Report RL34567, *Public-Private Partnerships (PPPs) in Highway and Transit Infrastructure Provision*, by William J. Mallett.

[2] CRS Report R41947, *Accelerating Highway and Transit Project Delivery: Issues and Options for Congress*, by William J. Mallett and Linda Luther.

[3] CRS Report R41869, *The Donor-Donee State Issue in Highway Finance*, by Robert S. Kirk.

[4] See, Sen. Harry Reid, "SA 1761, Amendment of a Perfecting Nature to S. 1813 to reauthorize Federal-Aid highway and highway safety construction programs, and for other purposes," available at https://docs.google.com/file/d/0B23rveCvG52eWllWVTBWNWhUZ2FTbk5Tb3FGeGstZw/edit

Committee on Rules.[5] For a comparative summary of MAP-21 and H.R. 7, with links to statistical resources, see CRS Report R42350, *Surface Transportation Reauthorization in the 112th Congress: Summary and Sources*, coordinated by Marc Levinson.

# The SAFETEA Framework

## Highway Trust Fund

The highway trust fund is financed from a number of sources including sales taxes on tires, trucks, buses, and trailers, as well as truck usage taxes, but approximately 90% of trust fund revenue comes from excise taxes on motor fuels. The motor fuel revenue dedicated to the trust fund is derived largely from taxes of 18.3 cents per gallon on gasoline and 24.3 cents per gallon on diesel. The HTF consists of two separate accounts—highway and mass transit. The highway account receives an allocation equivalent to 15.44 cents of the tax and the mass transit account receives the revenue generated by 2.86 cents of the tax.[6] Because the fuel taxes are set in terms of cents per gallon, rather than as a percentage of the sale price, their revenues do not increase with inflation. The fuel tax rates were last raised in 1993.

The period of sluggish economic performance that began in 2007 and the improvements in vehicle fuel efficiency have reduced fuel tax revenues below the optimistic projections assumed in SAFETEA. The highway account has already required three transfers from the general fund totaling $29.7 billion,[7] without which the Federal Highway Administration (FHWA) might not have been able to pay states for work they completed.

The Congressional Budget Office (CBO), in its January 31, 2012, HTF baseline projection, showed that the highway account is expected to have a negative balance of -$3.2 billion at the end of FY2013.[8]

The CBO projections show the highway account excess of outlays over tax revenues (plus interest) as $7 billion for FY2012 and $8.5 billion for FY2013. A gap of roughly $8 billion to $9 billion per year remains through FY2022.[9] CBO projects that the mass transit account, which received a $4.8 billion general fund transfer in FY2010, will remain above zero through FY2013

[5] U.S. Congress, House Committee on Rules, *Text of H.R. 7, the American Energy and Infrastructure Jobs Act of 2012*, committee print, 112th Cong., 2nd sess., February 8, 2012, Rules Committee Print 112-14 (Washington: GPO, 2012), pp. 1-847, http://docs.house.gov/billsthisweek/20120213/CPRT-112-HPRT-RU00-HR7RCP.pdf.

[6] A separate 0.1 cents per gallon tax on all fuels goes into the leaking underground storage tank (LUST) trust fund. LUST is administered by the Environmental Protection Agency. It funds leaking underground storage tank cleanup activities. The authorization of this fund is not addressed in surface transportation legislation.

[7] In late FY2008, $8 billion was transferred to carry the highway account into the 2009 fiscal year (P.L. 110-318, September 15, 2008). In FY2009 the transfer was $7 billion (P.L. 111-46, August 7, 2009). The Surface Transportation Extension Act of 2010 (P.L. 111-148, March 18, 2010) transferred $14.7 billion more to the highway account. The third rescue package, P.L. 111-147, also transferred $4.8 billion to the mass transit account.

[8] Information supplied by CBO as part of its January 2012 baseline, January 31,2012. According to FHWA, a working balance of roughly $4 billion is needed to meet state requests for reimbursement of outstanding obligations in a timely manner. Under current law, the HTF cannot incur negative balances. If the HTF resources were exhausted, spending on programs and activities financed by the fund would continue but at a slower pace as highway taxes are collected.

[9] Outlays from the highway account during FY2010-FY2011 were depressed because stimulus spending from the general fund temporally displaced trust fund outlays.

but then fall to a negative -$0.6 billion balance by the end of FY2014. The end-of-year negative balance falls further, to -$4.7 billion at the end of FY2015 and deepens rapidly thereafter. These are the gaps authorizers face as they work to move reauthorization legislation.

Without an increase in the existing fuel taxes, a difficult political issue in recent years, the fuel-based trust fund taxation system will not be able to support existing or increased surface transportation spending. The choice for policymakers, assuming no increase in fuel taxes, is between finding new sources of revenue for transportation or settling for a smaller program.

# Highways

The Federal-Aid Highway Program (Highway Program) is an umbrella term for an array of programs administered by FHWA. Over many years, the Highway Program has retained several defining financial and administrative attributes across the programmatic structure.

## Underlying Highway Program Attributes

The Highway Program is primarily a state-run program. The state departments of transportation (state DOTs) largely determine where and how money is spent, but have to comply with detailed federal planning guidelines. The state DOTs let the contracts and oversee project development and construction. Federally funded highway projects generally require states and/or local governments to provide a designated local matching share. For most Interstate System projects the state/local match is 10%. For other roads the state/local match is generally 20%.

Understanding the particular terminology employed by FHWA in managing the Highway Program is important:

- **Distribution** of funds is FHWA notification of the availability of federal funds, usually for four years. The states do not actually receive federal money for highway project spending up front.
- **Apportionment** is the distribution of funds among the states as prescribed by a statutory formula.
- **Allocation** is an administrative distribution of funds (often for specific projects) under programs that do not have statutory distribution formulas.
- **Reimbursement** occurs once a project is approved, the work is started, costs are incurred, and the state submits a voucher to FHWA.[10] The reimbursable nature of the highway program is designed to help prevent waste, fraud, and abuse.
- **Contract authority** is a type of budget authority that is available for obligation even without an appropriation (although appropriators must eventually provide authority to pay the obligations, known as liquidating authority).
- **Obligation** of contract authority for a project by FHWA legally commits the federal government to reimburse the state for the federal share of a project. This can be done prior to an appropriation.[11]

[10] For many projects the vouchers are submitted when the project is completed.

- **Limitation on obligations**, known as ObLim or Oblimit, is used to control annual FHWA spending in place of an appropriation. The ObLim sets a limit on the total amount of contract authority that can be obligated in a single fiscal year. For practical purposes, the ObLim is analogous to an appropriation.[12]

## Formula and Discretionary Programs

There are two categories of programs: formula and discretionary. Formula program funds are apportioned (each state receives a portion) annually among the states based on factors detailed in authorizing legislation. All of the large highway programs are formula/apportioned programs. Discretionary programs tend to be smaller programs allocated by FHWA or earmarked by Congress.

### *The "Core" Formula Programs*

Under SAFETEA, the vast majority of the federal-aid highway money for project spending is apportioned to the state DOTs through several large "core" formula-driven programs.[13] These programs are provided with roughly 80% of SAFETEA's contract authority[14] and are the sources of funding for most federal-aid highway projects. The core formula programs are the following:

- Interstate Maintenance Program (IM)
- National Highway System (NHS)
- Surface Transportation Program (STP)[15]
- Highway Bridge Program (HBP)
- Congestion Mitigation and Air Quality Improvement (CMAQ) Program
- Highway Safety Improvement Program (HSIP)
- Equity Bonus Program (EB)—EB funds are distributed into the programs above

The authorization act sets the total amount for each core program and each program's formula is run to determine each state's portion of each program's authorized total (hence the budget term "apportionment"). Historically, each federal highway formula program has had its own formula factors based, at least in part, on the policy intent of the program.

(...continued)

[11] For a more detailed discussion see Federal Highway Administration, *Financing Federal-Aid Highways*, (Washington, 2007), pp. 9-10, http://www.fhwa.dot.gov/reports/financingfederalaid/approp.htm#b.

[12] Ibid., pp. 19-22. To be contract authority the authorization must refer to Title 23, Chapter 1 of the *U.S. Code*, and it must be funded out of the highway trust fund.

[13] For a list of FHWA programs that receive funding (apportionments) by formula (including smaller non-"core" formula programs), see Federal Highway Administration, *Financing Federal-Aid Highways*, Appendix D, http://www.fhwa.dot.gov/reports/financingfederalaid/index.htm.

[14] Includes Equity Bonus distributions to IM, NHS, STP, and HBP.

[15] For a diagram of STP distribution, see FHWA, *Financing Federal-Aid Highways*, Appendix F, http://www.fhwa.dot.gov/reports/financingfederalaid/appf.htm.

Over time, the state DOTs have been given increasing flexibility to transfer funds from one program to another (excepting HSIP). Some Highway Program funding may also be used for transit projects. This transferability reduces the importance of funding formulas and program eligibility distinctions. Nonetheless, some state DOTs argue that the programmatic structure prevents them from using federal highway funds as they deem best.

The Equity Bonus Program is the largest highway program in dollar terms. Its purpose is to guarantee each state a minimum share of funds, regardless of the funding formulas. At present, each state must receive total formula program funding equal to at least 92% of its highway users' tax payments to the highway account of the HTF.[16] The Equity Bonus Program can be viewed as diluting the policy rationales associated with the core program formulas.

### Discretionary Programs

Several smaller discretionary programs (referred to as "allocated" programs) are also part of the Highway Program. These programs are nominally under the control of FHWA and were designed to allocate funds to projects chosen through competition with other projects. During SAFETEA, most of this funding was earmarked by Congress.[17]

The term "program" is used very broadly. FHWA's *Financing Federal-Aid Highways* listing of allocated programs includes entries for 59 activities, some of which are clearly programmatic in nature, mixed in with others that more resemble specific project designations, temporary pilot programs, studies, and other narrowly directed activities that are not truly "programs."[18]

## Transit

The federal transit program, administered by the Federal Transit Administration (FTA) in the U.S. Department of Transportation (DOT), is a collection of individual programs, each with different funding amounts, distributional mechanisms, and spending eligibility rules.[19] There are four main federal transit programs in SAFETEA, together accounting for 85% of authorized transit funding. Funding in two of these programs, the Urbanized Area Formula Program and the Fixed Guideway (or Rail) Modernization Program, is distributed by formula. The Urbanized Area Formula Program, which accounts for 41% of authorized transit funding in SAFETEA, provides funding to urbanized areas with populations of 50,000 or more. Funds can be used for a broad range of expenses including capital, planning, transit enhancements, and operations in urbanized areas with populations of up to 200,000. Fixed Guideway Modernization Program funds, 16% of authorized transit funding, go mainly for the replacement and rehabilitation of transit rail system assets.

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[16] For a description of the complexities of the operation of the Equity Bonus Program see CRS Report R41869, *The Donor-Donee State Issue in Highway Finance*, by Robert S. Kirk.

[17] For a list of all allocated programs, see FHWA, *Financing Federal-aid Highways,* Appendix G, "Authorizations for Allocated Programs," http://www.fhwa.dot.gov/reports/financingfederalaid/appg.htm.

[18] Ibid.

[19] CRS Report RL34171, *Public Transit Program Issues in Surface Transportation Reauthorization*, by William J. Mallett.

The other two main transit programs, the New Starts Program and the Bus and Bus-Related Facilities Capital Program, are both discretionary programs. New Starts funding, 18% of overall authorized transit funding in SAFETEA, is available primarily on a competitive basis for new fixed guideway systems and extensions. While the majority of funding from this program over the years has gone to transit rail projects, the New Starts program has funded projects for busways and bus rapid transit, ferries, automated guideway systems, and vintage trolleys. Congress enacted a new "Small Starts" program in SAFETEA to fund projects with a total cost of $250 million or less in which the federal share is $75 million or less. Small Starts projects are funded with $200 million annually from the New Starts authorization beginning in FY2007. Bus Program funds, 9% of authorized funding, are provided to purchase buses and bus-related equipment, including the construction of buildings such as administrative and maintenance facilities, transfer facilities, bus shelters, and park-and-ride stations. Until recently, these funds were mostly earmarked in authorization and appropriations legislation. Currently, FTA allocates these funds.

A number of smaller funding programs, including the Rural Formula Program, the Jobs Access and Reverse Commute (JARC) program, the Elderly and Disabilities grants program, and the New Freedom Program, together with program administration, account for the remaining 15% of transit program funds.

## Safety

Highway transportation is by far the leading cause of transportation-related fatalities and injuries in the United States. Highway safety is primarily the responsibility of the states, controlling as they do much of the road network and having the authority to legislate restrictions on driver behavior. Congress has established federal highway safety programs to assist states in improving highway safety. Three DOT agencies administer highway safety programs authorized in SAFETEA: the National Highway Traffic Safety Administration (NHTSA), which focuses on driver behavior and vehicle safety; the Federal Motor Carrier Safety Administration (FMCSA), which focuses on commercial driver qualifications and commercial vehicle safety; and FHWA through the Highway Safety Improvement Program, which focuses on the safety of roadway design.

### National Highway Traffic Safety Administration (NHTSA)

NHTSA provides grants to states to support and encourage state traffic safety efforts, regulates motor vehicle safety, and carries out research on traffic safety. It oversees the use of federal grant funds by requiring states to submit highway safety plans. A state's plan must be approved by NHTSA in order for the state to receive federal traffic safety funds. Each state's plan must identify the state's primary safety problems, set goals for addressing the problems, and establish performance measures by which progress toward those goals can be judged. NHTSA also provides training and technical assistance to states.

NHTSA provides grants to states through one large formula program (the State and Community Highway Safety Program, often referred to as the Section 402 program from its statutory identification as Section 402 of Title 23) and several smaller incentive grant programs. These programs support state efforts to improve traffic safety data collection systems, reduce speeding, increase the use of seat belts and child restraint systems, reduce drunk and drugged driving, reduce motorcycle crashes, reduce school bus crashes, and discourage unsafe driving behavior

(including aggressive driving, fatigued driving, and distracted driving caused by the use of electronic devices in vehicles).

### Federal Motor Carrier Safety Administration (FMCSA)

FMCSA promotes the safety of commercial motor vehicle operations through regulation, enforcement, training, and technical assistance. It also administers motor carrier safety grant programs that assist states in ensuring the safety of truck and motor coach operations, including inspection of vehicles and licensing of commercial drivers.

### Highway Safety Improvement Program (HSIP)

HSIP, one of the core federal-aid highway funding programs, is intended to reduce traffic fatalities and serious injuries by making improvements to the design or operation of roadways. Each state receives funding according to a formula based on road lane-miles, vehicle miles traveled, and traffic fatalities. Each state receives at least 0.5% of the program's funding. HSIP includes a dollar set-aside for the Railway-Highway Grade Crossing Hazard Elimination Program, and there is also a dollar set-aside within the formula funds distributed to the states for the purpose of construction and operational improvements on high-risk rural roads.

## Funding Guarantees and Revenue Aligned Budget Authority (RABA)

SAFETEA extended mechanisms that were put in place in earlier years to guarantee certain annual funding levels below which appropriators could not constrain funding. This was done by amending the Budget Enforcement Act of 1990 to create highway and mass transit budget categories ("fire walls") that protected these funds from being tapped to increase spending elsewhere. SAFETEA also guaranteed the annual ObLim set for FY2005 through FY2009 by amending the Balanced Budget and Emergency Deficit Control Act of 1985 to specify the SAFETEA ObLim levels, thereby preventing appropriators from setting a lower ObLim. Although the budget firewalls set in the Budget Enforcement Act ended in 2002, appropriators honored those guarantees over the life of SAFETEA. The guarantees retained a second level of protection via a change in the House rules that specified it would be out of order to consider any bill that would set a lower level of funding than set in Section 8003 of SAFETEA. Early in the 112th Congress, however, the new Republican majority in the House eliminated the rule, removing the last vestige of the guarantees.

RABA is a means of raising or lowering the firewall and guaranteed funding levels if any year's annual highway account receipts are either higher or lower than expected. Although adherence to RABA calculations can lead to either additional funding or cuts in funding, Congress has never allowed a negative RABA calculation to lead to a reduction in spending.[20] Despite the fact that revenues in recent years have consistently fallen below the guarantee levels, which under RABA would have lead to funding reductions, in recent years the RABA issue has been considered a moot point, because the HTF has been supplemented by general fund transfers. However, some

[20] See CRS Report RS21164, *Highway Finance: RABA's Double-edged Sword*, by John W. Fischer.

mechanism to bring spending into alignment with receipts might still be considered in reauthorization.

## Budget Control Act of 2011 (P.L. 112-25)

The Budget Control Act requires sequestration of certain funding authorizations in the event a special joint committee fails to reach an agreement on spending reductions. The Budget Control "Super Committee" announced in November 2011 that it had failed to reach such an agreement. However, exemptions to the sequester process under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (Codified in 2 U.S.C. Sec. 905 (j)), likely mean that sequestration would not significantly reduce any surface transportation spending authorized for years beyond FY2012. The surface transportation programs and activities exempted, to the extent that their budgetary resources are subject to appropriations bill obligation limitations, are the following:

- Federal-Aid Highways
- Highway Traffic Safety Grants
- NHTSA operations and research and National Driver Register
- Motor Carrier Safety Operations and Programs
- Motor Carrier Safety Grants
- Transit Formula and Bus Grants

The $739 million of annual contract authority that is typically exempt from the obligation limitation appears to be subject to sequester. The Federal Transit Administration's New Starts program, which is supported with general fund revenues, also appears to be subject to sequester.

## Extension Legislation

SAFETEA expired on September 30, 2009. Surface transportation programs and activities have been operating on the extension legislation set forth in **Table 1**.

**Table 1. Short-Term Extensions of SAFETEA**

| | Bill Number | Time Period in Effect | Length | Date Enacted | Public Law |
|---|---|---|---|---|---|
| 1 | H.R. 2918 | 10/1/2009–10/31/2009 | 1 month | 10/1/2009 | P.L. 111-68 |
| 2 | H.R. 2996 | 11/1/2009–12/18/2009 | 48 days | 10/30/2009 | P.L. 111-88 |
| 3 | H.R. 3326 | 12/19/2009–2/28/2010 | 72 days | 12/19/2009 | P.L. 111-118 |
| 4 | H.R. 4691 | 3/2/2010–3/18/2010 | 16 days | 3/2/2010 | P.L. 111-144 |

| | Bill Number | Time Period in Effect | Length | Date Enacted | Public Law |
|---|---|---|---|---|---|
| 5 | H.R. 2847 | 3/18/2010–12/31/2010 | 9.5 months | 3/18/2010 | P.L. 111-147 |
| 6 | H.R. 3082 | 1/1/2011–3/4/2011 | 2 months 4 days | 12/22/2010 | P.L. 111-322 |
| 7 | H.R. 662 | 3/5/2011–9/30/2011 | 6 months 25 days | 3/4/2011 | P.L. 112-5 |
| 8 | H.R. 2887 | 10/1/2011–3/31/2012 | 6 months | 9/16/2011 | P.L. 112-30 |

**Source:** Public Laws in **Table 1**.

# MAP-21 (S. 1813)

As voted out of the Environment and Public Works Committee (EPW) in the Senate, MAP-21 only included the highway portions of the surface transportation bill under EPW's jurisdiction.[21] By February 7, 2012, however, all the other Senate committees of jurisdiction had reported favorably on their bills. The legislative language of these bills were folded into Senate Amendment SA 1761, "of a perfecting nature," which was proposed by Senator Harry Reid, Majority Leader, on March 1, 2012. References to MAP-21 are to S. 1813 as amended by SA 1761.[22]

## Overview

### Highways

MAP-21 is a two year reauthorization bill that basically funds the Federal-Aid Highway Program at the baseline level, adjusted for inflation. However, it would make substantial changes to the structure, formulas, and funding distribution of the federal highway program.

- A total Federal-Aid Highway Program authorization of $39.4 billion for FY2012 and $40.4 billion for FY2013 (reflecting rescissions), and $400 million for research and education in each fiscal year.
- In a major change, MAP-21 would eliminate all the formula factors under the individual formula programs. Each state would be apportioned a share of the bill's authorized contract authority based on its share of total apportionments and allocations during FY2005-FY2009. These state shares (guaranteed to provide a 95% return on each state's payments to the HTF) would then be used to calculate the MAP-21 apportionments.

[21] According to the rules of the Senate, the Committee on Banking, Housing, and Urban Affairs has jurisdiction over mass transit, the Committee on Commerce, Science, and Transportation has jurisdiction over most surface transportation safety and research issues, and the Committee on Finance has jurisdiction over tax and revenue issues.

[22] Available at https://docs.google.com/file/d/0B23rveCvG52eWllWVTBWNWhUZ2FTbk5Tb3FGeGstZw/edit

- The replacement of individual program formulas with an initial calculation across all states based on SAFETEA share, the change in the programmatic structure, and the broad eligibility across programs lessen the federal and congressional influence on program direction and project selection. In the past, some Members of Congress influenced surface transportation by pressing for changes in the program formulas or through earmarking. MAP-21 has neither program formulas nor congressional designation of projects.
- National interests and needs would be increasingly driven by federal planning, performance management, project delivery, and project eligibility requirements. Transferability between core programs, however, would be restricted to 20% of each formula program's apportionment.
- MAP-21 would reduce the number of programs by roughly two-thirds. This would be accomplished mostly by shifting program eligibility to the core programs. Nearly all discretionary grant programs nominally under the control of FHWA would be eliminated.
- The Transportation Enhancements Program (TE)[23] is rolled into the CMAQ program. The bill eliminates some controversial TE uses and, beginning in FY2013, allows states to spend TE funds on a range of non-TE CMAQ uses if they build up an unspent balance for one and a half years. Some TE type projects are also made eligible for funding in other proposed programs.
- A National Freight Program (NFP) should increase the funding of freight projects by eliminating competition with non-freight projects, at least within the new program.
- The Senate bill increases The Transportation Infrastructure Finance and Innovation Act (TIFIA) program funding nearly ten-fold. However, the bill is generally silent on tolling of federally funded roads and bridges. Tolls often provide the revenue streams needed for TIFIA and other alternatively financed projects.

## Transit

MAP-21 would fund the Federal Transit Administration (FTA) and its programs at the current level. The HTF would provide 79.9% of the funding and the general fund would provide 20.1%. MAP-21 provisions include

- $10.458 billion annually for FY2012-FY2013, for transit programs;
- Elimination of the Bus and Bus Facilities program;
- Creation of the State of Good Repair (SGR) program, which would replace the Fixed Guideway Modernization Program;

[23] Transportation Enhancement (TE) activities offer funding opportunities to help expand transportation choices and enhance the transportation experience through 12 eligible activities. Under SAFETEA the program received a 10% set-aside from the Surface Transportation Program. Some eligible activities have been criticized, such as the establishment of transportation museums and spending for historic preservation.

- Modification of the New Starts process, including the elimination of the alternatives analysis that is currently required in addition to that required by the National Environmental Policy Act (NEPA).

### Rail

MAP-21 as amended by SA 1761, includes provisions that call for the development of a national rail (including both passenger rail and freight), for the development of a rolling stock equipment pool for corridor intercity passenger services, and for the implementation of positive train control. For freight rail, the bill would amend the Railroad Rehabilitation and Improvement Financing Program, which provides government loans for freight and passenger railroads, to accept state or local subsidies or dedicated revenue stream as collateral. The bill would also make modest changes to laws affecting rail freight rail enforced by the Surface Transportation Board.

# Finance Provisions: Filling the Gap

In the Senate, extending the authorities for the highway trust fund and providing revenues to support the surface transportation bills fall under the jurisdiction of the Finance Committee. The Senate Finance Committee marked up and reported favorably the finance title to S. 1813. SA 1761 included the Finance Committee provisions with some modifications.[24]

Most of the provisions of the finance title are intended to close the gap between projected HTF revenues and the total authorizations included in MAP-21.

## Finance Provisions: Division D of MAP-21

The finance title of the Senate bill extends highway-related taxes, at their current rates, through FY2015 and extends highway trust fund expenditure authority through FY2013.[25]

The bill includes provisions to raise revenue or provide offsets equal to roughly $10.5 billion over ten-and-a-half fiscal years.[26] Further deposits and revenues accrue in years beyond the term of MAP-21. The deposits include

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[24] See, Division D—Finance, in Sen. Harry Reid, "SA 1761, Amendment of a Perfecting Nature to S. 1813 to reauthorize Federal-Aid highway and highway safety construction programs, and for other purposes," Available at https://docs.google.com/file/d/0B23rveCvG52eWlIWVTBWNWhUZ2FTbk5Tb3FGeGstZw/edit

[25] U.S. Congress, Senate Committee on Finance, *Highway Investment, Job Creation, and Economic Growth Act of 2012*, Report with additional views to accompany S. 2132, 112th Cong., 2nd sess., February 27, 2012, S.Rept. 112-152 (Washington: GPO, 2012), pp. 1-49. SA 1716 did not include the elimination of the cellulosic biofuel producer credit for "black liquor" (a by-product of the kraft process for making paper), which was in the Finance Committee bill as reported. The Joint Committee on Taxation estimates that the change would have increased revenues $1.588 billion over FY2012-FY2016.

[26] U.S. Congress, Senate Committee on Finance, *Description of the Chairman's Modification to the proposals of the "Highway Investment, Job Creation and Economic Growth Act of 2012",* committee print, prepared by Prepared by the Staff of the Joint Committee on Taxation, 112th Cong., 2nd sess., February 7, 2012 (Washington: GPO, 2012), pp. 1-19, http://finance.senate.gov/legislation/details/?id=d923f3c4-5056-a032-52f9-cc852968f453. See also, at the same site, *"Description of the Chairman's Mark of S. __, the "Highway Investment, Job Creation and Economic Growth Act of 2012*, also prepared by the staff of the Joint Committee on Taxation.

- $3 billion from the Leaking Underground Storage Tank (LUST) trust fund balance would be transferred immediately, as well as $683 million of projected LUST fund revenues over the next 10 years;
- $698 million (over 10 years) from the transfer of the Gas Guzzler Tax from the general fund to the HTF;
- $743 million (over 10 years) consequent of the revocation of passports of tax delinquents;
- $841 million (over 10 years) consequent of allowing the Treasury to levy up to 100% of the payment to a Medicare provider to collect unpaid taxes;
- $4.52 billion from the transfer of future import tariffs on automotive products (FY2012-FY2016);
- $244 million (over 10 years) from a change in tax treatment of securities of a controlled corporation that are exchanged for assets as part of certain types of corporate reorganizations;
- $25 million (over 10 years) from the clarification that the Internal Revenue Service may levy a federal employee's Thrift Savings Account to satisfy tax liabilities;
- $4.648 billion (FY2014-FY2022) from changes in treatment of Individual Retirement Account distributions after death.
- $1.588 billion transfer from the Treasury general fund to the HTF.

The Finance Committee also reported favorably on provisions that cost money.

- -$353 million (over 10 years) from changing the Small Issuer Exception to extend the special rules providing modifications to bonds issued after the date of enactment and before January 1, 2013;
- -$215 million (over 10 years) from providing that bonds issued after the date of enactment and before January 1, 2013 not be treated as a tax preference for purposes of the alternative minimum tax;
- -$139 million from extending the parity of the monthly exclusion for employer-provided vanpool and transit pass benefits and the exclusion for employer-provided parking.

The committee reported favorably on a provision to authorize states to issue TRIP (Transportation and Regional Infrastructure Project) bonds through state infrastructure banks. The Joint Committee on Taxation determined the provision had no revenue effect.

By amendment, the Finance Committee approved inclusion of S. 836, the Transportation Access for All Americans Act (as modified), which would amend the Internal Revenue Code to change the depreciation period for long-term highway leases from 15 to 45 years. This might make highway privatization less attractive for private-sector investors. The bill also would provide that the amortization period of the franchise right to collect tolls be not less than the term of the lease or 15 years, whichever is greater. The report language expresses the Finance Committee's concern that under current law the amortization period (15 years) for amounts paid for the right to

operate and maintain the public highway and collect tolls is usually significantly shorter than the term of lease under which the right to toll is exercised.

Also by amendment, the committee approved inclusion of S. 939, the Sustainable Water Infrastructure Act (as modified), which would provide that the state volume cap on private activity bonds would not apply to bonds for facilities that would provide for water and sewage treatment, subject to the funding offset provided by extension of Section 420 of the Internal Revenue Code through 2021.[27]

## Solvency Account

The finance provision would establish a "solvency account" into which the Secretary of the Treasury would transfer any excess of amounts appropriated to the HTF before October 1, 2013 under MAP-21 over the amount necessary to meet the needs of the HTF for the period ending October 1, 2013. These amounts would then be made available for transfers to both the highway account and the mass transit account in a manner that would assure that each account maintains a financial cushion of $2.8 billion on September 30, 2013.

## Leaking Underground Storage Tank (LUST) Trust Fund

The Senate bill proposes to draw heavily on the LUST trust fund to provide a new revenue source for the highway trust fund. Congress established the LUST trust fund in 1986 to address a nationwide problem of groundwater contamination caused by releases from leaking underground storage tanks (USTs) containing petroleum.[28] The LUST trust fund receives revenues primarily from a 0.1 cent per gallon excise tax on gasoline and diesel fuels. Annual discretionary appropriations from this trust fund support the Environmental Protection Agency (EPA) and primarily the states administering the Leaking Underground Storage Tank (LUST) environmental contamination investigation and cleanup program, and the UST leak prevention program authorized in the Solid Waste Disposal Act. Historically, the states used the annual LUST trust fund appropriation mainly to help oversee and enforce corrective actions performed by responsible parties, and also to conduct corrective actions where no responsible party has been identified, where a responsible party fails to comply with a cleanup order, in the event of an emergency, and to take cost recovery actions. The Energy Policy Act of 2005 expanded state and EPA responsibilities and authorized the use of trust fund monies for the federal UST leak prevention and detection program as well as the LUST cleanup program.[29] Of some 501,000 releases from leaking petroleum tanks reported since the beginning of the LUST program, more than 413,000 (or 85%) have been addressed, leaving a backlog of 88,000 releases requiring cleanup.

The LUST trust fund had an unobligated balance of $3.392 billion at the beginning of FY2012. In FY2012, absent legislative changes, the fund is estimated to receive $117 million in interest

[27] Title 26 U.S.C. Section 420, *Transfers of Excess Pension Assets to Retiree Health Accounts*.

[28] Superfund Amendments and Reauthorization Act (SARA; P.L. 99-499) amended the Solid Waste Disposal Act, Subtitle I (42 U.S.C. §6991-6991i) and authorized EPA and states to respond to spills and leaks from petroleum underground storage tanks (USTs). SARA also amended the Internal Revenue Code of 1986 (26 U.S.C. §9508) to create the Leaking Underground Storage Tank (LUST) Trust Fund to help EPA and states cover the costs of responding to leaking petroleum USTs in cases where UST owners or operators do not clean up a site.

[29] The Energy Policy Act of 2005, P.L. 109-58, Title XV, Subtitle B.

payments on its unobligated balance and $181 million in tax receipts. For each of the past several fiscal years, Congress has appropriated approximately $113 million from the trust fund. States receive, as grants, a minimum of 80% of the annual appropriation. EPA uses the remainder to carry out its responsibilities, including implementing the program on Indian lands. Partly because of the relatively low appropriations through the history of the program, states LUST programs have relied primarily on nonfederal fund sources, including state fees and appropriations, as well as state insurance programs.[30]

Section 40302 of the Senate bill, as amended by SA 1761, would transfer $3.0 billion from the LUST trust fund into the highway trust fund in FY2012. The Senate bill also would appropriate to the Highway Trust Fund one-third of the future LUST trust fund receipts from the 0.1 cent-per-gallon tax on gasoline and diesel fuel. The Joint Committee on Taxation projects that these future transfers would range from $62 million to $67 million annually, and that over ten years, the appropriations and transfers together would provide $3.685 billion to the highway trust fund.[31]

The LUST trust fund tax is set to expire on March 31, 2012. Section 40101 of the Senate bill, as amended by SA 1761, would extend the tax through September 30, 2013.[32]

# Highways

## Highway Funding Summary

- MAP-21 proposes total authorizations of $80.6 billion (after rescissions) over two years ($39.8 billion for FY2012 and $40.8 billion for FY2013), under the Highway and the Research titles of the bill (see **Table 2**).
- To fully fund the bill, $10.5 billion in new revenues or offsets (to allow for general fund transfers) is needed to fill a shortfall of HTF revenues and balances. A variety of non-highway tax sources have been discussed, including oil and gas leasing revenues, transfer of funds from other non-highway trust funds (e.g., the Leaking Underground Storage Tank trust fund and the Land and Water Conservation trust fund), and rescission of unspent federal funds. Using any of these, however, would weaken the claim that road users pay the cost of the federal highway program.

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[30] Annual claims against state funds typically have far exceeded revenues. State Financial Assurance Funds surveys from 1997 through the present are available at http://www.astswmo.org/publications_tanks.htm. ASTSWMO is the Association of State and Territorial Solid Waste Management Officials, which includes representatives of state underground storage tank programs.

[31] U.S. Congress, *Estimated General Fund and trust Fund Effects of the Revenue Provisions Contained in the Chairman's Modification to S. ____, the "Highway Investment, Job Creation and Economic Growth Act of 2012"*, prepared by Joint Committee on Taxation, 112th Cong., 2nd sess., February 7, 2012, JCX-14-12 (2012).

The Senate Finance Committee Report to Accompany S. 2152 (S.Rept. 112-152), explains that,

> For Federal budget scorekeeping purposes, the LUST Trust Fund tax, like other excise taxes dedicated to trust funds, is assumed to be permanent.

[32] The LUST Trust Fund financing tax was set to expire on September 30, 2011, but was extended through March 30, 2012, in the Surface and Air Transportation Programs Extension Act of 2011 (P.L. 112-30).

- The Senate bill does not reinstate the TEA-21 or SAFETEA funding firewalls or spending guarantees.
- MAP-21 eliminates the Equity Bonus Program. Instead the bill guarantees a state share based on SAFETEA and a 95 cent return on each dollar that a state's highway users pay to the highway account of the HTF.

**Table 2. Highway Authorizations: MAP-21, as Reported**

(Contract authority from the Highway Account of the HTF, except as noted, in millions of $)

| Program | FY2012 | FY2013 | Total |
|---|---|---|---|
| Title I Federal-Aid Highways | 39,143 | 39,806 | 78,949 |
| Transportation Infrastructure Finance and Innovation Program | 1,000 | 1,000 | 2,000 |
| Tribal Transportation Program | 450 | 450 | 900 |
| Federal Lands Transportation Program | 300 | 300 | 600 |
| Federal Lands Access Program | 250 | 250 | 500 |
| Territorial and Puerto Rico Highway Program | 180 | 180 | 360 |
| Federal Highway Administration Administrative Expenses | 480 | 480 | 960 |
| Projects of National & Regional Significance [Gen. Fund] | | 1,000 | 1,000 |
| Rescissions of funds earmarked for projects and funds apportioned under 23 U.S.C., Chapter 1 | 2,391 | 3,054 | 5,445 |
| Total Authorizations Title I | 39,412 | 40,412 | 79,824 |
| Federal-Aid Highway Program Obligation Limitation | 41,564 | 42,227 | 83,791 |
| Title II Research and Education | 400 | 400 | 800 |
| Total Authorizations | 39,812 | 40,812 | 80,624 |

**Source:** Federal Highway Administration. Figures are preliminary.

**Notes:** FHWA also receives a permanent $100 million authorization for the Emergency Relief Program each year. This funding is also exempt from the obligation limitation. The $1 billion authorized for Projects of National and Regional Significance can be expended only with an appropriation.

## Ratchet Mechanism

Section 4001, Highway Spending Controls, includes a provision designed to assure the solvency of the highway account of the HTF. Referred to as the "ratchet mechanism," it requires that within 60 days of enactment, DOT and the Department of the Treasury estimate whether the highway account balance will fall below $2 billion in FY2012 or $1 billion in FY2013. If either of these conditions is expected to occur, DOT will calculate the amount to which the FY2012 ObLim would have to be reduced to prevent this occurrence and then adjust the distribution to the states to reflect the reduction. Any withdrawn ObLim would immediately lapse and a proportionate amount of contract authority would be rescinded. For the years after FY2012 a similar calculation is to be made. The calculation is, however, only to be made under the year-long appropriations bills and not under short-term continuing resolutions.

This provision appears to be related to the pending $10.5 billion HTF shortfall under MAP-21 spending levels, as it apparently commits EPW to keeping the bill's spending within the means of

the HTF. It may also increase the pressure to identify additional revenue options for the HTF to make up the shortfall.

Implementing the ratchet mechanism, if the trigger HTF balances were to be breached, could face resistance in Congress, given the history of negative RABA calculations. For FY2003 the RABA calculation called for a $4.4 billion downward adjustment in the guaranteed funding levels for the highway program. However, despite the negative RABA calculation, Congress chose to override the reductions by drawing down the then positive balance in the HTF.[33]

## Highway Formula Distribution

Unlike SAFETEA and earlier authorization acts, MAP-21 does not set the core programs' authorization levels and then run the funding through their individual program formulas to determine each state's apportionments. Instead, MAP-21 determines the state apportionments for all the major programs according to a single methodology, as follows:

First, each state's "initial amount" is determined by multiplying the total amount available for apportionment ($39.143 billion for FY2012 and $39.806 billion for FY2013) by each state's share of total nationwide apportionments and allocations received for FY2005-FY2009.

Second, these initial amounts are adjusted (if needed) to ensure that each state's combined apportionments in each year will not be less than 95% of the estimated tax payments made by its highway users to the highway account of the HTF. Given the excess of federal highway spending over HTF revenues for FY2005-FY2009, it is unlikely that any adjustments will have to be made, if MAP-21, as reported, is enacted and fully funded.

Third, an amount based on each state's CMAQ percentage of its total apportionments for FY2009, plus 10% of the state's Surface Transportation Program funding for FY2009 (to account for the transfer of Transportation Enhancements to CMAQ), are set-aside for the new CMAQ program, from the adjusted initial amount determined in the first two steps. Then the metropolitan planning amount is determined by multiplying, the ratio of a state's apportionment under Title 23 Section 134 for FY2009 to its total apportionments for that year, times the adjusted initial amount calculated in the first two steps.

Fourth, the remaining amount of each state's "initial amount" is divided among the four remaining core programs as follows: 58% is apportioned to the National Highway Performance Program (NHPP), 29.3% for the Transportation Mobility Program (TMP), 7% for the Highway Safety Improvement Program (HSIP), and 5.7% for the National Freight Program (NFP).

**Table 3** shows the dollar amounts of the aggregate programmatic split.

[33] CRS Report RS21164, *Highway Finance: RABA's Double-edged Sword*, by John W. Fischer.

**Table 3. Apportioned Programs (Contract Authority)**
(millions of $)

| Program | FY2012 | FY2013 | Total |
|---|---|---|---|
| National Highway Performance Program | 20,623 | 20,972 | 41,595 |
| Transportation Mobility Program | 10,418 | 10,595 | 21,013 |
| Highway Safety Improvement Program | 2,489 | 2,531 | 5,020 |
| Congestion Mitigation & Air Quality Improvement Program | 3,252 | 3,308 | 6,560 |
| National Freight Program | 2,027 | 2,061 | 4,088 |
| Metropolitan Transportation Planning | 334 | 339 | 673 |
| Total | 39,143 | 39,806 | 78,949 |

**Source:** Federal Highway Administration. The MAP-21programmatic split is estimated.

## Donor-Donee Implications

Historically, concerns about receiving federal highway spending proportionate to the highway taxes paid by each state's highway users were resolved through programs such as SAFETEA's Equity Bonus Program, which added funds across all the formula programs to bring all states up to a minimum percentage return on tax payments. MAP-21 has no overt equity program. MAP-21's determination of the "initial amount" for each state, based on each state's share of total funding during FY2005-FY2009, is designed to resolve the "donor-donee" issue up front. Although there is an adjustment mechanism to assure that all states receive at least a 95% rate of return on their payments to the HTF, it is unlikely that adjustments will have to be made. The nationwide rate of return for FY2005-FY2009 was $1.23 on the dollar. Using this base level would likely lift all donor states above the 95% level. If, however, Congress does not provide sufficient funding for the program authorized in MAP-21, the adjustment process to guarantee a 95% return might have to be implemented. Also, some states may prefer that state return on payments to the HTF be used to determine the "initial amount," rather than the state share of total FY2005-FY2009 funding, largely because of earmarking legacy issues.

## SAFETEA's Earmarking Legacy

SAFETEA included 6,372 earmarks, more than any previous surface transportation authorization bill, valued at $24.3 billion.[34] Of the $22.1 billion of highway earmarks, 67% were "below the line," which meant the earmarks did not bring additional money to the receiving state because the state's Equity Bonus distribution was reduced by a like amount. The other 33% were "above the line" and increased the amount of funds flowing to the receiving states, in most cases increasing those states' shares of total highway program funding. This became an issue under the extension legislation. Although the individual earmarks were not extended, the states that previously did well in obtaining above-the-line earmarks benefited from a higher base amount under the extension legislation. [35]

[34] "Overview of Earmarked Projects in the Conference Report," *Transportation Weekly*, August 4, 2005, p. 19.

[35] "Highway Extensions Would Extend Highway Earmarks for VIPs," *Transportation Weekly*, September 23, 2009, p. 4.

MAP-21 is free of project earmarks. However, because under MAP-21 the apportionment calculation to the states is based on the state share of both apportioned and allocated funding for the SAFETEA years (FY2005-FY2009), states that did well in terms of "above the line" earmarks under SAFETEA would receive apportionment shares under MAP-21 that reflect these increased amounts.[36] SAFETEA's unequal distribution of earmarking both among Members of Congress and among the states was very controversial.[37] Continuing the crediting of these "above the line" earmarks in MAP-21's initial state share calculation could continue to favor states which fared well during the SAFETEA earmarking process.[38]

## Highway Formula Programs

MAP-21 reduces the number of discrete funding programs by two-thirds to roughly 30 programs. Most of this reduction is accomplished by absorbing the programs' eligibilities into the new core programs discussed below. The core programs also have many areas of overlapping eligibility. Under MAP-21, the five core programs plus metropolitan transportation planning would be authorized at $39.143 billion for FY2012 and $39.806 billion for FY2013.

### National Highway Performance Program (NHPP; Section 1106)

This program would be the largest of the programs within the restructured Federal-Aid Highway program. The NHPP would receive $20.5 billion for FY2012 and $21 billion for FY2013. The program would provide support for improvement of the condition and performance of the National Highway System.[39] Three SAFETEA core programs, the Interstate Maintenance Program, the National Highway System Program, and the Highway Bridge Program's NHS component, would be combined to create most of NHPP. The program would include projects to achieve national performance goals for improving infrastructure condition, safety, mobility, or freight movement, consistent with state or metropolitan planning; construction, reconstruction, or operational improvement of highway segments; construction, replacement, rehabilitation, and preservation of bridges, tunnels, and ferry boats and ferry facilities; inspection costs and the training of inspection personnel for bridges and tunnels; bicycle transportation infrastructure and pedestrian walkways; traffic and traveler information monitoring; intelligent transportation systems; and environmental restoration, as well as, natural habitat and wetlands mitigation within NHS corridors. The program focus would be on system maintenance. States would not be allowed to spend more than 40% of their three-year NHPP apportionment average on new capacity. States would have to develop National Highway System asset management plans with performance metrics and targets. If Interstate System and NHS bridge conditions in a state were to fall below the minimum conditions established by the Secretary of Transportation, certain amounts of funds would be transferred from other specified programs in the state.

[36] It is possible that the state share could also be credited for appropriations earmarks obtained during FY2005-FY2009.

[37] "TW Analysis: 'Above-the-Line' Highway Earmarks," *Transportation Weekly*, vol. 7, no. 10 (January 17, 2006), pp. 1-10.

[38] See "Senate EPW Leaders Unveil $85.3 Billion Two-Year Highway Bill With Major Program Consolidation," *Transportation Weekly*, vol. 13, no. 4 (November 7, 2011), p. 5.

[39] Section 1104 redefines the National Highway System and the Interstate System. It also adds the strategic highway network, "other connector highways" that connect arterial routes, and sets forth the rules for modifications to the National Highway System and the Interstate System. The NHS would be expanded from roughly 160,000 to roughly 220,000 miles.

### Transportation Mobility Program (TMP; Section 1108)

This program would assist states and localities in improving the conditions and performance of federal-aid highways and of bridges on any public road. Essentially, it would replace SAFETEA's Surface Transportation Program, less its 10% Transportation Enhancement (TE) set-aside and the off-NHS system component of the Highway Bridge Program. The TE shifts to the enhanced CMAQ program. TE type projects, however, also maintain TMP eligibility. The authorization for TMP is roughly $10.5 billion annually for FY2012 and FY2013.

TMP funds would be eligible for transit uses, carpool programs, traveler information, congestion pricing, transportation planning, transportation enhancement activities, recreational trails, ferryboats and ferry facilities, border infrastructure projects, scenic roads, truck parking facilities, safe routes to school projects, as well as eligibilities from discontinued SAFETEA programs. TMP funds would also be eligible for state participation in natural habitat and wetlands mitigation efforts related to projects under Title 23 U.S.C., including statewide and regional natural habitat and wetlands conservation and mitigation plans. Improvement to a freight railroad, marine highway, or intermodal facility would be eligible under specified conditions. TMP funds could be used for maintenance and improvement of all public roads within 10 miles of international borders on which federally owned vehicles comprise more than 50% of the traffic. States would be subject to penalties if the total deck area of deficient bridges increased for the two most recent years.

TMP funds are to be sub-apportioned within states. Fifty percent of each state's apportionment is to be apportioned within the state based on the relative share of a state's population residing within three categories of areas: (1) urbanized areas with urbanized area populations over 200,000; (2) areas within the state other than urban areas with populations above 5,000; and (3) other areas in the state. The other 50% could be apportioned to any area in the state.

The Appalachian Development Highway System (ADHS) program would be eliminated but its routes and access roads would be eligible under TMP. This change would give states more flexibility to determine spending on the ADHS.

### Congestion Mitigation and Air Quality Program (CMAQ; Section 1113)

CMAQ as it exists under SAFETEA would be expanded, in part, by absorbing the eligibilities of discontinued programs including Transportation Enhancements, Safe Routes to Schools, and Recreational Trails. Under MAP-21, CMAQ would receive roughly $3.3 billion annually for FY2012 and FY2013 (under SAFETEA, CMAQ received $1.7 billion for FY2009). The expanded program would include expanded eligibilities under CMAQ ranging from turning lanes to demand shifting projects such as telecommuting, ridesharing, and road pricing. For further discussion of CMAQ, see the "Amendments to the CMAQ Program" section of this report.

### Highway Safety Improvement Program (HSIP; Section 1112)

HSIP would remain largely as it is under SAFETEA. It would continue to support projects that improve the safety of road infrastructure by correcting or improving hazardous road locations, such as dangerous intersections, or road improvements such as adding rumble strips. HSIP would be funded at roughly $2.5 billion annually for FY2012 and FY2013. The High Risk Rural Roads program set-aside would be abolished, although its project eligibilities would be retained. The

Rail-Highway Grade Crossing Program would also be abolished but its eligibility under HSIP would also be retained.

### National Freight Program (NFP; Section 1115)

The NFP would be an entirely new program intended to improve the condition and performance of a newly designated national freight network. The program would be funded at roughly $2 billion annually for FY2012 and FY2013. This program is discussed in detail in the "New Freight Initiative" discussion in this report.

### Transferability Among the Core Programs (Section 1507)

MAP-21 would reduce from 50% to 20% the maximum percentage of funding that a state can transfer from any one of its apportioned (mostly core formula) programs to another. Section 1507 of the bill would, however, prohibit the transfer of any TMP funding suballocated by population. The restriction on transfers among programs may be less limiting than it appears, as the core programs under MAP-21 would have many areas of overlapping eligibility, potentially reducing the need for inter-program transfers by the states.

## Other Programs

### Emergency Relief (ER) Program

Section 1107 would clarify eligibility criteria regarding roads and bridges damaged by natural disasters or catastrophic failures from an external cause, but that already were closed to traffic or were already scheduled for the construction phase in the approved statewide transportation improvement plan at the time of the disaster. It would also reiterate that ER funds can only be used on federal-aid highways. The $100 million ceiling on a single natural disaster or a single catastrophic failure in a single state would be eliminated. Section 1506 allows the 180-day emergency period during which the federal government pays 100% of repair costs to be adjusted for time lost due to lack of access to damaged facilities. Also, 100% federal share may be allowed at the discretion of the Secretary of Transportation if the cost to repair exceeds the annual state apportionment under 23 U.S.C. 104.

### Federal Lands and Tribal Transportation Programs

Section 1116 of MAP-21 would restructure the Federal Lands Highways Programs (Public Lands Highways, Indian Reservation Roads, Park Roads and Parkways, and Refuge Roads) by creating the Federal Lands and Tribal Transportation Program. The new program would have three main components: the Tribal Transportation Program; the Federal Lands Transportation Program; and the Federal Lands Access Program. MAP-21 proposes to fund the Tribal Transportation Program at $450 million annually. Funding for other federal lands programs would be $550 million annually. Among the changes in the Tribal Transportation Program is a new statutory formula for distributing funds among tribes based on road mileage and tribal population. Funding from the Federal Lands Access Program would be allocated among the states by a formula that takes into account the amount of federal land, the number of recreational visitors, the number of miles of federal roads, and the number of federally owned bridges.

## Territorial and Puerto Rico Highway Program

Section 1114 would combine the Puerto Rico and Territorial Highway (THP) programs, funding them at $180 million annually for FY2012 and FY2013. The THP would receive a 25% set-aside each year, amounting to $45 million annually for Guam, American Samoa, the Northern Marianas, and the U.S. Virgin Islands. Puerto Rico would receive a 75% per year set-aside, or $135 million annually. Puerto Rico's set-aside is limited to certain program eligibilities: 50% for purposes under NHPP, 25% for purposes under HSIP, and the remainder for purposes eligible under 23 U.S.C. Chapter 1 (Highways).

## Projects of National and Regional Significance (PNRS)

Section 1118 establishes a program similar to the program of the same name in SAFETEA. Budget authority, not contract authority, of $1 billion is provided for FY2013. This program would require an appropriation before funds could be made available. The purpose of this discretionary program is to fund critical high-cost surface transportation infrastructure projects that are difficult to complete with existing funding but would generate national and regional economic benefits and increase global competitiveness, reduce congestion, improve roadways vital to national energy security, improve the movement of freight and people, and improve transportation safety. No later than three years after the date of enactment, the Government Accountability Office (GAO) is to report on the process of selection, the factors that went into the selection, and the justification under these factors for the selection of each project.

## Transportation Infrastructure Finance and Innovation Act (TIFIA) Program

An existing federal program for providing credit assistance to large transportation projects is the TIFIA program. TIFIA stands for the Transportation Infrastructure Finance and Innovation Act, enacted in 1998 as part of the Transportation Equity Act for the 21st Century (TEA-21) as amended (P.L. 105-178; P.L. 105-206). Currently, TIFIA provides federal credit assistance, up to a maximum of 33% of project costs, in the form of secured loans, loan guarantees, and lines of credit. Loans must be repaid with a dedicated revenue stream, typically a project-related user fee.

MAP-21 proposes several significant changes to TIFIA. Perhaps most importantly, the bill proposes to greatly enlarge the TIFIA program by authorizing $1 billion annually, up from the $122 million annually in SAFETEA. These funds would be available to pay the administrative and subsidy costs of the program. Administrative costs would be capped at 1% of this amount, leaving about $990 million to pay loan subsidy costs. Assuming an average subsidy cost of 10%, this may provide DOT with the capacity to make loans totaling $9.9 billion per year. At the same time, MAP-21 also proposes to increase the share of project costs that TIFIA may provide from 33% to 49%, potentially lowering the share of nonfederal resources leveraged with federal loans.

Another significant change from current law proposed by MAP-21 is to allow credit assistance to be provided for a program of projects secured by a common security pledge. This would be accomplished through a "master credit agreement." Currently, TIFIA only allows the Secretary to enter into agreements on a project by project basis. The Los Angeles County Metropolitan

Transportation Authority (Metro), for one, has sought this change to accelerate the financing of 12 transit projects (known as the 30/10 Initiative).[40]

The existing TIFIA threshold for eligible projects of $50 million generally or $15 million for intelligent transportation system projects remains, except that MAP-21 proposes a threshold of $25 million for projects in rural areas.[41] Rural areas are defined as urbanized areas of 200,000 population or less or nonurbanized areas. Additionally, whereas loans for urban projects must charge interest not less than the Treasury rate, rural projects are to be offered loans that are half the Treasury rate. Furthermore, 10% of TIFIA funds made available in MAP-21 are set-aside for rural projects.

Currently, projects seeking TIFIA assistance are evaluated on eight criteria.[42] These criteria would be abolished, and projects and programs of projects would be evaluated solely on their eligibility on a first-come, first-served basis. Once funding is exhausted for a year, a project sponsor could enter into a master credit agreement for future credit assistance or it could decide to pay its own credit subsidy to permit an immediate loan. MAP-21 would permit the payment of the credit subsidy from federal surface transportation apportionments. Alternatively, if not all TIFIA funding is used it may be apportioned to the states for the purposes of the Transportation Mobility Program.

# New Freight Initiative

There is no separate federal freight transportation program in SAFETEA, only a loose collection of freight-related programs that are embedded in a larger surface transportation program aimed at supporting both passenger and freight mobility. Most of the freight-related funding authorized by SAFETEA is provided to the states through the regular highway programs, such as the Surface Transportation Program (STP). SAFETEA specifically dedicates minor funding to freight transportation improvements, leaving state DOTs and metropolitan planning organizations to make most decisions about the priority to be accorded freight. A large, well-defined federal freight program would be a significant departure from SAFETEA.[43]

## National Freight Program

The Senate bill (S. 1813, Section 1115) proposes a new core program intended to direct funds to infrastructure segments that are particularly critical to freight movement. The Secretary of Transportation would designate such segments, based primarily on freight volume and in consultation with shippers and carriers, as the "primary freight network" (PFN), consisting of 27,000 centerline miles of existing roadways. (For comparison, the existing Interstate Highway

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[40] Los Angeles County Metropolitan Transportation Authority (Metro), *Metro's 30/10 Initiative*, http://libraryarchives.metro.net/DB_Attachments/100524_30_10_Initiative.pdf.

[41] The law also provides eligibility for projects that are 33.3% of the amount of federal highway assistance apportioned in the most recent fiscal year to the state in which the project is located. This is unchanged in MAP-21.

[42] These are the amount of private participation; environmental impact; national or regional significance; project acceleration; credit worthiness; use of new technologies; reduced federal grant assistance; and consumption of budget authority.

[43] For further discussion of issues related to freight in the reauthorization debate, see CRS Report R40629, *Freight Issues in Surface Transportation Reauthorization*, by John Frittelli and William J. Mallett.

System consists of approximately 47,000 centerline miles.) Through a formula allocation, states would be guided to spend their freight program apportionment on the PFN first before spending funds on other freight-related infrastructure. The Secretary of Transportation could designate up to an additional 3,000 centerline miles of existing or planned roads as part of the PFN based on their future importance to freight movement. Every decade, the Secretary of Transportation would re-designate the PFN based on the same process.

States would be able to designate "critical rural freight corridors" based on the density of truck traffic if the roadway connects the PFN or Interstate System with sufficiently busy freight terminals. States would be able to spend a maximum of 20% of their freight program apportioned funds on these roads.

The critical rural freight corridors, portions of the Interstate System not designated as the PFN, and the PFN would be designated as the "national freight network (NFM)."[44] States could spend freight program funds on non-Interstate highways or transit system projects if those projects would improve freight flows on nearby or parallel interstate highways more cost-effectively than improving an Interstate segment. States could also spend up to a maximum of 10% of their freight program apportionment for public or private freight rail or maritime projects, but only if the Secretary of Transportation determines that a project would make significant improvement to freight flow, that the public benefit exceeds the federal cost, and that the project provides a better return than a highway project on the PFN.

Creating a specific funding program for freight movement, as well as requiring states to develop performance measures, will likely elevate consideration of freight needs in the project selection process. The designation of a PFN consisting of about 30,000 miles of highway would concentrate funds on segments most critical to freight movement. The U.S. DOT has estimated that on 4,700 miles highways with volume exceeding 8,500 trucks per day, trucks have to travel below the speed limit during rush hours due to congestion, and that on 3,700 additional miles of highway trucks experience stop-and-go conditions during rush hours.[45] Most of these congested segments are at urban interchanges.[46] Because the freight program would rely on apportioned funds, states could still be reluctant to address bottlenecks that are costly to alleviate with projects that primarily benefit through trucks (as opposed to trucks serving local shippers). Programs such as TIFIA, Projects of National and Regional Significance (PNRS), and CMAQ may be more suitable to funding these types of projects under MAP-21.

# Transportation Planning and Performance Management

MAP-21 would make substantial changes to transportation planning requirements at the national, state, and local levels. Arguably the biggest change is a requirement for the use of performance

[44] The PFN and NFN should not be confused with the existing "National Network" comprising roughly 200,000 miles of highways designated as safely accommodating large combination trucks.

[45] U.S. Department of Transportation, Federal Highway Administration, Office of Freight Management and Operations, *Freight Facts and Figures 2010,* based on data from the Freight Analysis Framework, version 3.1, 2010.

[46] American Transportation Research Institute, Bottleneck Analysis of Freight Significant Highway Locations, http://www.atri-online.org.

management throughout the planning process (Subtitle B, "Performance Management"), an idea that has gained wide currency over the past few years.[47] MAP-21 proposes that state and metropolitan planning include performance measures and targets. Although the bill includes a set of five national goals (Section 1203),[48] for the most part the specific performance measures would be developed and performance targets set by the states and metropolitan planning organizations (MPOs) themselves. The consequences for failing to meet the targets are relatively mild, typically requiring a remedial plan of action on the part of the state or MPO.

At the national level, as part of the new National Freight Program discussed earlier, MAP-21 would require the development of a national freight strategic plan by DOT (Section 1115). Among other things, the plan would have to establish "quantifiable performance measures for freight movement on the primary freight network." In order to obligate funding from the new freight program, moreover, each state would be required to set performance targets for freight movement. If a state were to fail to make significant progress toward meeting its performance targets it would be required to submit a freight performance improvement plan to the Secretary of Transportation.

As part of the new National Highway Performance Program (Section 1106), each state would be required to develop a risk-based asset management plan that includes performance targets and an investment strategy. A state that fails to make significant progress toward achieving its targets would have to submit a description of actions it will undertake to achieve them. As part of the planning, the Secretary would have to, among other things, set minimum standards for the condition of pavement on the Interstate System and the condition of bridges on the NHS. If the condition of Interstates and NHS bridges were to fall below that minimum, a state could be required to redirect its federal apportionments to bring those facilities up to par.

In some respects, MAP-21 would leave state planning requirements as they are. Each state would still be required to develop a statewide transportation plan and a statewide transportation improvement program. However, there are some changes (Section 1202). Statewide plans and improvement programs would have to incorporate metropolitan transportation plans and transportation improvement programs without change. Currently, statewide plans need only to be developed in cooperation with the MPO. Similarly, MAP-21 would require states to develop their plans in cooperation with nonmetropolitan areas, a stronger requirement than the current need for "consultation."

As with many other elements of MAP-21's planning provisions, states would be required to incorporate a performance-based approach into transportation planning. Performance measures and targets would have to be coordinated with those developed in other planning efforts, such as the national freight strategic plan. The performance plan would have to include a financial plan.

In terms of metropolitan transportation planning (Section 1201), MAP-21 proposes to create two tiers of MPOs, Tier I in areas with populations of 1 million or more and Tier II in areas of less than 1 million. Tier I and Tier II MPOs would have to meet certain, but presumably different, minimum technical requirements having to do with modeling, data, staffing, and other planning

[47] See, for example, American Association of State Highway and Transportation Officials, *AASHTO Authorization Policy, Topic I: Performance Management*, Washington, DC, http://www.transportation.org/sites/policy_docs/docs/i.pdf.

[48] These are safety; infrastructure condition; system reliability; freight movement and economic vitality; and environmental sustainability.

elements. The Secretary would be required to issue regulations establishing these minimum requirements one year from the date of enactment. For Tier I MPOs, MAP-21 will require performance-based planning and targets, elements that will be evaluated by DOT as part of an MPO's certification. According to MAP-21, requirements for Tier II MPOs will be more at the discretion of the Secretary and may include performance measures. MAP-21 also includes provisions for the optional development of multiple scenarios, sometimes known as blueprint planning. MAP-21 provides that both Tier I and Tier II MPOs are allowed to select projects from their TIPs in consultation with state, as is the case now, but MAP-21 adds that it must also be done with the concurrence of the facility owner.

As part of the rewriting of the metropolitan planning provisions, MAP-21 proposes to require the designation of MPOs only in urbanized areas of 200,000 population or more, up from 50,000 or more as required in current law. Nevertheless, MPOs in urbanized areas of less than 200,000 could be designated by agreement between the governor and local officials, although these MPOs would have to meet the minimum technical requirements as determined by the Secretary for Tier II MPOs. Existing MPOs in areas under 200,000 population, unless reaffirmed by the MPO and governor, and approved by the Secretary, are to be terminated three years after regulations are promulgated for Tier II MPOs.

One other intent of MAP-21 appears to be consolidating metropolitan planning within a single MPO in each urban region. However, the proposed legislation provides that more than one MPO can co-exist if the governor and an existing MPO decide that it is appropriate for an area.

# Accelerating Transportation Project Delivery

Budgetary pressures at all levels of government have increased concern about using resources for transportation projects as effectively as possible. The speed with which transportation projects are delivered, and the role the federal government plays in the project delivery process, have received particular attention. See CRS Report R41947, *Accelerating Highway and Transit Project Delivery: Issues and Options for Congress*, by William J. Mallett and Linda Luther.

Similar to previous transportation reauthorization legislation, MAP-21 includes provisions intended to expedite overall transportation project development (under its Subtitle C, "Acceleration of Project Delivery"). Like TEA-21 and SAFETEA before it, these provision in MAP-21 focus primarily on elements of the environmental compliance process, particularly activities required pursuant to the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. §4321 et seq.). MAP-21 also includes non-environmental provisions, such as requirements applicable to contracting procedures and relocation assistance.

## Provisions Applicable to the Environmental Compliance Process

The environment-related provisions in MAP-21 apply to activities associated with the environmental review phase of transportation project development. The "environmental review process" is the phase in overall project development in which applicable state, tribal, and federal environmental compliance requirements, including those established under NEPA, are identified and documented. Compliance with those requirements may require input or cooperation from federal, state, or tribal agencies. Before final design activities, property acquisition, purchase of

construction materials or rolling stock, or project construction can proceed, FHWA or FTA must ensure that the environmental review process for that project is complete.

Depending on project-specific impacts, various environmental requirements may apply to a given transportation project, but NEPA will always apply to federal-aid highway and transit projects. Broadly, NEPA requires federal agencies to consider the environmental impacts of an action before proceeding with it. To ensure environmental impacts are indeed considered, NEPA requires that an environmental impact statement (EIS) be prepared for all major federal actions "significantly" affecting the environment. If the significance of a project's environmental impacts is unclear, an environmental assessment (EA) must be prepared to make that determination.

Projects that do not individually or cumulatively have significant environment impacts are categorically excluded from the requirement to prepare an EIS or EA. Hence, they are referred to as categorical exclusions (CEs). DOT's NEPA regulations list two groups of actions that are generally CEs—those that require no additional DOT approval and those that may be processed as CEs when appropriately documented and approved by DOT.[49] Since 1998, approximately 90% of highway projects approved annually by FHWA were processed as CEs and approximately 6% required an EA.[50] While such projects may have "no significant environmental impact under NEPA," they may still be subject to other environmental requirements pursuant to the National Historic Preservation Act, the Clean Water Act, the Endangered Species Act, or other laws.

Efforts to expedite overall project delivery in MAP-21 focus primarily on elements of the NEPA process. The most significant changes to the environmental review process are those that would be established under Section 1313, "Accelerated Decisionmaking," and Section 1316, "Review of Federal Project and Program Delivery." Under Section 1313, MAP-21 would amend existing environmental review procedures to establish new requirements applicable to "issue resolution."[51] The provisions would establish criteria intended to ensure that all parties to the environmental review process are on schedule to meet project deadlines and to resolve disputes that may delay completion of that process or result in denial of any approval required under applicable law.[52]

Under Section 1313, MAP-21 would also establish "financial transfer provisions" applicable to an agency that fails to issue or deny a permit, license, or other approval required under any federal law. Under certain conditions, the applicable office of the head of the agency responsible for the delay would be required to transfer $10,000 or $20,000, once a week,[53] to the agency or divisions charged with rendering a decision regarding an application. A transfer would be required on the later of 180 days after an application for a permit, license, or approval is

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[49] Actions requiring no additional approval from DOT are listed under 23 C.F.R.§771.117(c). They include projects such as emergency repairs from a natural disaster or catastrophic failure and landscaping activities. Actions that require some level of DOT approved are listed under 23 C.F.R. §771.117(d). These projects have a higher potential for impacts, but still generally meet the CE criteria because environmental impacts are minor They include projects such as modernization of a highway by resurfacing, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).

[50] See "FHWA Projects by Class of Action" at http://www.environment.fhwa.dot.gov/strmlng/projectgraphs.asp/.

[51] Pursuant to requirements applicable to "Efficient environmental reviews for project decisionmaking," established under 23 USC §139(h).

[52] Under Section 1313, "all parties" refers to the project sponsor, lead agencies, resource agencies and any relevant state agencies.

[53] For an individual project, the total amount transferred cannot exceed 1% of annual funds made available for the applicable agency office; the total amount transferred cannot exceed 5% of an agency's annual funds.

complete; or 180 days after a final project decision is made, pursuant to NEPA. The transfer would not be required if the delay is of no fault of the agency.

Agencies responsible for issuing approvals or permits for DOT projects will depend on the impacts of that project, but may include EPA, the U.S. Army Corps of Engineers, or the Department of the Interior's U.S. Fish and Wildlife Service. A given divisional, regional, or local program office within one of these agencies may process hundreds of permit applications annually for a range of regulated activities—for projects beyond those applicable to transportation project development (e.g., private land development, mining operations, oil and gas development, cattle grazing,). Agency under-staffing or lack of funds is sometimes cited as a cause of delay in issuing necessary approvals or permits. A requirement to redirect limited agency funds for the purpose of expediting a single transportation project approval may have the unintended affect of slowing other applications being processed by that office.

Under Section 1316, MAP-21 would require DOT to prepare assessments that compare the completion times of CEs, EAs, and EISs initiated after calendar year 2005 to those initiated during a period prior to calendar year 2005; and to compare the completion times of CEs, EAs, and EISs initiated during the period beginning on January 1, 2005 and ending on the date of enactment of MAP-21 to those initiated after MAP-21's enactment. DOT would be required to report this information to Congress within one year after enactment. No specific funding is authorized to complete the required assessments.

Determining the time it takes to complete the various NEPA documents, as directed under Section 1316, will likely be challenging. Information indicating when individual EIS preparation begins and ends is available, but is not necessarily an accurate reflection of the time it takes to complete the NEPA process. Little or no data are available for projects processed with EAs or CEs. State DOTs generally do not attempt to track the time it takes to complete the NEPA process or any other environmental compliance obligations. Also, NEPA compliance fits into the overall project delivery process as a subset of one or more major elements of project development. Extracting accurate information about the time it takes to complete activities specific to the NEPA process may not be possible. To meet Congress's directive, DOT may require states to begin tracking this information and report it to DOT. Such a requirement would be an addition to the existing environmental clearance process.

MAP-21 provisions applicable to CEs generally involve directives to DOT to change existing regulatory requirements applicable to such projects. The most significant provisions applicable to CEs, "Programmatic Agreements and Additional Categorical Exclusions" (Section 1310), would direct DOT to survey state agencies for suggested new CEs. From those suggestions, DOT would be required to promulgate regulations adding projects to the existing regulatory list of CEs. Also, DOT would be directed to change existing CE regulations by moving specific projects listed as those that require documentation and approval from DOT to the list of projects for which no additional DOT approval is required (i.e., to move certain projects from 23 C.F.R.§771.117(d) to §771.117(c)). Other CE-related provisions would specify DOT agency roles in meeting NEPA compliance requirements for multimodal projects (Section 1306) and direct DOT to promulgate regulations specifying criteria under which specific projects located solely within the right-of-way of an existing highway may be designated as categorical exclusions (Section 1309).

Provisions that would continue or amend environment-related programs or procedures established under SAFETEA, include the following:

- **Assistance to Affected State and Federal Agencies**—would continue to authorize the use of federal transportation funds for dedicated staff at a federal agency that would support activities that directly contribute to expediting and improving transportation project planning and delivery. However, under this section, before DOT funding approval, the agency receiving DOT funds and the state (e.g., project sponsor) would have to enter into a memorandum of understanding establishing project priorities to be addressed by using those funds (Section 1305).
- **State Assumption of Responsibilities for Categorical Exclusions—**would amend existing requirements to include a "sovereign immunity" provision requiring states that consent to assume DOT's role in implementing and enforcing requirements applicable to CE determinations to accept the jurisdiction of federal courts; states would be allowed to use apportioned transportation funds for attorneys' fees directly attributable to activities associated with projects implemented under this section (Section 1307).
- **Surface Transportation Project Delivery Program—**would make permanent the "surface transportation project delivery pilot program" that allowed five specific states to assume federal responsibilities for environmental reviews required under NEPA or any other federal law. Under the new program, any state could participate and DOT would be required to make certain determinations regarding a state's ability to implement the program. Provisions similar to those under Section 1307 regarding sovereign immunity and legal fees are also included (Section 1308).
- Additional environment-specific provisions under MAP-21's Subtitle C generally identify certain activities as being of importance to Congress, reinforce the importance of activities DOT is currently implementing, or clarify existing requirements applicable to NEPA compliance.[54]

## Non-environmental Provisions Accelerating Project Delivery

Outside of the environmental review process, MAP-21 would make three main changes to existing law in an attempt to speed project delivery. First, in Section 1303, MAP-21 would add specific authority for state DOTs to enter into construction manager/general contractor (CM/GC) contracts. According to FHWA, CM/GC contracts occupy a middle ground between the traditional design-bid-build construction method and the more innovative design-build method in which a single contractor is responsible for all the design and construction work.[55] With a CM/GC contract, a state DOT employs a general contractor to provide advice during the design phase. If agreement can be reached on price and other details, the same firm may then be employed to build the project. With intimate knowledge of the project, it is believed the contractor is able to enter into such an agreement and can begin construction tasks before the design work is complete, thereby accelerating the delivery of the project.

[54] These provisions include Sections 1301, project Delivery Initiative; Section 1302, Clarified Eligibility for Early Acquisition Activities Prior to Completion; Section 1303, Efficiencies in Contracting; Section 1304, Innovative project Delivery Methods; Section 1311, Accelerated Decisionmaking in Environmental Reviews; Section 1312, Memoranda of Agency Agreements for Early Coordination; and Section 1314, Environmental procedures Initiative.

[55] Federal Highway Administration, "Every Day Counts Initiative: Accelerated Project Delivery Methods," http://www.fhwa.dot.gov/everydaycounts/projects/methods/index.cfm.

Second, MAP-21 would increase the federal funding share (normally 90% for Interstate Highway projects and 80% for other projects) by 5% on highway projects that demonstrate some kind of innovative project delivery method or technology (Section 1304). This applies to projects funded from the National Highway Performance Program, the Transportation Mobility Program, and the National Freight Program (the increased federal share is limited to 10% of a state's apportionments under these programs). Examples of innovations listed in MAP-21 include prefabricated bridge elements, digital 3-dimensional modeling technologies, and design-build and CM/GC contracting methods.

Third, MAP-21, in Section 1315, would create a pilot program, limited to not more than five states, permitting advance payment of moving costs for people and businesses forced to relocate because of a highway project.[56] These advanced payments may be combined with payments to compensate for the acquisition of real property. Currently, moving costs are reimbursable. Presumably, this "Alternative Relocation Payment Demonstration Program" is intended to speed the removal of people from the project right-of-way. However, it is a relatively minor change compared with other suggested alternatives to laws governing the acquisition of property and relocation of those displaced. For example, state transportation officials have recommended allowing states to substitute their own property acquisition and relocation laws if they meet federal requirements.[57]

# Amendments to the CMAQ Program

Under Section 1113 of MAP-21, the Congestion Mitigation and Air Quality Improvement Program (CMAQ) would be essentially re-written.[58] The CMAQ program was established to provide funds for projects and programs which may reduce the emissions of transportation-related pollutants that may cause an area within a state to exceed certain air quality standards.

Under the Clean Air Act, the Environmental Protection Agency (EPA) was directed to set air quality standards for certain pollutants. Of relevance to transportation planning agencies were the resulting National Ambient Air Quality Standards (NAAQS) established for ozone, carbon monoxide, and particulate matter (distinguished as coarse and fine particulate, referred to as $PM_{10}$ and $PM_{2.5}$, respectively).[59] A geographic area that meets or exceeds NAAQS for a particular pollutant is considered to be in "attainment"; an area that does not meet a standard is in "nonattainment." A "maintenance" area is one that was previously in nonattainment, but is currently attaining the NAAQS subject to a maintenance plan. The CMAQ program was established to provide funds particularly for projects in nonattainment and maintenance areas.[60]

[56] Uniform Relocation Assistance And Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

[57] American Association of State Highway and Transportation Officials, *AASHTO Authorization Policy, Topic IV: Project and Program Development and Delivery*, Washington, DC, http://www.transportation.org/sites/policy_docs/docs/iv.pdf.

[58] Established under 23 U.S.C. §149.

[59] "Mobile sources," such as cars, trucks, buses, and other vehicles, are considered significant sources of these pollutants. NAAQS have also been established for lead and sulfur dioxide, but mobile sources are not significant sources of those pollutants.

[60] The Clean Air Act Amendments of 1990 directed EPA to establish the NAAQS. In the year following year, CMAQ was established under provisions in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The program was amended and program funding was reauthorized in both TEA-21 in 1998 and SAFETEA in 2005.

Under MAP-21, CMAQ program goals, criteria specifying project eligibility, and requirements regarding partnerships with private entities would be largely unchanged. However, proposed amendments to the CMAQ program would significantly change how program funding levels are established and how those funds would be apportioned to and distributed within individual states.

Since the early 1990s Congress authorized specific annual CMAQ program funding levels. Those funds have been apportioned to each state according to a formula based on the state's population and regional pollution levels (e.g., depending on an area's level of nonattainment for a particular pollutant).[61] MAP-21's CMAQ apportionment for FYs 2012 and 2013 would not be a specific dollar amount. Instead, as discussed in "Highway Formula Distribution," CMAQ funds apportioned to each state would be tied to the amount of CMAQ funds apportioned to that state in FY2009 plus 10% of the apportioned amount to STP funds for that year. CMAQ funds apportioned to each state would then be distributed within each state based on certain limitations and suballocations established under the new CMAQ program.

## CMAQ Distribution Limitations

Of the CMAQ apportioned funds, a state would be required to reserve the amount attributable to the 10% of previously-apportioned STP funds for any of the following projects or activities:

- transportation enhancements[62]
- the recreational trails program[63]
- specific activities associated with planning, designing or constructing "boulevards, main streets, and other roadways"[64]
- projects that involve "providing transportation choices," such as on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation[65]

## CMAQ Suballocations

Of the remaining CMAQ funds apportioned to each state, half would be "suballocated" for projects within each designated nonattainment or maintenance area. Those funds would be distributed in accordance with a formula developed by the state. However, that formula would have to be approved by DOT and be weighted by population and the severity of pollution in each nonattainment or maintenance area (in accordance with factors established in MAP-21).[66] Also, half of the suballocated funds would have to be obligated based on the population of areas in

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[61] In accordance with calculations applicable to CMAQ program apportionments, under 23 U.S.C. §104(b)(2).

[62] As defined under 23 U.S.C. §101(35); for more information about potentially eligible projects, see FHWA's "Transportation Enhancement Activities" web page at http://www.fhwa.dot.gov/environment/te/.

[63] Established under 23 U.S.C. §206; for more information about potentially eligible projects, see FHWA's "Recreational Trails Program" web page at http://www.fhwa.dot.gov/environment/rectrails/.

[64] See MAP-21's proposed amendment to CMAQ §149(l)(2)(D).

[65] See MAP-21's proposed amendment to CMAQ §149(l)(2)(E).

[66] The calculation and distribution of these suballocated funds are largely similar to the current apportionment formula applicable to CMAQ funding allocations specified under 23 U.S.C. §104(b)(2)(B). In MAP-21, relevant suballocation requirements would be established under the proposed amendment to CMAQ §149(j).

nonattainment or maintenance areas for fine particulates. Further, 30% of the suballocated funds would have to be set aside to purchase low-emissions construction equipment and vehicles.[67]

The remaining CMAQ funds apportioned to a state (e.g., not suballocated or reserved) would be available to the state for eligible projects in any nonattainment or maintenance areas. States in attainment for NAAQS may use its apportioned funds for CMAQ-eligible projects.

Additional provisions in MAP-21 may significantly change how the CMAQ program is implemented in individual states. Those provisions include the following:

- **Proposed Section 149(f), Priority Considerations.** In nonattainment or maintenance areas for fine particulates, $PM_{2.5}$, states and MPOs would be directed to prioritize CMAQ fund distribution for projects proven to reduce those pollutants, including diesel retrofits.
- **Proposed Section 149(h), Evaluation and Assessment of Projects.** DOT and EPA would be directed to develop a table illustrating the cost-effectiveness of a range of projects. States and MPOs would be required to consider this information in developing performance plans for CMAQ-funded projects.
- **Proposed Section 149(i), Optional Programmatic Eligibility.** Technical assessment of a selected program or projects, conducted at the discretion of MPOs, would be allowed to demonstrate emissions reductions. Those data could be used to show that similar projects meet CMAQ eligibility requirements.
- **Proposed Section 149(k), Performance Plan.** Requires MPOs to prepare performance plans for CMAQ-funded projects.

# Alternative Fuels and Advanced Technology Vehicles

Current laws provide incentives to promote the use of alternative fuels and advanced technology vehicles. These incentives include tax credits for the purchase of plug-in vehicles and for the production of biofuels from cellulose. (Other credits, including a credit of 45 cents per gallon to blend ethanol into gasoline and a credit for the purchase of alternative fuel vehicles, have expired or are set to expire at the end of 2011.) Non-tax incentives include credits automakers receive under the Corporate Average Fuel Economy (CAFE) program for the production and sale of alternative fuel vehicles.

Various highway programs also provide non-tax incentives. For example, SAFETEA allowed states to allow low-emission and energy-efficient vehicles to travel in high occupancy vehicle (HOV) lanes, although this authority expired at the end of FY2009. MAP-21 would extend this authority indefinitely. However, MAP-21, Section 1510, would also limit states' authority to exempt these vehicles if the HOV lanes become "degraded" to the point that vehicles fall below

[67] Federal support for construction equipment diesel engine replacement and upgrades is currently limited to equipment that is strictly off-road, and sponsors need to verify that the equipment will be used on such project in EPA-designated nonattainment areas for the vast majority of its useful life. MAP-21, Section 1511, appears to require only 80 hours of use on a covered project in a nonattainment area.

minimum average speed—generally 45 mph—over 90% of the time during peak travel hours. Under current law, states must limit exemptions if the exempted vehicles cause the degradation, while MAP-21 would require states to limit access regardless of the cause of the degradation.

To support the expansion of electric vehicle infrastructure, MAP-21, Section 1509, would allow highway funds to be used for new charging stations at existing or new parking facilities funded through the law.

# Transit

The Senate's transit program provisions are contained in the Federal Public Transportation Act (FPTA) of 2012 and the revenue provisions are in the Highway Investment, Job Creation and Economic Growth Act of 2012. Neither of these bills has been formally introduced and, hence, both are unnumbered. These bills are folded into MAP-21, by amendment, in SA 1761.[68]

The proposed Senate bill would authorize $10.458 billion for federal transit programs annually for FY2012 and FY2013, the current funding level, with $8.361 billion coming from the Mass Transit Account of the Highway Trust Fund and $2.098 billion from the general fund (see **Table 4**).[69]

**Table 4. Proposed Annual Federal Transit Funding in Senate Bill**

Authorizations for FY2012 and FY2013

| | Mass Transit Account | General Fund |
|---|---|---|
| Administration | | $108,350,000 |
| Planning Programs | $144,850,000 | |
| Emergency Relief | | such sums as are necessary |
| Urbanized Area Formula Program | $4,756,161,500 | |
| Clean Fuels Program | $65,150,000 | |
| Capital Investment Grants | | $1,955,000,000 |
| Elderly and Disabled | $248,600,000 | |
| Nonurbanized Area Formula Program | $591,190,000 | |
| Research, Development, Demonstration, and Deployment Projects | $34,000,000 | |

[68] See Division B—Public Transportation in Sen. Harry Reid, "SA 1761, Amendment of a Perfecting Nature to S. 1813 to reauthorize Federal-Aid highway and highway safety construction programs, and for other purposes," Available at https://docs.google.com/file/d/0B23rveCvG52eWllWVTBWNWhUZ2FTbk5Tb3FGeGstZw/edit

[69] Senate Committee on Banking, Housing, and Urban Affairs, "Federal Public Transportation Act of 2012, Bill Highlights," http://banking.senate.gov/public/_files/Transit_Bill_Summary_and_Funding_Chart.pdf.

| | Mass Transit Account | General Fund |
|---|---|---|
| Transit Cooperative Research Program | $6,500,000 | |
| Technical Assistance and Standards Development | $4,500,000 | |
| National Transit Institute | $5,000,000 | |
| Paul S. Sarbanes Transit in Parks Program | | $26,900,000 |
| Workforce Development and Human Resource Programs | $2,000,000 | |
| National Transit Database | $3,850,000 | |
| State of Good Repair | $1,987,263,500 | $7,463,000 |
| *Fixed Guideway SGR* | *$1,874,763,500* | |
| *Fixed Guideway SGR Discretionary* | | *$7,463,000* |
| *Motorbus SGR* | *$112,500,000* | |
| Growing States and High Density Formula | $11,500,000 | |
| **Total** | **$8,360,565,000** | **$2,097,713,000** |

**Source:** Senate Committee on Banking, Housing, and Urban Affairs, "Federal Public Transportation Act of 2012, Bill Highlights," http://banking.senate.gov/public/_files/Transit_Bill_Summary_and_Funding_Chart.pdf.

## Program Restructuring

The FPTA contains some significant restructuring of the federal transit program. The existing Fixed Guideway (Rail) Modernization Program would be replaced with a new State of Good Repair (SGR) Grant Program. This proposed program has three components:

- The **High Intensity Fixed Guideway SGR Formula Program** would distribute funding by formula for the maintenance, repair, and replacement of fixed guideway public transit defined as: using and occupying a separate right of-way for the exclusive use of public transportation; rail; using a fixed catenary system; a passenger ferry system; or a bus rapid transit system. The facility must be at least seven years old. Funding for this program comes from the Mass Transit Account of the Highway Trust Fund, and would be distributed by a new formula that uses vehicle miles and route miles.
- The **Fixed Guideway SGR Grant Program** would distribute competitive grants for the upkeep of fixed guideway systems. Funding for this program would come from the general fund.
- The **High Intensity Motorbus SGR** program would distribute funds by formula for public transportation provided on a facility with access for other high-occupancy vehicles. The facility must be at least seven years old. Funding comes

from the mass transit account, and would be distributed by a formula that uses fixed-guideway motor bus vehicle miles and route miles.

Another major change in the FPTA from current law is the elimination of the heavily earmarked discretionary Bus and Bus-Related Facilities program. It appears that some of the funding for this program, currently almost $1 billion per year, is added to some of the other formula programs, particularly the Urbanized Area and Non-Urbanized Area Formula programs.

Another significant change is to combine the Formula Grants for Elderly Individuals and Individuals with Disabilities Program and the New Freedom Program, which provides formula funding for the disabled, into a single program to be called Formula Grants for Enhanced Mobility of Seniors and Individuals with Disabilities.

The current Jobs Access and Reverse Commute program is shifted to be part of the Urbanized and Non-Urbanized Area Formula programs. The renamed Access to Jobs program requires that recipients spend at least 3% of their Urbanized Area apportionments on projects that are designed to help low income individuals travel to and from jobs. Under the Non-Urbanized Area program, Access to Jobs is an eligible expense.

The Senate bill also creates two new programs that mirror existing highway programs. These are the Appalachian Development Public Transportation Assistance Program, with $20 million set aside from the Non-Urbanized Area funds, and the Public Transportation Emergency Relief Program. This emergency relief program, akin to the existing Highway Emergency Relief Program, provides funding for capital and operating costs in the event of a natural or man-made disaster. The bill authorizes such sums as may be necessary to carry out this new program.

As is currently the case, funds from the Non-Urbanized Area Formula Program are also set aside for transit on Indian reservations. This legislation would double the amount set aside from $15 million to $30 million annually. Of the $30 million, $20 million would be distributed by formula and $10 million competitively.

## New Starts Program

The bill would make substantial changes to the New Starts program. It would allow New Starts program funds for substantial investments in *existing* fixed guideway systems that add capacity and functionality. These types of projects are termed "core capacity improvement projects." It also authorizes the evaluation and funding of a program of interrelated projects.

The bill also attempts to simplify the New Starts process by reducing the number of major stages from four to three. The new stages are termed project development (PD), engineering, and construction.[70] To enter the project development phase, the applicant must apply in writing to the Secretary of Transportation and initiate the NEPA process. (For more on the NEPA process, see Accelerating Transportation Project Delivery above.) The bill would eliminate the alternatives analysis separate from the alternatives analysis in NEPA as currently required by law. Along with the NEPA work, during PD the project sponsor will have to develop the information needed by

[70] Currently, the New Starts process involves four major phases: planning and alternatives analysis; preliminary engineering; final design; and construction. For more information, see CRS Report R41442, *Public Transit New Starts Program: Issues and Options for Congress*, by William J. Mallett.

the Secretary to review the project justification and the local financial commitment. Generally, the project applicant has two years to compete PD.

The project is permitted to enter into the Engineering Phase once the NEPA process is concluded with a Record of Decision (ROD), a Finding of No Significant Impact (FONSI), or a Categorical Exclusion, the project is selected as the locally preferred alternative, the project is adopted into the metropolitan plan, and is justified on its merits. After Engineering, if successful, a project will then be eligible to enter into a full funding grant agreement with the Secretary for federal funding assistance and to move into the construction phase of the project.

The Senate bill also tries to advance projects more quickly using special warrants for projects of which the federal share is $100 million or less or 50% or less of the total project cost. But the bill eliminates the Small Starts program that provided dedicated funding to projects requesting $75 million or less in federal assistance and costing in total $250 million or less. The act also creates a pilot program for expedited project delivery for three projects, as the bill states, "to demonstrate whether innovative project development and delivery procurement methods or innovative financing arrangements can expedite project delivery for certain meritorious new fixed guideway capital projects and core capacity improvement projects."

## Operating Assistance

For the most part, the Senate bill would maintain the prohibition on the use of federal funds for operating expenses in urbanized areas of 200,000 or more people. However, it adds some exceptions to this general prohibition. For small bus transit systems in urbanized areas of 200,000 or more people, those operating 75 or fewer buses in peak service would be allowed to use up to 50% of their Urbanized Area apportionments for operating expenses. For transit systems operating 76 to 100 buses in peak service the allowable amount would be 25% of their Urbanized Area apportionment. In addition, the bill would allow the use of Urbanized Area formula funds for operating expenses in urbanized areas of 200,000 or more people with high unemployment rates for up to three years. The maximum allowable amount would be 25% of an area's apportionment in the first year and 20% for years two and three.

# Rail Provisions

MAP-21, as amended by SA 1761, adds a title concerning passenger and freight rail (Title VI, of the Senate bill is the National Rail System Preservation, Expansion, and Development Act of 2012), which pertains to both passenger (intercity and commuter) and freight rail.[71]

## Intercity Passenger Rail

Section 36101 calls for development of a national rail plan, including passenger and freight, to guide future investments and illustrate on a map priority routes to be served. It also calls for DOT,

[71] See Division C, Title VI, in Sen. Harry Reid, "SA 1761, Amendment of a Perfecting Nature to S. 1813 to reauthorize Federal-Aid highway and highway safety construction programs, and for other purposes," Available at https://docs.google.com/file/d/0B23rveCvG52eWllWVTBWNWhUZ2FTbk5Tb3FGeGstZw/edit

in coordination with states and others, to develop regional rail plans, excluding the Amtrak-owned Northeast Corridor (NEC), to refine the national plan with respect to each region. The regional plans would include maps identifying rail alignments and station stops, among other things. Finally, states may also create state rail plans that further refine the appropriate regional plan with respect to a state. These plans would be relevant to the approval process for federal capital grants for intercity passenger service.

Regarding the NEC, the bill makes amendments to the NEC advisory commission created by the Passenger Rail Investment and Improvement Act of 2008 (P.L. 110-432) and requires Amtrak to submit a new plan for high-speed service (200 mph or greater) in the corridor.

The bill requires DOT, within one year of enactment, to develop guidance on how to better measure train delays, including automatic measurement. It requires DOT to conduct a data needs assessment to support development of intercity passenger rail, including cost-benefit analysis and modeling of estimated ridership. Within two years, DOT is required to survey and report on track access arrangements for intercity passenger rail operating on other railroads' tracks and the processes for resolving disputes over that access.

### Rolling Stock Equipment Pool

The bill furthers development of an equipment pool of standardized cars for corridor intercity passenger services (with endpoints less than 750 miles apart) by creating a corporate or cooperative entity that is controlled by Amtrak and states funding corridor services. The entity would serve as the equipment supplier and manager of the standardized cars to be used in corridor service. The bill also amends the capital grant program for corridor passenger service to include Amtrak, not just states, as an eligible recipient.[72] The intent of the equipment pool is to achieve economies of scale in car production and maintenance but a drawback is that it could discourage innovation in car design.

Implementation of positive train control (discussed below) could have a significant impact on domestic car design. Federal Railroad Administration (FRA) regulations require passenger cars be designed to limit damage in a collision. This requirement distinguishes U.S. from foreign passenger cars whose rail systems put more emphasis on crash avoidance than crash survival. As a result, U.S. cars are much heavier due to more robust bulkhead requirements. However, the implementation of positive train control (a crash avoidance system) could lead the FRA to modify its requirements to be more in line with foreign requirements. Notwithstanding "Buy America" requirements, this has the potential to facilitate a global market for passenger car equipment.

## Positive Train Control

The bill allows DOT to extend the deadline beyond December 31, 2015, for implementing positive train control (PTC) technology, upon application by a railroad, if it is determined to be infeasible. DOT could extend the deadline by one year increments but not beyond December 31,

[72] 49 U.S.C. 24401.

2018. The bill also makes PTC implementation an eligible use of RRIF funding (see below) and requires a joint DOT/FCC study of the spectrum needs for PTC.

Congress mandated PTC in 2008[73] in response to a deadly collision between a commuter and freight train in the Los Angeles area and releases of poisonous chemicals from rail tank cars after derailments in other parts of the country. Passenger railroads (intercity and commuter) and freight railroads on routes carrying toxic-by-inhalation products are required to install PTC. PTC relies on radio signaling between devices along the track and in the locomotive that is supposed to override human error in train control. Railroads and others have objected to PTC has a high-cost remedy for relatively rare types of train accidents. Lack of adequate spectrum to carry the radio signals has been raised as an obstacle to implementation in urban areas.

## Freight Rail

Section 36401 amends a federal grant program, created in SAFETEA-LU, for relocating railroad lines having adverse affects on traffic flow or economic development to include the lateral or vertical relocation (*e.g.* an overpass or underpass) of a road, not just the rail line.[74] Section 36408 amends the Railroad Rehabilitation and Improvement Financing (RRIF) Program, a government loan program for freight and passenger railroads, to accept as collateral a state or local subsidy or dedicated revenue stream. It also expands eligible uses of a RRIF loan to include pre-construction activities such as preliminary engineering, environmental review, and permitting.

The bill makes some modest changes to areas of the freight railroad industry regulated by the Surface Transportation Board (STB). It raises the ceiling on the maximum total dollar value of freight charges that shippers (railroad customers) can bring before the STB under its simplified rate case procedures, from $1 million to $1.5 million in rate relief under the “three-benchmark” procedure, and from $5 million to $10 million under the “simplified stand-alone-cost” procedure.[75] The bill imposes shorter procedural deadlines for rate relief cases brought under the more complex “stand-alone cost” methodology. The STB would be required to study whether to incorporate railroad asset replacement costs in its annual examination of railroad revenue adequacy, a change advocated by railroads but rejected by the STB in 2008.[76] The bill requires the STB to compile and report on its website railroad service complaints and conduct a review of the agency’s staffing needs.

# Highway Safety

Highway safety programs are the responsibility of the National Highway Transportation Safety Administration (NHTSA). The Senate highway safety bill (Division C, Title I of S. 1813 as amended by SA 1761) would retain most of the existing NHTSA grant programs and would create another: an incentive grant program to encourage states to make texting while driving, and

[73] The Rail Safety Improvement Act of 2008 (P.L. 110-432), see section 104.

[74] This grant program is codified at 49 U.S.C. 20154.

[75] See Ex Parte No. 646 (Sub-No. 1), available on the STB’s website, for further information on these rate case procedures.

[76] See the filings and decisions issued under Ex Parte No. 679.

the use of a cell phone by drivers under age 18, primary traffic offenses.[77] It would promote greater awareness of motor vehicle defect reporting, and would increase the maximum civil penalty for violations of vehicle safety defect rules from $15 million to $230 million. And it would require, beginning with model year 2015, that passenger motor vehicles be equipped with event data recorders.[78]

**Table 5. Highway Safety Grants to States**

($ in millions)

| | FY2011 | FY2012 | FY2013 |
|---|---|---|---|
| Current | $620 | $550 | — |
| Senate MAP-21 | — | 682 | 691 |

# Commercial Trucking Safety

Significant provisions in the commercial motor vehicle safety title of SA 1761 include[79]

- the creation of a clearinghouse of drug and alcohol test results by commercial drivers in order to prevent drivers who have failed a test from avoiding penalties by switching employers;
- an increase in DOT's ability to act against "reincarnated carriers"—carriers whose operations have been suspended due to safety violations which then resume operations under a new name; and
- requiring that electronic on-board recorders be used on all trucks and buses (in interstate commerce) to improve compliance with hours-of-service regulations.
- promoting motorcoach safety by requiring DOT to assign a simple safety rating to each commercial motorcoach operator, and requiring that rating to be displayed at all points of sale for the motorcoach operator's services.

**Table 6. Motor Carrier Safety Grants to States**

($ in millions)

| | FY2011 | FY2012 | FY2013 |
|---|---|---|---|
| Current | $310 | $307 | — |
| Senate MAP-21 | — | 310 | 315 |

[77] At the beginning of 2012, in 32 states, the District of Columbia, and Guam, texting while driving was a primary offense, and 30 states and the District of Columbia had some version of cell phone use by drivers under 18 or novice drivers as a primary offense. See http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html.

[78] See Division C, in, Sen. Harry Reid, "SA 1761, Amendment of a Perfecting Nature to S. 1813 to reauthorize Federal-Aid highway and highway safety construction programs, and for other purposes," Available at https://docs.google.com/file/d/0B23rveCvG52eWllWVTBWNWhUZ2FTbk5Tb3FGeGstZw/edit

[79] Ibid. Title II.

# Transportation Research and Education

MAP-21 would authorize $400 million for each of FY2012 and FY2013 for transportation research and education. It would direct the Secretary of Transportation to carry out a technology deployment program, including establishing a competitive grant program to accelerate ITS deployment. It would authorize the Secretary to conduct prize competitions to promote surface transportation innovations. It would direct DOT to conduct studies on improving many aspects of transportation, including safety, lifecycle cost analysis, reducing congestion, assessing infrastructure investment needs, and options for financing. It would authorize 35 grants to be awarded on a competitive basis annually to university transportation centers for transportation research.[80]

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[80] There are 60 university transportation centers: Research and Innovative Technology Administration, U.S. DOT, University Transportation Centers Program 2011 Grant Solicitation, July 26, 2011, p. 5 (http://utc.dot.gov/about/grants_competitions/2011/grant_solicitation/pdf/entire.pdf).