



Transportation and Transportation Security Related Provisions of House and Senate Stimulus Legislation (H.R. 1)

John W. Fischer
Specialist in Transportation Policy

William J. Mallett
Specialist in Transportation Policy

Robert S. Kirk
Specialist in Transportation Policy

John Frittelli
Specialist in Transportation Policy

February 17, 2009

Congressional Research Service

7-5700

www.crs.gov

R40214

Summary

This report discusses the major transportation and transportation security related provisions of the American Recovery and Reinvestment Act of 2009 (H.R. 1) as passed by the House on January 28, 2009, and the Senate on February 10, 2009. The report also discusses the major transportation provisions of the conference report on H.R. 1 (H.Rept. 111-16), which was passed by both the House and Senate on February 13, 2009, and signed by President Barack Obama on February 17, 2009.

Contents

Introduction	1
Highway and Surface Transportation Provisions	1
House	1
Senate	1
Additional Surface Transportation Discretionary Grants.....	2
Enacted.....	2
Additional Surface Transportation Discretionary Grants.....	2
Transportation Taxation Provisions	3
Taxable and/or “Build America” Bonds	3
House	3
Senate.....	3
Enacted.....	3
Alternative Minimum Tax (AMT)	3
House, Senate, and Enacted	3
Public Transit.....	3
House	3
Senate	4
Enacted.....	4
Federal Railroad Administration	4
Amtrak	4
House	4
Senate.....	5
Enacted.....	5
Intercity Passenger Rail.....	5
House	5
Senate.....	5
Enacted.....	5
High-Speed Rail Corridor Program.....	6
House	6
Senate.....	6
Enacted.....	6
High-Speed Rail Bonds.....	6
House	6
Senate.....	6
Enacted.....	6
Federal Aviation Administration.....	7
Grants-in-Aid for Airports.....	7
House	7
Senate.....	7
Enacted.....	7
Facilities and Equipment.....	7
House	7
Senate.....	7
Enacted.....	8
Maritime Transportation Related Provisions.....	8

Shipyard Assistance	8
House	8
Senate.....	8
Enacted.....	8
U.S. Coast Guard.....	8
House	8
Senate.....	9
Enacted.....	9
General Provision: Department of Transportation.....	9
Maintenance of Effort	9
Enacted.....	9
Transportation Security Related Provisions	9
Aviation Security.....	9
House	9
Senate.....	10
Enacted.....	10
Port and Maritime Security	10
House	10
Senate.....	10
Enacted.....	10
Passenger and Cargo Land Border Ports of Entry Security	10
House	10
Senate.....	11
Enacted.....	11
Transit and Rail Security.....	11
House	11
Senate.....	11
Enacted.....	11

Contacts

Author Contact Information	11
----------------------------------	----

Introduction

This report discusses the major transportation and transportation security related provisions of the American Recovery and Reinvestment Act of 2009 (H.R. 1) as passed by the House on January 28, 2009, and the Senate on February 10, 2009. The report also discusses the major transportation provisions of the conference report on H.R. 1 (H.Rept. 111-16), which was passed by both the House and Senate on February 13, 2009, and signed by President Barack Obama on February 17, 2009.

Highway and Surface Transportation Provisions

House

Provides \$30 billion to be distributed through the existing federal-aid highway program. Set-asides included in this total are: \$450 million for federal lands highways, \$60 million for Federal Highway Administration (FHWA) administrative costs, \$20 million for Disadvantaged Business Enterprises (DBE) bonding, \$20 million for job training, \$108 million for Puerto Rico, and \$46 million for the remaining U.S. territories. Funds are to be obligated to the states at the same ratio as that found in the FY2008 transportation appropriations act. However, 40.5% of each state's funds are suballocated within the state on the basis of population. In addition, 4.5% of each state's funds are to be reserved for transportation enhancement projects as defined in the existing federal-aid highway program. The federal share for all funds provided is 100%. States have 90 days to obligate at least 50% of their available funds. States unable to obligate 50% will lose the remaining portion via redistribution to states that are able to obligate these funds. Suballocated funds (usually under the jurisdiction of Metropolitan Planning Organizations (MPOs)) are subject to a 75-day deadline for obligation of at least 50% of available funds. If this deadline is not met these funds are made available to the state for obligation. Funds not obligated by states by August 1, 2010, will be redistributed to the states in accordance with mechanisms already existing in the federal-aid highway program.

Senate

Provides \$27.06 billion to be distributed through the existing federal-aid highway program. Set-asides included in this total are: \$500 million for federal lands highways, \$12 million for FHWA administrative costs, and \$60 million for ferry boats. The formulas associated with the existing Surface Transportation Program (STP) are used as the mechanism to distribute money to the states. However, 40% of each state's funds are suballocated within the state on the basis of population. There is no separate distribution for the enhancement program normally associated with the STP. In addition, 5% of each state's total funding is set-aside for projects that would be eligible for funding under the existing Congestion, Mitigation, and Air Quality (CMAQ) improvement program. Funding available through this provision can be used for non-highway transportation related purposes, for example, stormwater runoff and passenger/freight rail projects. For the purposes of the funding distribution Puerto Rico is treated as a state and will receive \$132 million. 180 days after enactment, the Secretary shall withdraw 50% of the amount available to each state, less the amount already obligated, and redistribute these funds to states that were not subject to the withdrawal. The federal share for all funds provided is 100%. One year after enactment all remaining unobligated funds are withdrawn from the states and made

available to the Secretary for distribution as part of the Surface Transportation Discretionary Grant Program (discussed below).

Additional Surface Transportation Discretionary Grants

The Senate bill provides for a new “surface transportation” discretionary grant program of \$5.5 billion. Distribution of these funds is to be accomplished on a competitive basis. Criteria for selection are to be developed by the Secretary of Transportation and published within 75 days of enactment of the bill. Projects eligible for funding include a wide range of transportation activities. Selected projects must cost at least \$20 million and not more than \$500 million. Projects must be of national, metropolitan, or regional significance. At the Secretary’s discretion up to \$200 million can be made available for funding of the existing Transportation Infrastructure Finance and Innovation Program (TIFIA). The federal share for all funds provided is 100%. The Secretary is charged with expediting the spending of these funds and for distributing them broadly on the basis of specific criteria detailed in the legislation. Grant applications are required within 180 days of enactment of these provisions with grant awards selected within one year of enactment. Additional funds withdrawn under Senate provisions from both the highway and transit programs must be awarded within 180 days after receipt.

Enacted

Provides \$27.5 billion to be distributed through the existing federal-aid highway program. Set asides included in this total are: \$550 million for federal lands highways (\$310 million for Indian Reservation Roads program, \$170 for the Park Roads and Parkways program, \$60 million for the Forest Highway Program, and \$10 million for the Refuge Roads program), \$40 million for FHWA administrative costs, \$60 million for ferry boats, \$45 million for the Territorial Highway program, \$105 million for the Puerto Rico Highway program, \$20 million for highway surface transportation and technology training, and \$20 million for disadvantaged business enterprises bonding assistance. After making the set asides, 50% of the funds made available as Surface Transportation Program funds and the remaining funds are apportioned in the same ratio as the obligation limitation for FY2008 under the transportation appropriations act. Thirty percent of funds apportioned to the states are to be suballocated within the states according to STP’s population-based sub-state distribution framework. The federal share is 100%. Priority is to be given to projects that are projected to be completed within three years and are located in economically distressed areas. The funds are to be apportioned within 21 days of enactment. 120 days after enactment the Secretary of DOT will withdraw from each state an amount equal to 50% of unobligated non-suballocated funds. These funds will be redistributed to states that have no such unobligated funds. One year after enactment the Secretary will withdraw any unobligated funds and redistribute them in accordance with FHWA’s annual August redistribution. Three percent of funds made available are to be used for Transportation Enhancement purposes.

Additional Surface Transportation Discretionary Grants

The conference agreement made a number of changes to the provision in the Senate bill. It reduced the amount made available from \$5.5 billion to \$1.5 billion. The allowable grant size was also changed to a range of \$20 million to \$300 million (the maximum in the Senate bill was \$500 million). Minimum grant size may be waived for projects in smaller cities, regions, or states, and not more than 20% of the funds may be awarded to projects in a single state.

Transportation Taxation Provisions

Taxable and/or “Build America” Bonds

House

Provides for a tax credit equivalent to 35% of interest due on certain governmental (primarily state, municipal, or local) bonds.

Senate

Provision defines “build America” bonds. Further the provision, grants such bonds a 35% to 45% tax credit on interest due. Emphasizes that these bonds are not federally guaranteed.

Enacted

Provides for a tax credit equivalent to 35% of interest due.

Alternative Minimum Tax (AMT)

House, Senate, and Enacted

Prevents interest on private activity bonds issued in FY2009 and FY2010 from triggering AMT tax treatment.

Public Transit

House

The House bill provides \$12 billion for public transit. Approximately 80% of the funding is distributed by formula and 20% is discretionary. From the formula funding, the bill takes \$22.5 million for Indian reservations and \$74.4 million for Federal Transit Administration (FTA) oversight. This leaves \$6.699 billion to be distributed via the urbanized area formula, \$1.98 billion via the fixed guideway modernization formula (typically known as “Rail Mod”), and \$724 million via the non-urbanized (rural) formula. \$2.5 billion is appropriated for the discretionary New Starts program, with up to \$25 million provided for FTA oversight. The House bill appears to limit spending to capital expenditures, disallowing operating expenditures in the various programs under current law. Of the formula funds, grantees must obligate at least 50% of funds within 90 days of apportionment. With New Starts funding, grantees must enter into binding commitments with 50% of the money within 90 days after award. Funds unobligated after 90 days shall be redistributed to other recipients that can use the funds in a timely manner. The remaining formula and New Starts funds must be committed not later than two years after the date of enactment. The federal share is 100% for grants under the formula programs.

Senate

The Senate bill provides \$8.4 billion for public transit, \$3.6 billion less than the House bill. There are three set-asides: \$3 million for FTA oversight, \$16.4 million for Indian reservations, and \$200 million for discretionary grants to reduce energy consumption and greenhouse gas emissions by transit agencies. The remaining funds are distributed by formula, with 71% (\$5.820 billion) distributed via the urbanized area formula, 19% (\$1.557 billion) via the fast-growing/high-density state formula, and 10% (\$820 million) via the non-urbanized formula. The Senate bill limits funding to capital expenditures. Grantees must obligate 50% of funds within 180 days of apportionment, and the remaining funds must be obligated within one year. Of the first 50% unobligated with 180 days, funds are redistributed to agencies that can use them in a timely manner. Funds unobligated within one year are transferred to the Surface Transportation Discretionary Grants program. The federal share is 100%.

Enacted

As enacted, the bill provides \$8.4 billion for public transit. Of this amount, \$6.9 billion is for transit capital assistance grants, \$750 million for fixed-guideway modernization, and \$750 million for the New Starts program. From the capital assistance grants, the bill provides \$100 million for discretionary grants to reduce energy consumption and greenhouse gas emissions by transit agencies. The remaining capital assistance grants are distributed by formula, with 80% (\$5.44 billion) distributed via the urbanized area formula, 10% (\$680 million) via the fast-growing/high-density state formula, and 10% (\$680 million) via the non-urbanized formula. The bill provides nearly \$50 million from these amounts for FTA administration and oversight. The bill also provides about \$17 million from the non-urbanized formula funds for Indian reservations. The enacted bill limits spending to capital expenditures, disallowing operating expenditures as allowed in the various programs under current law. With the transit capital assistance and fixed-guideway modernization grants, grantees must obligate at least 50% of funds within 180 days of apportionment and the rest within one year. Funds unused are to be redistributed to other recipients that can use the funds in a timely manner. With discretionary New Starts funding, funds are available through September 30, 2010. In selecting New Starts projects for funding, priority is to be given to recipients that are able to obligate funds within 150 days from enactment. Up to 1% (\$15 million) of the fixed guideway modernization and New Starts funds are available for FTA administration and oversight. The federal share is 100% for grants under the formula programs.

Federal Railroad Administration

Amtrak

House

Provides \$800 million for Amtrak capital and debt service grants as authorized under the Passenger Rail Investment and Improvement Act of 2008. Funds shall be made available not later than seven days after enactment. The funds are available for obligation until September 30, 2010. Priority shall be given to projects for the repair, rehabilitation, or upgrade of railroad assets or infrastructure. Prohibits the use of these funds to subsidize Amtrak operating losses.

Senate

Provides \$850 million for Amtrak capital projects to be allocated directly to Amtrak. The Amtrak Board of Directors shall take measures to ensure that projects are completed within two years of enactment. Funds shall serve to supplement and not supplant planned expenditures for such activities from other federal, state, local and corporate sources: the Board of Directors shall certify their compliance with these provisions to the House and Senate Committees on Appropriations in writing. Priority is given to capital projects that expand passenger rail capacity. No more than 50% of funds provided may be used for capital projects on the Northeast Corridor.

Enacted

The enacted version provides \$1.3 billion in capital grants to Amtrak and designates \$450 million of this amount for security-related infrastructure and \$5 million for the Amtrak Office of Inspector General. It also directs that no more than 60% of the non-security related capital grants can be allocated to the Northeast Corridor (between Boston and Washington, DC). The enacted version specifies that none of these funds can be used to cover operating losses. The funds must be awarded within 30 days of enactment and are available for obligation until September 30, 2010. The enacted version requires the Secretary of Transportation to certify in writing that he has taken measures to ensure projects are completed within two years of enactment and that the funding does not supplant but supplements planned expenditures from federal, state, local, and corporate sources.

Intercity Passenger Rail

House

Provides \$300 million for “Capital Assistance for Intercity Passenger Rail Service,” to make grants authorized by 49 U.S.C. Chapter 244. The federal share is 100%. Funds are available for obligation until September 30, 2010. Priority shall be given to projects for the repair, rehabilitation, upgrade or purchase of railroad assets or infrastructure that can be awarded within 90 days of enactment. In awarding grants preference priority will be given to FRA-compliant rolling stock and locomotives. Preference shall also be given to projects that support the development of intercity high speed rail service.

Senate

Provides \$250 million for intercity passenger rail described in 49 U.S.C. Section 24401(2)(A) and (2)(B) and Section 24105(b). The federal share is 100%. Priority shall be given to projects that demonstrate an ability to be completed within two years of enactment. Up to one-quarter of 1 percent of funds provided may be retained by the FRA for transfer to “Federal Railroad Administration, Safety and Operations.” To be eligible, specific projects must be on a Statewide Transportation Improvement Plan at the time of the application.

Enacted

The enacted version combines funding for this program with two other existing programs as explained below under the high-speed rail corridor program.

High-Speed Rail Corridor Program

House

No provision.

Senate

Provides \$2 billion to make grants for high-speed rail projects under 49 U.S.C. 26106. The federal share is 100%. Funds are available for obligation until September 3, 2011. FRA may retain and transfer up to one-quarter of 1 percent of the funds to “Federal Railroad Administration, Safety and Operations.”

Enacted

The enacted version provides a total of \$8 billion for three existing intercity passenger rail capital grant programs that were authorized in Division B of P.L. 110-423, which was enacted on October 16, 2008: intercity passenger rail capital grants (section 301 of P.L. 110-423), congestion grants (section 302), and high-speed rail corridor development grants (section 501). The Secretary of Transportation is directed to issue interim rules within 120 days of enactment to guide grant applicants on grant terms, conditions, and procedures until final regulations are issued. The Secretary is to give priority to projects that support high-speed rail development. The Secretary is to waive the requirement that a project to be included in a state rail plan developed under 49 U.S.C. Chapter 227. The Secretary is to submit a strategic plan within 60 days of enactment that describes how the funds will be used to improve and deploy high-speed passenger rail systems. The federal share payable may be, at the option of the recipient, up to 100%. Funds are available for obligation until September 30, 2012.

High-Speed Rail Bonds

House

No provision.

Senate

Provision (Division B, Section 1504) lowers the minimum speed a high-speed rail project can maintain to be eligible for high-speed rail bonds by changing the wording from being able to “operate at speeds in excess of,” to “be capable of attaining a maximum speed in excess of.”

Enacted

The enacted version adopts the Senate language.

Federal Aviation Administration

Grants-in-Aid for Airports

House

Provides \$3 billion for discretionary Airport Improvement Program Grants (AIP) (49 U.S.C. Chapter 471, Subchapter I). The funds shall not be subject to apportionment formula, special apportionment categories or minimum percentages under chapter 471. The conditions, certifications, and assurances under subchapter I apply. The federal share is not specified, therefore it appears that share would be determined by Section 47109. In applying use it or lose it criteria under Section 1104 of the bill the deadline for grantees to enter into contracts or other binding commitments to make use of 50% of funds awarded shall be 90 days after the award of the grant (i.e. or are subject to redistribution). Funds are available for obligation until September 30, 2010.

Senate

Provides \$1.1 billion for AIP grants for airport development (49 U.S.C. 47102(3)) and airport noise compatibility grants (49 U.S.C 47504(c)) and for the procurement, installation and commissioning of runway incursion prevention devices and systems at AIP eligible airports. The federal share is 100% and is not subject to any obligation limitation under existing law. Priority is to be given to “those projects that demonstrate to the Secretary of Transportation’s satisfaction their ability to be completed within 2 years of enactment and serve to supplement and not supplant planned expenditures from airport-generated revenues of from other state and local sources on such activities.” Funds are available for obligation until September 30, 2010.

Enacted

Provides \$1.1 billion as proposed by the Senate bill and includes its eligibility scope and priority statements. Requires that the Secretary of DOT award grants totaling not less than 50% of funds within 120 days of enactment and award grants for the remaining grants within one year of enactment. The federal share is 100%.

Facilities and Equipment

House

No provision.

Senate

Provides \$200 million for “necessary investments in Federal Aviation Administration (FAA) infrastructure ... provided that funding under this heading be used to make improvement to power systems, air route traffic control centers, air traffic control towers, terminal radar approach control facilities and navigation and landing equipment.” Federal share is 100%. Priority is to be given to

projects and activities that can be completed within two years. FAA has 60 days after enactment to establish a process for applying, reviewing and awarding contracts. Funds are available for obligation until September 30, 2009.

Enacted

Same as Senate.

Maritime Transportation Related Provisions¹

Shipyard Assistance

House

No provision.

Senate

The Senate version provides \$100 million in federal grants to small shipyards as authorized under 46 U.S.C. 54101 (section 3506 of P.L. 109-163). The bill requires the Department of Transportation (DOT) to ensure that these grants are obligated within 180 days of their distribution.

Enacted

The enacted version agrees with the Senate to provide \$100 million in grants to small shipyards and refers to the more recently authorized small shipyards assistance program in P.L. 110-417, section 3508.

U.S. Coast Guard

House

The House version provides \$150 million to modify the understructure of bridges over navigable waters that are interfering with safe navigation, as per the U.S. Coast Guard's Alteration of Bridges program (codified at 33 U.S.C. 516).

¹ See also CRS Report R40216, *Water Infrastructure Funding in the American Recovery and Reinvestment Act of 2009*, by Claudia Copeland and Nicole T. Carter, for funding related to navigation infrastructure under the Army Corps of Engineers Civil Works program.

Senate

The Senate version provides \$240.4 million for the Coast Guard's Alteration of Bridges program. The Senate version also provides \$450 million for Coast Guard acquisition, construction, and improvements, of which \$195 million is for shore facilities and aids to navigation facilities and \$255 million is for priority procurements due to materials and labor cost increases and to repair, renovate, assess, or improve vessels.

Enacted

The enacted version provides \$142 million for the Alteration of Bridges program and directs the Coast Guard to allocate funds to those bridges that are ready to proceed to construction. It provides \$98 million for shore facilities, aids to navigation facilities, priority procurements due to materials and labor cost increases, and to repair, renovate, assess, or improve vessels.

General Provision: Department of Transportation

Maintenance of Effort

Enacted

Not later than 30 days after enactment, for each amount that is distributed to a state or agency thereof, the governor of the state shall certify to the Secretary of DOT that the state will maintain its effort with regard to state funding for the types of projects that are funded by the appropriation. The certification must include a statement of the amount of funds the state planned to expend from state sources as of the date of enactment, during the period beginning on the date of enactment through September 30, 2010, for the types of projects that are funded by the appropriation.

If a state is unable to maintain the level of effort certified, the state will be prohibited by the Secretary from receiving additional obligation limitation pursuant to the redistribution of the limitation on obligations for federal-aid and highway safety construction programs that occurs after August 1 for FY2011. The conference report sets forth in detail reporting requirements regarding the use of funds appropriated in the act.

Transportation Security Related Provisions

Aviation Security

House

The House passed version provides \$500 million for the purchase and installation of explosive detection systems (EDS) and emerging checkpoint technologies in airports. The bill requires the Transportation Security Administration (TSA) to prioritize the awarding of these funds to airports

with completed design plans to accelerate EDS installation and to expeditiously award new letters of intent.

Senate

The Senate version provides \$1 billion for the purchase and installation of EDS and checkpoint explosive detection equipment in airports and requires the Department of Homeland Security (DHS) to submit an expenditure plan to the appropriations committees within 45 days of enactment.

Enacted

The enacted version agrees with the Senate version to provide \$1 billion for EDS and explosive detection equipment and to require an expenditure plan within 45 days. It adopts the House language concerning the awarding of grants to airports with completed design plans.

Port and Maritime Security

House

The House version provides \$100 million under Customs and Border Protection (CBP) to deploy non-intrusive detection technology at sea ports.

Senate

The Senate version provides \$100.8 million for the procurement and deployment of non-intrusive inspection equipment at ports and \$97.2 million for the procurement and deployment of tactical communications equipment and radios. The bill requires DHS to submit an expenditure plan to the appropriations committees within 45 days of enactment.

Enacted

The enacted version provides \$100 million for NII equipment and \$60 million for communication equipment and radios, but does not specify that this funding is for sea ports only. NII equipment is also utilized at land ports of entry to scan trucks and rail cars crossing the border.

The enacted version provides \$150 million in port security grants.

Passenger and Cargo Land Border Ports of Entry Security

House

The House passed version provides \$150 million to CBP to repair and construct inspection facilities at land border ports of entry.

Senate

The Senate version provides \$800 million to CBP for planning, management, design, alteration, and construction of CBP-owned land border ports of entry and requires DHS to submit an expenditure plan within 45 days of enactment.

Enacted

The enacted version provides \$420 million for CBP-owned land border ports of entry and adopts the Senate language regarding an expenditure plan.

Transit and Rail Security

House

No provision.

Senate

The Senate version provides \$100 million in grants for mass transit and intercity freight and passenger rail security.

Enacted

The enacted version provides \$150 million in grants.

Author Contact Information

John W. Fischer
Specialist in Transportation Policy
jfischer@crs.loc.gov, 7-7766

William J. Mallett
Specialist in Transportation Policy
wmallett@crs.loc.gov, 7-2216

Robert S. Kirk
Specialist in Transportation Policy
rkirk@crs.loc.gov, 7-7769

John Frittelli
Specialist in Transportation Policy
jfrittelli@crs.loc.gov, 7-7033