Surface Transportation Reauthorization Legislation in the 111th Congress: Summary of Selected Major Provisions

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Summary

The existing authorization for federal surface transportation programs provided by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU or SAFETEA) expires on September 30, 2009. Congress is now considering legislation that would either reauthorize these programs or extend the existing program into at least part of the next fiscal year.

While it considers reauthorization or extension legislation, Congress has also had to address an ongoing financial shortfall in the highway account of the Highway Trust Fund. Just before leaving for its summer District Work period, Congress provided a short term fix for the funding problem by transferring $7 billion from the Treasury's General Fund Account to the highway account of the Highway Trust Fund (P.L. 111-46). These funds are expected to keep the trust fund solvent through the remainder of FY2009 and may also provide an additional cushion that could extend later into the fall. This action does not, however, address program extension and provides no long term solution to the trust fund's financial problems.

Extension legislation introduced so far is straightforward in its nature, containing no extraneous legislative provisions. The Senate is considering a bill, S. 1498, the Surface Transportation Extension Act of 2009, and related legislation that would extend the existing surface transportation program for 18 months and would provide an infusion of $27 billion to insure that the highway and transit accounts of the Highway Trust Fund remain financially viable throughout the extension period. Action to this point has occurred at the Committee level and floor consideration of the legislation could occur in the fall of 2009.

At this point only one reauthorization bill has been introduced, the Surface Transportation Assistance Act of 2009. At present, however, the bill is incomplete, lacking funding data and other details on several of what might be the most significant features in the bill. The bill, although not yet formally introduced and hence unnumbered, has nonetheless been subject to mark up by the House Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit.

There are many issues associated with surface transportation legislation. Some, but not all, are discussed in the examination of the legislation under consideration presented in this report. Those seeking to understand all of the major issues at play in this debate should refer to: CRS Report R40053, *Surface Transportation Program Reauthorization Issues for the 111th Congress*, coordinated by John W. Fischer.

This report begins with a very brief discussion of the existing federal surface transportation program. Those already familiar with the program may choose to skip over this section of the report and move on to the sections that discuss the major provisions of significant legislation currently under consideration by the 111th Congress. As new legislation is introduced and more detailed information becomes available about already-introduced legislation, this report will be expanded and updated.

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Introduction

The existing authorization for federal surface transportation programs provided by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU or SAFETEA) expires on September 30, 2009. Congress is now considering legislation that would either reauthorize these programs or extend the existing program into at least part of the next fiscal year.

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The SAFETEA Framework

Funding

The Highway Trust Fund consists of two separate accounts—highway and transit—which are sometimes mistakenly referred to as separate trust funds. In practice, the highway account and the transit account are discussed as though they were separate entities, with the term Highway Trust Fund being synonymous with the highway account. 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 majority of the motor fuel revenue dedicated to the trust fund is derived from an 18.3 cents per gallon tax on gasoline (24.3 cents on diesel). The highway account receives an allocation equivalent to 15.44 cents of the tax and the transit account receives the revenue generated by 2.86 cents of the tax. A separate and unrelated 0.1 cents per gallon tax on all fuels goes into the leaking underground storage tank (LUST) trust fund.

As FY2009 comes to a close the highway account has once again needed a legislative rescue before the end of the fiscal year. Otherwise the Federal Highway Administration (FHWA) would have been unable to pay states for work they had already completed in a timely manner.[1] This situation was a rerun of last year's trust fund rescue in which $8 billion was transferred from the general fund to the highway account to carry it through the end of FY2008 (P.L. 110-318, enacted

[1] "Transportation Weekly," DOT Prepares for Next Highway Trust Fund Default, May 20, 2009. p. 1.

September 15, 2008). What differed this year was that FHWA gave Congress considerably more notice of the impending problem than was the case last year, thereby allowing Congress to take action to provide the trust fund with sufficient funds, $7 billion, to carry it through the remainder of FY2009 (P.L. 111-46). For the moment the transit account remains solvent, though its long term health is also believed to be in jeopardy.

Over the 50-plus year life of the trust fund there have been several increases in the levels of taxation. The last increase in the fuels taxes occurred in 1993 (all of these funds were not actually deposited into the trust fund initially, but were deposited in the Treasury general funds for deficit reduction purposes until FY1998). Historically, the trust fund based revenue collection system has been a reliable, and ever growing, source of funding for surface transportation. This situation has changed under SAFETEA as spending on highways and transit has exceeded both highway and transit account revenues on a regular basis. Data provided by the Congressional Budget Office (CBO) spring FY2009 baseline calculation, **Appendix B**, **Table B-1,** shows that the highway account had outlays of $35 billion for FY2007 against the aforementioned receipts of $34.3 billion. In FY2008 outlays of $37 billion were matched by only $31.3 billion in receipts, not including the aforementioned injection of $8 billion into the trust fund from Treasury general funds. For FY2009 the CBO estimates were for an even greater gap, outlays of $38.8 billion versus receipts of $31.6 billion. In reality, the FY2009 receipt level will be even worse than predicted by CBO in its spring baseline calculation because driving continues to be well below predicted levels due to the ongoing recession, and other trust fund tax components such as truck sales taxes, are also producing revenues well below expectations. These trends are shown clearly in an FHWA prepared chart attached to the end of this report in **Appendix B, Figure B-1.**

As a rule of thumb, adding a penny to the federal fuels tax provides the trust fund with between $1.6 and $1.8 billion in new revenues. 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 increased surface transportation spending. The choice for policymakers, therefore, is to find new sources of income for the expanded program that transportation proponents desire, or alternatively, to settle for a smaller program that might look very different than the one currently in place.

In the past nothing has solved the political problems of the surface transportation program faster than new money. TEA21 especially benefitted from a run up in fuel usage during the boom years of the late 1990s, that was at least partially the result of growing SUV purchases during the period. SAFETEA did not have quite the same financial backing, but the authors of the act were nonetheless able to find sufficient new revenues to make the act possible. The next reauthorization bill, as the above discussion indicates, lacks a ready source of new cash. This situation will define the upcoming legislative debate much more clearly than discussions of program structure, system needs, and a host of other items expected to be addressed in the weeks and months ahead.

The American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5)

The ARRA provided considerable new funding authority to surface transportation programs for FY2009 and FY2010. The federal-aid highway program received $27.5 billion to be distributed through the existing federal-aid highway program. The federal transit program will receive $8.4 billion. High Speed Passenger Rail, previously a relatively small federal program, will receive $8 billion. An additional $1.5 billion which can be used for any eligible surface transportation purpose is made available by a new Surface Transportation Discretionary Grant program. This

new program is under the control of the Secretary of Transportation and must be spent on projects of at least $20 million and not more than $300 million. The ARRA also provides for changes in tax law that will enable additional spending on transportation projects using so-called innovative financing (in this case providing a tax credit for "Build America Bonds" amongst other provisions). Transportation activities normally outside the scope of surface transportation reauthorization also received funding.

The reauthorization debate will proceed against this backdrop. Those seeking to delay reauthorization view this large boost in funding as a reason to move slowly on a new surface transportation bill. The alternative view, however, is that the ARRA provides only a down payment on what many consider to be serious national infrastructure deficiencies and that new funding is needed going forward to keep the momentum for improvement moving in the right direction.

Highways

The Federal-Aid Highway Program (Highway Program) is an umbrella term for an array of individually authorized programs administered by the FHWA. There are two categories of programs: formula and discretionary. Formula program funds are distributed annually amongst the states based on factors detailed in authorizing legislation. These annual state formula distributions are known in FHWA program parlance as "apportionments." All of the large highway programs are formula/apportionment programs.[2] Discretionary programs tend to be smaller programs. Funding under these programs is allocated by the FHWA or is earmarked by Congress.

The Highway Program is primarily a state run program. The state departments of transportation (state DOTs), operating within the federal programmatic framework, largely determine where and how money is spent (but have to comply with detailed federal planning guidelines as part of the decision making process). The state DOTs let the contracts and oversee the project development and construction process.

Federal monies for highway project spending are not provided to states up front. Rather, when amounts are "distributed" to the states, it is initially a notification of the availability of federal funds. Once a project is approved and the work is started, the states may submit vouchers to the FHWA for reimbursement for the project's costs as, or after, they are incurred. The "reimbursable" nature of the highway program is designed to help prevent waste, fraud and abuse.

The Highway Program is funded with contract authority (CA). CA is a type of budget authority that is available for "obligation" (which makes the federal government obligated to pay) according to the provisions of authorizing legislation, without further legislative action (i.e., prior to an appropriation).[3] Because CA can be obligated without an appropriation, a spending control mechanism, called a "limitation on obligations" (ObLim or Oblimit), is used to control annual

[2] The High Priority Project Program under SAFETEA, is a large program in dollar terms, but is essentially a list of congressional designations (earmarks) and has few programmatic features generally associated with a program.

[3] 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.

spending in the place of the appropriation.[4] The ObLim sets a limit on the total amount of contract authority that can be obligated in a single fiscal year. In most discussions, the ObLim is analogous to an appropriation, in that it is considered to be the best indicator of the amount of federal funding actually being made available for use by the states.

Federally funded highway projects generally require states and/or local governments to participate financially by providing a designated local matching share. For most Interstate System projects the match is 90% federal and 10% state/local (except in states with large amounts of federal land where the federal share may be larger). For other programs the match is generally 80% federal and 20% state/local.

The "Core" Formula Programs

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.[5] These programs are the "big money" programs (roughly 80% of the last authorization act's CA[6]) and are the sources of funding for most federal-aid highway projects. The core formula programs are:

- Interstate Maintenance Program (IM)
- National Highway System (NHS)
- Surface Transportation Program (STP)[7]
- Highway Bridge Program (HBP)
- Congestion Mitigation and Air Quality Improvement Program (CMAQ)
- 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 of these programs and formulas are run to determine the portion of the program's total authorization that is made available to each state. These programs were conceived, at least in part, to provide federal funds for specific needs as is indicated generally by the program names. There are also a number of smaller formula programs and activities such as the Safe Routes to School program, Appalachian Development Highway System (ADHS) program, and Metropolitan Planning.

Over time, the state DOTs have been given increasing flexibility to shift funds from one program to another (excepting HSIP) to help implement their state transportation plans. Some Highway Program funding may also be used for transit projects. This flexibility has the effect of reducing the importance of funding formulas and program eligibility

[4] 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.

[5] 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.

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

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

distinctions. Despite the growing funding flexibility, some state DOTs as well as some urban interests would argue that the programmatic structure still inhibits them from using federal highway funds in the way that they deem the most efficient or beneficial.

The Equity Bonus Program is the largest highway program in dollar terms. Its purpose is to assure that each state receives a prescribed rate-of-return (currently 92%) to its core apportionment programs on its highway users' tax payments into the highway account of the trust fund. The program's operation is very complicated and cannot be described here for reasons of brevity.[8] One effect of the Equity Bonus, however, is that, like the flexibility provisions, it can be viewed as diluting the policy rationales associated with the core program formulas. In some years, additional money has also been allocated to some formula programs through a process called Revenue Aligned Budget Authority (RABA).

Discretionary Programs

There are also a number of smaller discretionary programs (also referred to as allocated programs) that are also part of the Highway Program. These programs are nominally under the control of the FHWA and were designed to allocate funds to projects chosen through competition with other projects. Since FY2000, most discretionary program funding has been earmarked by Congress. Among the most commonly discussed discretionary programs are the Transportation, Community and System Preservation Program (TCSP), the National Corridor Infrastructure Improvement Program (NCIIP), Construction of Ferry Boats and Ferry Terminal Facilities, and Projects of National and Regional Significance (PNRS).[9]

The term "program" is used very broadly. The 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 some observers might question being listed as programs.[10]

Alternative/Innovative Finance

DOT has a number of financing mechanisms other than the grant programs. FHWA innovative financing mechanisms include the Transportation Infrastructure Finance and Innovation Act (TIFIA), Grant Anticipation Revenue Vehicles (GARVEEs), and State Infrastructure Banks.[11] All of these financing techniques leverage federal funds through debt mechanisms.

[8] For detailed information see CRS Report R40451, *The Donor-Donee State Issue: Funding Equity in Surface Transportation Reauthorization*, by Robert S. Kirk.

[9] 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.

[10] Ibid.

[11] Federal Highway Administration, *Innovative Financing Primer*, Washington, DC, 2002, pp. 15-29, http://www.fhwa.dot.gov/innovativefinance/ifp/ifprimer.pdf.

Transit

The federal transit program, administered by DOT's Federal Transit Administration (FTA), is a collection of individual programs, each with different funding amounts, distributional mechanisms, and spending eligibility rules.[12] There are four main federal transit programs in SAFETEA, together accounting for 85% of authorized 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 funding in SAFETEA, provides funding to urbanized areas with a population 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 a population of up to 200,000. Fixed Guideway Modernization Program funds, 16% of authorized funding, go mainly for the replacement and rehabilitation of transit rail system assets.

The other two main transit programs, the New Starts Program and the Bus and Bus-Related Facilities Capital Program, are both discretionary programs, although funding in the Bus Program is mostly earmarked. New Starts funding, 18% of overall authorized funding, 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.

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 program funds.

Safety

Highway transportation is by far the predominant cause of transportation-related fatalities and injuries in the United States. Three DOT agencies administer highway safety programs authorized in SAFETEA: the National Highway Traffic Safety Administration (NHTSA); the Federal Motor Carrier Safety Administration (FMCSA); and the FHWA through the Highway Safety Improvement Program (HSIP).

National Highway Traffic Safety Administration (NHTSA)

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

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

established a federal highway safety program to assist states in improving highway safety. Within the DOT, the National Highway Traffic Safety Administration (NHTSA) is the office primarily responsible for promoting highway safety. NHTSA provides grants to states to support and encourage state traffic safety efforts, regulates motor vehicle safety, and carries out research on traffic safety.

NHTSA monitors state highway safety activities and oversees the use of federal grant funds by requiring states to submit highway safety plans. A state's plan must be approved by the DOT 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 improving those safety problems can be measured. NHTSA also provides training and technical assistance to states.

NHTSA's safety grant programs can be divided into two parts: formula and incentive programs. The largest 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), provides grants to states by a formula, and is the core federal highway safety grant program. Congress has also established several smaller incentive grant programs which encourage states to adopt policies or carry out programs in support of federal safety priorities.

The Section 402 program provides grants to states to carry out highway safety programs intended to reduce the number of traffic crashes and their resulting deaths, injuries, and property damage. Specifically, Section 402 requires states to carry out programs that address speeding, the use of occupant protection devices (seat belts and child restraint systems), drunk and drugged driving, motorcycle crashes, school bus crashes, and unsafe driving behavior (including aggressive driving, fatigued driving, and distracted driving caused by the use of electronic devices in vehicles). Grants are distributed to the states by a formula based on population and public road mileage. At least 40% of the funds each state receives must be passed on to local communities for implementation of highway safety programs.

In addition to the Section 402 program, Congress established or amended six traffic safety incentive grant programs in SAFETEA that offer states the opportunity to qualify to receive additional federal funding by passing legislation or implementing programs that address these issues. The programs focus on promoting the use of occupant protection devices (seat belts and child car seats), reducing the incidence of driving while intoxicated, promoting motorcyclist safety, and improving state traffic safety data collection systems. The number of states which have qualified to receive grants under these programs each year during the period of SAFETEA-LU has varied from as few as five or six to all 50 states.

Federal Motor Carrier Safety Administration

The Federal Motor Carrier Safety Administration (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 commercial motor vehicle operations, including inspection of vehicles and licensing of commercial drivers.

Highway Safety Improvement Program (HSIP)

The FHWA administered HSIP is one of the aforementioned core federal-aid highway funding programs. Its purpose is to reduce traffic fatalities and serious injuries on public roads by making improvements to the design or operation of the roadway. 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% (1/2 of one percent) of the program's funding. HSIP includes a dollar set-aside for the Railway-Highway Grade Crossing Hazard Elimination Program from the program's funding 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.

Extension Legislation

The Obama Administration has asked Congress to extend the existing program for 18 months for a number of reasons, the most important being the need to identify a solid funding structure for long term program reauthorization. Senate Committee leadership has concurred with the Administration view and the Senate is now considering extension legislation.

On July 22, 2009, the Senate Committee on Environment and Public Works (EPW) reported the Surface Transportation Extension Act of 2009 (S. 1498). This legislation would extend existing surface transportation programs at current funding levels for 18 months (beginning October 1, 2009 and ending March 31, 2011). EPW has jurisdiction over highway titles of the surface transportation program and is the lead Committee on reauthorization. The 3 other Senate Committees with jurisdiction over various titles of the program have subsequently reported and/or introduced similar legislation: Commerce, Science, and Transportation (S. 1496), Banking (S. 1533), and Finance (S. 1474). The provisions in these bills are likely to be merged into a single bill should the Senate choose to consider this issue in the fall of 2009.

The Proposed Surface Transportation Authorization Act of 2009 (STAA)

Status

This legislation was made public on June 18, 2009 by the leadership of the House Committee on Transportation and Infrastructure. As released, the legislation is incomplete, lacking funding data and the details of several major provisions.

Subcommittee on Highways and Transit mark up of the proposed legislation occurred on June 24, 2009. No amendments were considered during the markup session (several were introduced, but all were subsequently withdrawn).

The bill is as yet unnumbered as it has not been formally introduced. Information on the contents of the not yet completed bill is available at the House Committee on Transportation and Infrastructure's website: http://transportation.house.gov/. In addition, an Executive Summary of the contents of the bill and documents explaining the rationale behind its major provisions can be found at the same location.

Overview

The authors of this legislation view it as transformational.[13] From their perspective this legislation presents a clear break from the existing structure of the federal surface transportation program that has developed incrementally over the last several decades. In part they hold this view because they see the proposed legislation as a refocusing and simplification of the program. Simplification here is facilitated by the elimination of 75 stand alone programs, the creation of a few new focused programs, and a rethinking of existing programs that are retained. This restructuring is especially true for what might be regarded as the traditional highway portion of the legislation (Title I–Federal-Aid Highways) although, as will be discussed, the bill to a significant extent tries to make Title I more intermodal in nature, and therefore might not be viewed by its authors as having a purely highway section.

The legislation is not devoid of new initiatives. It creates several new programs: the critical asset investment (CAI) program, the freight transportation program (FIP), the metropolitan mobility and access program (MMA), and a program for projects of national significance (PNS). The bill also provides for structural and other changes in several retained programs.

A principal feature of the legislation is its focus on intermodalism, which its authors consider an issue of overarching importance throughout the bill. To advance its policy goals the bill makes significant changes to the organization of the Department of Transportation (DOT), requires new national and regional (metropolitan) planning initiatives, greatly enhances the role of certain groups within the transportation planning and construction process - most notably in regard to Metropolitan Planning Organizations (MPOs) - and establishes broad program performance management systems.

The interest in performance management is particularly notable. The terms "performance target" and "performance measure" appear a combined 95 times in the bill. These same terms appeared only eight times in SAFETEA. According to the preamble, the legislation is designed "to transform Federal surface transportation to a performance-based framework ... " While federal performance management systems requirements would be new, the extent to which this is transformational is debatable. This bill appears to add performance management on top of the existing rules, regulations, and reporting requirements within many of the categorical programs. Some would argue that to be transformational, performance-based management should be used to replace rather than supplement these requirements. In this way the federal government would not dictate to states, localities, and transit agencies how to spend federal funds, funds that might be distributed via a block grant, but would set performance standards that they must meet. Recipients of federal funds would then be free to develop their own solutions to transportation problems, but would be held accountable, through rewards and penalties, for the results.

At 775 pages, without funding data, details on several programs, and an expected list of high priority projects (earmarks), the bill is nonetheless likely to be viewed as complicated and

[13] The view that the bill is transformational is set forth by the bill's authors in STAA supporting documents available on the House Transportation and Infrastructure Committee Internet website, see *The Surface Transportation Authorization Act of 2009: a Blueprint for Investment and Reform; Executive Summary* (Washington, 2009), p. 3-4; House, Committee on Ways and Means, *The Honorable James L. Oberstar Chairman, Committee on Transportation and Infrastructure, Statement Before the Subcommittee on Select Revenue Measures*, Hearing, 111th Cong. 1st sess., July23, 2009, p. 4; and *Letter of June 24, 2009, to United States President Barack Obama from the Committee on Transportation and Infrastructure*. All these sources are available at http://transportation.house.gov/.

difficult to comprehend, especially for non-transportation practitioners. In part, the length of the bill is related to how it has been drafted. Whereas previous legislation usually contained language amending the U.S.C. Title 23 (Highways), this legislation redrafts significant portions of the title. But the length of the proposed legislation is also related to the aforementioned restructuring of the federal surface transportation programs and by significant changes in the overall policy goals advanced by the bill.

Because STAA includes some limits on new highway lane construction and focuses on freight, transit, intermodalism, and livability policies, some observers might construe features of this bill as being biased against expanding highway capacity. Others, however, may view these features of the bill as reflecting policies that favor alternatives to the automobile, such as transit, bicycles, and walking.

Funding remains the great unknown of this legislation. The T&I Committee in its supporting document calls for a $500 billion program; $450 billion, mostly from the Highway Trust Fund's two accounts, for surface transportation programs (with a U.S. Treasury general fund contribution for transit) and an additional $50 billion for high speed rail, most likely from the U.S. Treasury general fund account and/or other sources. Since the T&I Committee lacks jurisdiction over tax and other fundraising policy, it must wait for the House Committee on Ways and Means to come up with a revenue raising scheme that would fund the T&I Committee's proposals or limit the size of the bill to some other, as of yet, undetermined amount.

Because the bill lacks a revenue title as well as programmatic funding information, it is, at this juncture, difficult to evaluate the relative importance that the STAA places on certain of its programs, especially its new ones. For example, it is clear that the FIP is an important policy direction for the bill, but without funding information, it is impossible to know whether it is viewed as a small start up program or a large long term initiative.

In the supporting documents provided by the Committee transit appears to do well in terms of funding under the bill. T&I has stated that the federal transit program alone will be authorized at $99.8 billion over six years, an annual average of $16.6 billion. Not counting highway program funds that may go to support transit projects and the $50 billion proposed by the supporting documents for high speed rail, the share of the funding directed to transit by the STAA is 22%.

This discussion basically follows the organization of the proposed legislation on a subject by subject basis. Because of the structure of the bill, some provisions, such as performance management, appear throughout the legislation, so there may appear to be some overlap and occasional redundancy in this discussion. This is largely intentional.

Highway Provisions

STAA would make major changes in the structure and policy focus in the Highway Title of the reauthorization bill (Title I). The bill represents a major programmatic shift away from highway construction in a broader sense and toward a concentration on: the maintenance/improvement of existing highways; the improvement of freight movement, in regard to both highway and intermodal improvements; multimodal improvements to metropolitan area mobility, access, and livability; addressing large projects of national significance; as well as continuing highway safety efforts. Some could see STAA as being more urban-focused in outlook than SAFETEA, in part by

expanding the authority of Metropolitan Planning Organizations (MPOs) relative to the state DOTs.

Among the structural changes the Highway Title of STAA would make to the Federal-Aid Highway program are the following. In Subtitle A, among the core programs, the Interstate Maintenance Program, the current Highway Bridge Program, and the National Highway System Program would cease to exist as independent entities and their programmatic responsibilities would be transferred mostly to the newly created Critical Asset Investment (CAI) and Freight Improvement (FIP) programs, or to the existing STP, which, it appears, could be substantially expanded by STAA in dollar terms. Of the SAFETEA core programs, STP, CMAQ, and HSIP are retained as core programs to be joined by CAI and the FIP, a total of five core programs. Funds under these core programs would be apportioned among the states by formula.

In Subtitle B, Intermodal and Organizational Innovations, STAA creates two major intermodal programs, the Metropolitan Mobility and Access Program (MMA) and Projects of National Significance (PNS), which would be under the control of MPOs and the FHWA, respectively, and not state DOTs.

STAA would allow for a major expansion of funding transferability between highway and transit programs and a broadening of direct project funding eligibilities to allow an increase in direct highway funding of transit projects or direct transit funding of highway projects. Historically, however, most of such funding transfers have been of Title 23 U.S.C., Highways funds to Chapter 53 of Title 49, Public Transportation projects and uses. Transferability is discussed further later in this section.

STAA also continues a significant number of discretionary programs, consolidates or eliminates some, and creates others.[14]

Core Programs Under STAA

Five STAA programs fit the profile of core programs under earlier legislation, programs that provide for the apportioning of contract authority for highways among the states by formula.

Critical Asset Investment Program (CAI)

The stated intent of this new program (Section 1110) is to bring the National Highway System (NHS) roads and bridges (which include all Interstate System routes and most other major arterial highways) up to a state of good repair and to preserve this condition. CAI is also intended to strengthen the connection between funding and performance outcomes. Eligibility is limited to highways on the NHS (about 4% of total U.S. road length) or bridges on Federal-Aid Highways.[15] Capacity expansion that involves the addition of added travel lanes that are not auxiliary lanes are not eligible projects unless they are located on Federal-Aid Highway bridges.[16] The provision

[14] House, Committee on Transportation and Infrastructure, *Surface Transportation Authorization Act of 2009: a Blueprint for Investment and Reform*, (Washington, 2009), p. 2-4, http://transportation.house.gov/Media/file/Highways/HPP/Surface%20Transportation%20Blueprint%20Program%20Consolidation.pdf.

[15] Federal-Aid Highways account for about 25% of total road mileage in the United States.

[16] An example of an auxiliary lane would be the lanes connecting on and off ramps.

includes a currently unspecified percentage that states could spend on certain CAI management, data collection, bridge inspection, and bridge inspection personnel training efforts. The CAI provision sets forth a variety of performance measures and targets for the program. It also requires each state to submit state CAI plans to DOT for approval. If DOT disapproves a state plan, the Department is not to approve funding for uninitiated projects until the plan, or updated plan, is approved. DOT may lower a state's required performance targets under certain conditions, including in a finding by the DOT that the state is receiving insufficient apportionments to meet its CAI targets or because of an emergency. Beginning in 2012, if DOT determines that a project is inconsistent with its plan, federal funding may be withheld from the project.

Freight Improvement Program (FIP)

STAA (Section 1105) creates a second new program that would provide apportionments to states to fund publicly owned highway freight transportation projects. The bill sets forth the four purposes of the FIP as: 1) to improve the existing freight transportation system, 2) to add physical capacity to the freight transportation system, 3) to strengthen the ability of rural communities to access national and international trade markets, and 4) to support regional economic development. FIP projects must be located on the NHS, the National [truck] Network, or secondary freight routes designated under procedures set forth in STAA. States are to develop state freight plans. Projects must be on the state plan to receive funding. States would be allowed to make grants to freight corridor coalitions (which must meet certain organizational requirements of the bill to qualify). Many observers would regard the FIP as a major new intermodal initiative. For some reason not made clear by the authors of the STAA, the FIP is made part of the core programs and not part of the intermodal section of the bill. This program is discussed in greater detail later in this report.

Surface Transportation Program (STP)

This existing program would, under STAA Section 1106, retain its SAFETEA requirements and eligibilities with a few changes. Former Highway Bridge Program projects, not eligible under CAI, would be directly eligible for STP funding, as would tunnels. Under current law 10% of STP funds must be obligated for Transportation Enhancement activities. STAA would also specifically require that ten percent of the STP funds sub-allocated to Metropolitan Planning Organizations (MPOs) be used only for Transportation Enhancement (TE) activities. The sub-allocation of STP funds, after TE funding is subtracted, is shifted to be 80% based on population and 20% to any area of the state (from 62.5% and 37.5% respectively under SAFETEA). STP is, in general, the most flexible of the existing Highway Programs both in terms of project eligibility and the transferability favored by many state and local officials. In this regard, STP contrasts with more restrictive programs, such as the proposed CAI. The federal share would remain 80%.

Highway Safety Improvement Program (HSIP)

STAA (Section 1108) would continue this SAFETEA created program with a number of changes. States would be required to develop HSIP investment plans. Funding after FY2012 would be contingent on implementation of the plan. DOT is to establish, in coordination with the states, quantifiable highway safety targets for each state. Strategies to meet these safety targets are to be integrated into states' existing Strategic Highway Safety Plans. The general cost share for HSIP is set at 90% (except as required by 23 U.S.C. 130). The High Risk Rural Road Program is

consolidated within the HSIP but is given distinct funding under the bill (the amount is as yet unspecified). Several narrowly focused safety programs are also brought under the HSIP umbrella. The federal share is 90%. This program is also discussed in the safety section of this report.

Congestion Mitigation and Air Quality Improvement Program (CMAQ)

STAA (Section 1109) continues and modifies this existing core Highway Program. CMAQ provides funding for projects and activities which reduce transportation related emissions in air quality nonattainment and maintenance areas for ozone, carbon monoxide. and particulate matter. The bill would allow CMAQ funds to be used for High Occupancy Vehicle (HOV) lane construction. It also would reduce DOT's authority to allow use of CMAQ funds in Clean Air Act attainment areas. CMAQ funds would be allowed for purchase of clean-fuel public transportation buses. The CMAQ formula factors have been rewritten but their relative weights are not given. The federal share is 80%. This program is discussed in greater detail in the environmental section of this report.

STAA Intermodal Programs

Metropolitan Mobility and Access Program (MMA)

STAA (Section 1205) creates the MMA program which would provide multimodal transportation funding and financing authority directly to metropolitan planning organizations (MPOs).[17] As mentioned earlier, direct funding to MPOs would be a major change under the Federal-Aid Highway Program. The Transportation Research Board of the National Academy of Sciences would be required to provide recommendations for project selection and evaluation criteria. DOT would have 18 months to issue a rule to carry out Section 1205. Projects under either Title 23 (Highways) or under Chapter 53, Title 49 (Public Transportation) of the U.S. Code would be eligible for MMA funding. To be an eligible MPO under MMA, an MPO must serve an urban area with a population of over 500,000, must submit a proper application, have an approved metropolitan mobility plan in effect, demonstrate the ability to carry out congestion management, and demonstrate cost management strategies and systems. There are two tiers of grants: tier one grants are for MPOs serving urbanized areas with over 1,000,000 people that experience substantial travel time delays; tier two grants are available to eligible MPOs that have not received tier one grants. Of the funds made available under MMA, 40% are to be for tier one grants and 60% are to be for tier two grants. Tier one grants are limited to not more than 10 recipients. In allocating tier two grants, DOT is to ensure a geographically equitable distribution of financial assistance through such grants. DOT may enter into full funding grant agreements (FFGAs) with recipients establishing the terms and limits of federal participation. The FFGA must identify performance criteria for the eligible recipient entering into the agreement. Plans involving tolls or public private partnerships (PPPs) that are part of a metropolitan mobility plan, must be reviewed and approved or disapproved by the Office of Public Benefit (described later in this report). Some interest and other financing costs are eligible within certain limitations. Certain planning and reporting costs are also eligible. Eligible recipients may enter into an agreement

[17] Whether all MPOs are authorized under state and local laws to receive funds directly from the federal government is uncertain (See 23 U.S.C. Section 134).

with the DOT to establish a metropolitan infrastructure bank to provide credit to help carry out projects and activities in its metropolitan mobility plan. Although Section 1205 does not overtly discourage MPOs from using MMA funds on highway construction, it is likely that much MMA funding will be spent on transit improvements. The federal share is 80%.

Projects of National Significance (PNS)

STAA (Section 1206) establishes a new project program for very large projects of national significance that cannot be addressed through regular state highway apportionments. Projects are to equal or exceed the lesser of $500 million or 75% of a state's annual apportionment. Projects must be eligible under the highway title (Title 23) or the mass transit title (Chapter 53 of Title 49). In addition, Section 1206 also identifies as eligible: an international bridge or tunnel, a public rail facility or private rail facility that provides public benefit, an intermodal freight transfer facility, access improvements or service improvements such as intelligent transportation systems for freight rail facilities or intermodal freight transfer facilities. In some cases there may be limited assistance to ports for surface transportation infrastructure modification. DOT is to set competitive criteria for grant selection. DOT would carry out a national solicitation for grant applications and award the grants on a competitive basis. DOT would issue letters of intent followed by an FFGA. The federal share is 80% but a lower federal share may be requested by the grant recipient.

Selected Additional Highway Programs

STAA also includes a number of both new and existing programs that neither fit into the core formula program category nor the new intermodal program category. They include the following.

Appalachian Development Highway System (ADHS)

Under Section 1116, ADHS funds would be apportioned via the most recent cost-to-complete estimate. Each of the participating states are guaranteed a minimum of 1% of funds, and a maximum share is set at 25%. STAA would cut the allowable access road mileage on the ADHS from 1,400 miles to 1,000 miles. The bill repeals the designation of corridor O-1 in Pennsylvania and limits the federal share of the cost to complete corridor X-1 in Alabama to $500 million. Funds apportioned prior to September 30, 2009 but not obligated before September 30, 2013 are to be rescinded as of that date. The federal share under ADHS is 80%.

Delta Region Transportation Development Program

Section 1117 would reauthorize the program for FY2010-FY2015, but no amount is given.

Ferry Program

Section 1107 would reestablish the program for reconstruction of ferry boats and ferry terminal facilities as the Ferry Program. The new Section 147 does not include the current set-asides for Alaska, New Jersey, and Washington State. The provision would require the establishment of a National Ferry Database. The program is to be an apportioned program, but the apportionment formula is not provided.

Federal and Tribal Lands, Puerto Rico, and Territorial Highway Program

Section 1113 would consolidate the Federal Lands Highways programs (Public Lands Highways, Indian Reservation Roads, Park Roads and Parkways, and Refuge Roads) with the Territorial Highway System (Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands), and the Puerto Rico Highways program. Funding amounts are not provided. It appears that the individual programs would retain much of their individual programmatic structures under the broader programmatic umbrella.

Recreational Trails Program

Section 1114 would require DOT to encourage states to contract with qualified youth conservation and service corps to perform construction and maintenance of recreational trails.

Tolling Programs and Public-Private Partnerships

Although under current federal law, tolling of most federally funded roads, bridges, and tunnels is allowed, it is limited in regard to the Interstate System highways. From a policy perspective the limitation on tolling of the Interstate System is important because it is the Interstate System highways that most often carry sufficient traffic to potentially produce the level of toll revenue needed to support toll-based financing of highways. SAFETEA provided for a limited broadening of tolling of Interstate System highways, by adding a number of pilot programs and making a number of other modifications. STAA appears to be changing direction by eliminating several programs and instituting some new requirements. To begin with, STAA would eliminate the following toll or toll related programs: the Interstate System Construction Toll Pilot Program, the Interstate System Reconstruction and Rehabilitation Pilot Program, the Value Pricing Program, and the Express Lanes Demonstration Program.

Perhaps more importantly, STAA would require that before instituting tolls a number of new conditions are met. A public authority would have to consider the negative effects of a toll on interstate commerce or travel, provide improvements to accommodate diverted travelers, and mitigate the effect of the toll on low-income drivers. Toll revenues are first to be used for facility capital and operating costs, for debt service, and for a reasonable return on investment. Excess revenues generated from a tolled high occupancy vehicle (HOV) facility may be used for public transportation facilities within the same travel corridor as the HOV lanes. This could potentially be a significant shift of resources from highways to mass transit in certain corridors. DOT is to review all toll rate schedules prior to implementation. Federal participation would be allowed in HOV projects where hybrids or other low-emission single-occupant vehicles pay a toll to use the HOV lanes.

Public-private partnerships (PPP), often financed by vehicle tolls, have been created in many different ways to develop, construct, and operate highway and transit infrastructure.[18] Under the proposed legislation, PPPs entered into by agreements at the state and local level, but involving federal-aid highway funds, would also be subject to a number of new federal requirements. Among the most important provisions is the requirement that a public authority entering into such

[18] For more information see CRS Report RL34567, *Public-Private Partnerships in Highway and Transit Infrastructure Provision*, by William J. Mallett.

an agreement must evaluate the costs and benefits of the PPP against traditional public delivery methods. The public authority would also be subject to some new requirements regarding public information and public involvement before awarding a contract. Furthermore, PPP agreements would be precluded from including a non-compete clause. These clauses are designed to prevent public authorities from providing new, competitive highway infrastructure near a privately controlled facility. The act also permits the public authority to terminate a contract early with fair market compensation to the private partner (Section 1504).

To ensure compliance with these new tolling and PPP requirements, the act creates within the FHWA an Office of Public Benefit (OPB) to "provide for the protection of the public interest in relation to highway toll projects and public-private partnership agreements on Federal-aid highways" (Section 1204). Among other things, the director of the office is empowered to administer toll agreements by reviewing and approving toll rate schedules and changes. The OPB would also be required to provide leadership and technical assistance on the development of highway toll projects and highway PPPs.

These new tolling and PPP oversight provisions appear to be designed to mitigate problems that detractors of these arrangements often mention, such as the possibilities for diverting traffic to other routes and travelers to other types of transportation, increasing driving costs to burdensome levels (particularly for low income travelers), and by-passing the public planning process. This may also be an attempt to develop a more systematic approach to identifying and evaluating the public interest in PPPs, as suggested by GAO among others, instead of the current project-by-project evaluation.[19] Critics of more oversight worry, however, that these new requirements will dampen, if not extinguish, the desire of states and the private sector to pursue tolling and PPP agreements because of the extra time, expense, and uncertainties that they may entail. A possible major source of uncertainty is the requirement that the OPB review and approve a PPP on its compliance with new public transparency requirements. One critic suggests this review and approval might be forthcoming only late in the process when design and financing details have been settled. Because of the substantial time and money it takes to develop projects early on, risking disapproval at this juncture would likely be unacceptable to project partners, thus, the thought is, few projects would ever be advanced.[20]

Flexibility/Transferability

Section 1103 appears to allow blanket highway-transit transfers to and from any Title 23 (Highway) or Chapter 53, Title 49 (Public Transportation) programs. States may also transfer funds to other states or to the FHWA for other uses. States with urbanized areas of over 200,000 individuals receiving STP sub allocations may not transfer such apportionments to highway uses without MPO agreement.

In addition, the MMA and PNS programs provide that any projects eligible under either Title 23 (Highways) or Chapter 53 of Title 49 (Public Transportation) are directly eligible under the new programs. This appears to allow for funds, authorized under the highway title of STAA, to be

[19] Government Accountability Office, Highway Public-Private Partnerships: More Rigorous Up-front Analysis Could Better Secure Potential Benefits and Protect the Public Interest, GAO-08-44, Washington, DC, February 2008, http://www.gao.gov/new.items/d0844.pdf.

[20] D.J. Gribbin, "Public Private Partnerships and the Surface Transportation Authorization Act of 2009," *Public Works Financing*, June 2009, pp. 7-10.

spent directly on mass transit projects without an administrative transfer of funds. This could present DOT with organizational issues in regard to the tracking and management of spending under these provisions. It could also make it difficult to distinguish between federal highway and transit spending.

The ability to transfer highway funding to mass transit uses and vice versa is not new, but STAA broadens the extent to which this can be done. The broadening of flexibility makes virtually all of STAA's Federal-Aid Highway title available for transit use through transfer or through direct eligibility. Although Section 1103 also provides for transfer of mass transit funding to highway projects, historically the transfers have mostly flowed from highways to transit.

STAA appears to have retained existing interagency transfers among existing programs that would continue should the bill be enacted, but has not included interagency transferability provisions in the proposed legislative language of the new programs. It therefore appears that programs such as STP, CMAQ, and Recreational Trails may still transfer funds to each other, but transfers to and from the new Title 23 highway programs such as CAI, FIP, MMA, and PNS may not be allowable.

Policy Issues

The programmatic provisions under STAA, for the most part, share a number of administrative requirements. Detailed performance, planning, and reporting requirements are set forth for most of the programs in Title I (Federal-Aid Highways) of the bill. These planning and performance mandates could require a significant increase in personnel at DOT, state DOTs, and MPOs.

As mentioned earlier, the state administration of Federal-aid Highway Program funded projects has been a basic program attribute since the Federal Highway Act of 1921 (42 Stat. 22). Under the Metropolitan Mobility and Access Program, financing authority would be made available directly to the Metropolitan Planning Organizations (MPOs). This would be a major change in the way the Federal-Aid Highway Program operates and could be seen as a major shift in authority from the states to the MPOs. There are some in the transportation community who question the ability of some MPOs to administer a program such as MMA efficiently. Another concern is that, at least in some states, MPOs may not have the legal authority to receive federal funds directly.

Given the prohibition on new lane construction using CAI funding, the freight, intermodal, and livability focuses of the other major new highway programs, and the greatly expanded transferability between highways and transit, some highway interests might express concerns that solutions for highway passenger traffic congestion are not a focus of STAA. From a flow of funds perspective some might also question why Subtitle B of Section I of STAA, which includes MMA and PNR, is not funded from both the highway and transit accounts of the Highway Trust Fund rather than solely from the highway account.

At this time STAA has no earmarks included, although a place is held for High Priority Projects. During the SAFETEA reauthorization process, funds for the Projects of National and Regional Significance were to have been distributed as competitive grants. Instead, as enacted, all of the funds associated with this program were earmarked. STAA programs that could be at risk for earmarking include Projects of National Significance and tier one grants from the Metropolitan Mobility and Access Program. The formula programs could also be subject to discretionary set asides that could be subject to earmarking later in the legislative process.

STAA, as of this writing, has no equity adjustment program, but a place is held in the bill at Section 1104. However, because the bill includes programs to improve freight bottlenecks, to fund nationally significant megaprojects, and to encourage, mostly urban, intermodalism, the spending of Federal-Aid highway funds across the nation is likely to be uneven. This could both exacerbate the donor-donee conflict and make any attempt to bring donor states up to a targeted share of spending more expensive. Determining which programs would be kept within the auspices (often referred to as scope) of an equity adjustment could also be a problematic decision. If the MMA, PNS, High Priority Projects and perhaps FIP are kept within the scope, the states that benefit the most from these programs could have their core programs reduced via a lower equity adjustment. If these large programs were left out of the scope, the percent of the overall bill that would be brought up to a guaranteed rate-of-return would be reduced. In addition, the expanded transferability of funds between highway and transit programs could skew the conceptual framework of the rate-of-return rationale as highway account funds are used for transit purposes.

Although STAA proposes numerous programmatic changes in the Federal-Aid Highways title (Title I) of the bill, as of this writing, authorization levels are not included. This limits analysis of the policy impact of the changes in the bill. For example, without knowing the funding levels of the new Critical Asset Investment Program (CAI) and Freight Improvement Program (FIP) relative to the Surface Transportation Program it is difficult to determine the relative importance of national needs supported by CAI and FIP versus an expanded STP. Historically, STP has generally been viewed as supporting more local needs than other core programs.

Freight Transportation Initiatives

Freight Improvement Program

Many observers argue that unless there are significant and focused increases in freight infrastructure investment, the freight system will become increasingly inefficient and a drag on the U.S. economy. While most agree that more investment is necessary to accommodate current and future freight demand, there is significant disagreement about the best way to accomplish improvements in freight system infrastructure. Among the most important areas of disagreement are how to raise new funds for investment, the magnitude of the amounts required, and the role of the federal government in the planning process.

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 funding authorized by SAFETEA is provided to the states through the regular Highway Programs, such as the STP, that provide significant benefits to the freight industry. Of the total funding only relatively small amounts were specifically dedicated to freight transportation improvements, leaving most decisions about the types of infrastructure improvements to fund largely to state DOTs and MPOs. Because of this, some in the transportation community would like to see a larger and more well-defined federal freight program that addresses needs the regular programs have not or cannot address.[21]

[21] 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.

Section 1105 of the STAA creates a new program, the Freight Improvement Program (FIP), that would direct funds to publicly owned highway freight transportation projects that provide community and highway benefits by addressing economic, congestion, security, and safety issues associated with freight transportation. Eligible projects must be on the existing National Highway System (NHS) or National Network (NN),[22] or on a newly designated secondary freight route. These secondary freight routes would be selected by each state, in consultation with local governments, as being of substantial economic or freight-related significance, such as serving the mining, agricultural, timber, or tourism industries. DOT would review the state's list and then designate them as such. Each state would be required to measure and document the speed, reliability, and accessibility of freight movement along facilities that receive funding on the NHS or NN but not on the designated secondary freight routes. DOT would also establish performance targets against which to measure each state's progress toward improving freight movement. Every five years each state would be required to assess the condition of its secondary freight routes.

The draft bill requires state DOTs to develop a freight plan, which may be stand-alone or incorporated in their statewide transportation improvement plan, and projects must be included in the freight plan to receive FIP funds. A freight advisory committee (comprised of representatives from state and local government transportation departments, port authorities, shippers, carriers, and transportation unions), would participate in the development of this plan and are intended to serve as a forum for communication between the public and private sectors in each state as well. The draft bill also allows funding to be provided to a maximum of ten freight corridor coalitions which are multistate planning organizations formed for the purpose of examining and identifying the transportation infrastructure needs of a defined interstate freight corridor. A coalition would be comprised of representatives from state DOTs, MPOs, port authorities, freight carriers, and shippers.

Creating a specific funding category for freight movement, as well as requiring states to develop a separate freight plan, could elevate consideration of freight needs in the funding allocation process. However, without a specific authorized amount to indicate the program's share of total funding, it is impossible to assess the FIP's real significance. The establishment of freight advisory committees and funding for multi-state corridor coalitions builds on freight-related planning provisions enacted in SAFETEA and predecessor legislation. Some state DOTs and MPOs already have created freight advisory committees and multistate corridor coalitions have been established for a handful of interstate routes. The FIP attempts to address stakeholder concerns regarding accountability for funding decisions by requiring performance tracking of freight routes, but it does so at the state DOT level. Freight carriers and shippers are also concerned with the earmarking of transportation projects at the federal level which, in their view, has likely contributed to the neglect of nationally significant chokepoints in the surface freight network.[23]

[22] The National Network is a system of approximately 209,000 miles of road specifically designated by the states as capable of handling commercial vehicles and codified in Federal regulations at 23 CFR 658. The NN includes the Interstate System and other Federal-aid primary highways where Federal truck width and length limits apply. The NN was established by the Surface Transportation Assistance Act of 1982.

[23] This criticism is particularly targeted toward the Projects of National and Regional Significance program in SAFETEA (section 1301) which is discussed elsewhere in this report.

Freight Rail Provisions

Because freight railroad infrastructure is mostly held in private hands, much less is publicly known about the condition and performance of the railroad system compared to the highway system. Data that the railroad industry does provide publicly is aggregated so it is difficult to pinpoint locations with infrastructure constraints. Because the mainline rail system is a network, and the preponderance of rail cargo is moving long distances, a backup in one localized area can significantly affect fluidity on other parts of the system.

SAFETEA created two capital grants programs and extended a loan program for freight rail infrastructure. Title VI of the STAA extends these programs through FY2015. Specifically, section 6002 extends the authorization of a capital grant program for relocating railroad track that is interfering with road traffic at railroad crossings or that is hindering economic development in a community. Section 6004 extends the authorization of a capital grant program to class II and III (a.k.a. regional and shortline) railroads and section 6005 extends the authorization of a loan program for railroad rehabilitation and improvement. Section 6008 of the draft bill creates a new requirement that the DOT provide quadrennial reports to Congress on the condition and performance of the freight and intercity passenger rail systems.

DOT/FHWA Organizational Changes

Intermodalism, as the name of the legislation suggests, was a major focus of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, P.L. 102-240). That legislation suggested that surface transportation programs should be administered with improved intermodal connections in mind. To facilitate this process the law created a new Office of Intermodalism within DOT that was supposed to give the concept a high profile in DOT program decisionmaking. The Office of Intermodalism, however, never lived up to the high level of expectation that the author's of ISTEA held for it. The Office itself has moved around within DOT over the years and has, by most accounts, had little direct influence on policymaking.

The Under Secretary of Transportation for Intermodalism

Several observers believe that the ISTEA created Office of Intermodalism failed to be effective because it did not have a prominent role within the DOT leadership structure. The authors of STAA appear to share this view and have proposed a new structure for intermodal planning within DOT headed by a newly created Under Secretary of Transportation for Intermodalism. As will be discussed in various places throughout the discussion of the STAA, the Under Secretary is given a number of responsibilities by the legislation. This includes, for example, approval/recommendation authority for MMA and PNS projects. The guiding mission, however, is to enhance coordination and planning among DOT's modally organized operating agencies.

To facilitate the Under Secretary's mission, the STAA creates a new Office of Intermodalism within the Office of the Secretary of Transportation. The new office is to be headed by a Director appointed by the Secretary of Transportation. Potentially, the Office will play a significant policy role in the coordination, and perhaps vetting, of all MMA and PNS project proposals submitted to the Undersecretary. Depending on how the Undersecretary utilizes its staff the Office could be a fairly busy place. The STAA is silent on how staffing and funding levels for the Office will be set. Given its potentially broad role, however, its staffing needs could be significant.

The STAA also requires the creation of a new Council on Intermodalism to address overall departmental coordination issues, such as agency planning. The Council is chaired by the Secretary of Transportation, or in his or her absence, the Under Secretary. The voting membership on the Council includes the Administrator of each DOT operating agency. Each Council member has one vote. The Coast Guard Commandant and the Chief of Engineers are named as nonvoting members of the Council. The Council is required to meet monthly.

The clear intent of this provision is to keep intermodalism at the forefront of DOT policymaking decisions. There are some questions that can be raised as to how this group will be able to function effectively. For example, the provision establishing the Council precludes modal administrators from designating substitutes to act in their absence. The intent here is clearly to ensure that those at the highest level of decisionmaking take part in the Council's meetings. Inevitably, however, administrators will be absent due to illness, travel, etc. This could, at least in theory, allow the Council to determine policy without one or more of the major agency administrators present. Depending on who was absent, this situation could be problematic given the equal voting distribution required by the provision. This is particularly the case because the one agency, one vote mandate found here does not take into consideration the very significant differences between the operating agencies in terms of size and scope. The St. Lawrence Seaway Development Corporation and the Pipeline and Hazardous Materials Safety Administration, by way of example, are tiny agencies when compared to the FHWA or the Federal Aviation Administration (FAA).

Offices of Expedited Project Delivery (FHWA and FTA)

The STAA requires that an Office of Expedited Project Delivery be created in both the FHWA and FTA, each with a Director appointed by the Secretary of Transportation. As the title implies the major role of this Office is to facilitate the timely completion of projects being funded by FHWA and FTA. The Offices are charged with giving special attention to large and potentially complicated projects. In the case of FHWA these are defined as "significant" projects, those costing $500 million or more. For FTA the emphasis is on "New Start" projects, which are usually, but not exclusively, rail transit construction projects. Although the STAA provides special attention for large projects, the Offices are nonetheless charged with providing oversight for all FHWA and FTA funded projects.

The Offices are expected to fulfill their mission by taking a "leadership" role in the project delivery process. This is largely done by identifying problems (especially those associated with environmental review issues), and working with project managers to find solutions for these problems. The Offices are required to provide annual reports to Congress on the project delivery process and make recommendations as to how it might be improved. The Offices are not given any specific authority to force action by any party or to penalize any party for not following through on its recommendations. One can assume that there might be consequences for noncompliance with the Offices' respective expediting efforts in future project contract awards, but such a mechanism is not spelled out in the bill. As a result, some critics might consider the new Offices to be somewhat powerless to actually provide for expedited project delivery.

The Offices will likely need significant staffing and funding to fulfill this new mission. The STAA, however, does not set-aside funding for these Offices and instead proposes to fund these activities through the respective FHWA and FTA administrative budgets. Hence it is unclear from the bill as drafted how much these new functions might cost and/or whether the agencies would be required to reallocate funding from existing administrative activities.

Office of Livability (FHWA)

A new Office of Livability is to be established within FHWA with a Director appointed by the Secretary of Transportation. The Office is a response to the call, primarily, but not exclusively, from the environmental community, to move federal surface transportation policies and programs into closer alignment with the concepts of "sustainable transportation" and "livable communities." There is a considerable body of literature that explains these concepts, but in short they call for providing multiple transportation options to individuals (including transit, walking, and bicycling) and making land use decisions in ways that facilitate these goals (primarily by reducing sprawl type development and/or some of its attributes). While there is strong support for these ideas in some parts of the transportation community, there is equally strong opposition in others (but not necessarily to every aspect of the livable communities idea).

To facilitate the expansion of the idea of livability in the context of the federal surface transportation assistance program, the Director is charged with administering several programs: the existing safe routes to school program; the existing nonmotorized transportation pilot program; the existing transportation enhancement program (a set aside within the STP); the existing recreational trails program, the existing national scenic byways program; and the new U.S. bicycle route system program. The Director is further charged with working with the Administrators of FHWA and FTA on planning and other programs that could be used to promote the livability concept in the delivery of surface transportation assets. The Director also serves as the point of contact within DOT for other Executive Branch agencies on livability issues and, in this role, coordinates DOT activities with agencies such as Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA).

The Director is charged with providing leadership, DOT-wide, on a range of "livability" issues. For example, the Director is charged with developing and disseminating street design policies and standards. While FHWA has no specific power to require states to adopt such standards, it appears that the authors of STAA believe that the standards will be adopted over time in conjunction with the implementation of other features of the highway and transit programs. The Director is also charged with developing model legislation, implementable by states, enunciating the rights of pedestrians and bicyclists. In these roles it seems that the Director is given the "bully pulpit" to promote livability, but has little real authority to require that any of the ideas and concepts developed in the Office are adopted outside of DOT.

In one instance, however, in the development and implementation of a U.S. Bicycle Route System, the Director is the decisionmaker. It is the Director's role to issue the regulations that would lead to the designation of the national system. Once designation is complete, the Director will operate a grant program designed to implement the system. The amount of grant funding available for this purpose has not yet been determined but grants are available for the planning, mapping, signage, promotion, and construction of the designated system. Only 50% of the funds made available, however, can be used for construction. As is the case with the new DOT, FHWA, and FTA Offices described earlier in this section of the report, the STAA is silent on staffing and funding for the operation of the Office of Livability.

Office of Public Benefit

The new Office of Public Benefit has the stated task of providing "for the protection of the public interest in relation to highway toll projects and public-private partnership agreements on Federal-aid highways." This new Office is to be domiciled in FHWA and have a Director appointed by the

Secretary. The most important responsibility reserved for the Director is the administration of toll agreements – which the Director is charged with approving or disapproving based on specific criteria detailed in this section of the STAA. Further, once a toll agreement is in place, the Director is charged with monitoring compliance with the agreement. A similar charge is given to the Director for monitoring other public-private partnership agreements.

The creation of the Office of Public Benefit is intended to provide a safety net to protect the public interest. In the STAA supporting documentation, the authors set forth their view that

> to protect the integrity of the nation's surface transportation system and the public interest regarding trade and travel, the Federal surface transportation program requires strengthened public protections regarding highway toll projects and PPP agreements. [24]

The bill seeks to give the Office significant guidance by providing specific criteria to evaluate in its decision making process. Most of these criteria are mentioned earlier in this report. Implementing some of the guidance in the bill is likely to be difficult, however. For example, it might be difficult to evaluate the effect of a specific toll rate proposal on "low income travelers" without developing appropriate data at the local/regional level. Similarly, it could be difficult to measure the potential impact of tolling on transit service as called for in the bill.

As proposed, the Office will apparently be a party to all alternative/innovative financing agreements dependant on toll revenues. Many in the transportation community hold the view that PPPs need to be a significant part of the Nation's highway infrastructure creation process going forward. A long standing concern expressed by many of these same observers is that PPPs are already difficult to execute from an administrative perspective. It is likely that supporters of increased tolling and the use of PPPs for infrastructure creation will be, to say the least, wary of this new Office, which they will likely view as another difficult bureaucratic hurdle to be crossed. They are also likely to see the approval/disapproval criteria spelled out in the bill as somewhat hostile to the use of non-grant financing mechanisms for infrastructure creation.

Transportation Planning

The act adds a substantial number of new transportation planning requirements at the national, state, and local levels, including the development of performance management systems throughout the planning process. At the national level, the proposed legislation creates a new requirement for the development of a National Transportation Strategic Plan by the Secretary of Transportation, a national equivalent to the statewide long-range transportation plan required under current law (Section 1207). The national plan is to be developed primarily from projects with significant national and regional benefits submitted by states. Funding for a project from the Projects of National Significance program will depend to some extent on inclusion in the strategic plan.[25] Once created the plan is to be updated every two years. The creation and updating of the plan is to be the responsibility of the new Office of Intermodalism to be established in the Office of the Secretary.

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[24] House, Committee on Transportation and Infrastructure, *The Surface Transportation Authorization Act of 2009: a Blueprint for Investment and Reform*, p. 31, http://transportation.house.gov/Media/file/Highways/HPP/Surface%20Transportation%20Blueprint.pdf.

[25] The legislation uses the term "consistency with plans." That is, to be eligible for funding a project must be consistent with the metropolitan, statewide, freight corridor, and national strategic plans.

Many have called for the creation of a national transportation plan to guide the use of federal transportation funds. The National Surface Transportation Policy and Revenue Study Commission, for one, recommended the creation of a national strategic plan, although it believed the plan should be overseen by an independent commission and should include recommendations on how investment programs should be funded.[26] By contrast, the STAA proposes to have DOT oversee the development of the plan, and the plan will not necessarily be constrained by available resources nor include funding recommendations. As currently written, the legislation is likely to require a significant amount of work for DOT, particularly in evaluating the proposals for inclusion in the plan. With an expectation that inclusion in the plan might help in securing federal funds, states may deluge DOT with what they consider worthy projects. Whether this is the case or not, the requirement that DOT must evaluate each project submitted within 60 days may be difficult. DOT is also required to disseminate data and 20-year projections to states on a range of topics for use in preparing transportation plans and projects, including a 20-year projection of passenger demand for suborbital space tourism. While states may have many project proposals already on the books through the statewide and metropolitan transportation planning processes, the requirements for inclusion in the national plan might also create substantial work for state DOTs. Another problem might arise when states try to identify projects involving infrastructure that is largely owned and operated by private companies, such as freight rail. If the DOT only puts together a list of projects from what states send in, some critics might wonder how "strategic" the ultimate plan is likely to be. On the other hand, DOT may face a barrage of criticism if, in the course of setting priorities, some states are significantly underrepresented and others overrepresented.

The act proposes to alter state transportation planning in several ways. To begin with, the proposed bill makes a number of changes to the existing statewide planning requirements (Section 1509). Among other things, the act adds some factors that may be considered in the planning process such as enhancing sustainability and livability, reducing GHG emissions and dependence on foreign oil, and improving public health. In accordance with the Clean Air Act, the proposed legislation requires, as part of the planning process, each state to "develop surface transportation-related greenhouse gas emission reduction targets, as well as strategies to meet such targets." In places with congested airports and freight rail corridors, the plan is specifically required to include measures to alleviate the congestion. The plan must also take into consideration deep draft ports, inland waterways, and interconnectivity between modes. In the statewide transportation improvement program, the state is required to implement a system of performance management that includes the development of performance measures and targets.

The proposed legislation also adds a freight improvement program that includes a requirement for each state to develop a state freight plan that "provides a comprehensive overview of the State's current and long-range freight planning activities and investments"(Section 1105). This freight plan may be either separate from or incorporated within the statewide plan. The state freight plan is required to include performance measures and targets related to freight movement, and to describe how the state plans to achieve those targets. Section 1105 also authorizes the Secretary to designate and make grants to a maximum of 10 freight corridor coalitions. A designated corridor coalition is required to develop a freight corridor plan that is modeled on the statewide strategic long-range plan. The plan is required to be consistent with the long-range statewide transportation

[26] National Surface Transportation Policy and Revenue Study Commission, *Transportation for Tomorrow*, Washington, DC, 2007, http://www.transportationfortomorrow.org/final_report/.

plan, the statewide improvement plan, the metropolitan plan and improvement program, and the metropolitan mobility plan under Section 701 of the bill.

Many of the changes made to statewide planning requirements are also made to the requirement for metropolitan planning, as, for example, with the setting of GHG emissions targets and strategies (Section 1508). If enacted, MPOs will also be required to implement a system of performance measurement. There are four notable provisions that apply only to MPOs. First, the act raises the urbanized area population threshold for MPO creation from 50,000 to 100,000, although existing MPOs in areas currently between 50,000 and 100,000 must be maintained as required by current law. Second, the act requires that voting members of the MPO are represented in proportion to the population of each political subdivision to the total population in the metropolitan planning area. This represents a major change, as voting structures currently vary widely according to state and local law and custom. Third, the act adds to the certification requirements both the new voting structure requirement and a requirement that the MPO is meeting or likely to meet its performance measurement targets. As part of the certification process, the Secretary may withhold up to 20% of funds attributable to the metropolitan planning area. Fourth, the act requires the creation of a database of MPO characteristics.

As noted earlier in creating the Metropolitan Mobility and Access Program (Section 1205), the act provides funding directly to MPOs in areas of 500,000 or more. Additionally, this new program requires the development of a metropolitan mobility plan "that identifies projects that the eligible recipient, or another entity described in and subject to the plan, proposes to address surface transportation congestion and its impacts within the urbanized area served by the eligible recipient." According to the proposed legislation, this plan needs to be coordinated with state and transit agencies and is to be reviewed and approved by DOT.

Finally, the act defines a rural planning organization (RPO) as "an organization designated by a State to enhance the planning, coordination, and implementation of statewide transportation plans and programs in areas with a population of less than 50,000 individuals, with an emphasis on addressing the needs of such areas of the State." The act requires a state to coordinate statewide planning with such organizations if designated, and to consult with a RPO in the obligation of transportation enhancement funds in its planning area.

Performance Management

The bill includes performance management as a new requirement in many programs throughout the federal surface transportation program, including, among others, the Freight Improvement Program (FIP), the Highway Safety Improvement Program (HSIP), the Critical Asset Improvement (CAI) Program, the Metropolitan Mobility and Access Program (MMAP), and statewide and metropolitan planning. The overall approach is to add performance management to focus attention on the most important objectives of a program, and to improve the transparency to program managers and the general public as to whether the objectives are being met or not. The requirements for performance management and the consequences for not meeting the requirements vary from program to program. In some cases, there are no explicit sanctions for not establishing performance management tools, nor for not meeting the performance goals that are established. For example, in the FIP a state is required to establish performance goals and performance measures, must include in its state freight plan how these goals will be met, and must report this information to the Secretary annually. But funds from the FIP do not appear to be dependent on the quality of the plan nor progress toward the goals, and there appear to be no other consequences for not following through.

In other programs, however, there are sanctions for not establishing performance goals and for not meeting the goals themselves. For example, in the MMA an MPO must have an approved metropolitan mobility plan, supported by performance-based goals and metrics, to receive funds. Beginning in FY2012, continued funding is contingent on providing an annual report which documents progress toward the goals, reasons for failing to meet any of the goals, and a new plan by which the goals will be met going forward.

Safety Provisions

Highway Safety Improvement Program (HSIP)

The STAA requires that DOT establish quantifiable safety performance targets for each state for their highway safety improvement plans, and to report to Congress annually on each state's progress in meeting its performance targets. It also requires states to develop highway safety improvement program investment plans describing how the state will address its highway safety needs. The DOT will review the investment plans, and approve or disapprove them based on whether the investment strategy will enable the state to meet its highway safety performance targets. The DOT is also required to oversee implementation of each state's investment plan to ensure that each state's use of funds is consistent with the investment plan.

National Highway Traffic Safety Administration (NHTSA)

The STAA would reduce the number of statutory programs that NHTSA administers from more than eight down to five (and does not fund a few other existing programs which do not have statutory language), incorporating some of the elements of the eliminated programs into the remaining programs. Specifically, it would eliminate the occupant protection incentive grants, the safety belt performance grants, and the alcohol-impaired countermeasures program. Instead, some currently unspecified percentage of the formula safety grant funds to states would be restricted to impaired driving programs, occupant protection programs, and motorcycle safety programs. If states meet their performance targets for these programs, they would gain the flexibility to use some of those funds for other safety purposes. By contrast, under the current structure states are eligible to receive additional funding through the incentive grant programs for occupant protection, impaired driving, motorcycle safety, and data improvement, if they meet certain criteria.

In addition to requiring that a certain portion of each state's highway safety program funding be restricted to specific programs/goals (e.g., reducing impaired driving), the draft bill also strengthens the emphasis on performance. Currently, states are required to have a highway safety program that is linked to performance measures which have been selected in cooperation between DOT and representatives of state highway safety offices. The draft bill requires DOT to establish quantifiable safety performance targets for each state and to report to Congress annually on each state's progress in meeting its performance targets. In one respect, however, the draft bill reduces the existing linkage between highway safety programs and performance measures, by eliminating the NHTSA incentive grant programs which made it possible for states to qualify for additional federal highway safety funding by meeting safety performance targets.

The existing seat belt incentive grant program enables states to qualify for additional funding by either passing a primary seat belt law (which allows a law enforcement officer to stop a vehicle in

order to issue a ticket if a driver or front seat passenger is not wearing a seat belt) or attaining a certain rate of seat belt usage statewide. As of July 2009, 30 states have primary seat belt laws. The draft bill would replace that incentive program with a penalty: any state without a primary seat belt law in FY2013 would have 2% of some of its highway funding withheld, with the amount withheld increasing to 8% in FY2016 and thereafter.

The existing alcohol impaired driving incentive program enables states to qualify for additional funding by either reducing their rate of alcohol-related fatalities or enacting several measures intended to reduce impaired driving. The draft bill would require that states install an ignition interlock device for at least 6 months on each motor vehicle operated by someone convicted of driving under the influence. Beginning in FY2013, a state without such a law would have 2% of some of its highway funding withheld, with the amount withheld increasing to 5% in FY2015 and thereafter.

The draft bill adds pedestrian and bicycle safety to the existing list of traffic safety areas that states must focus on (reducing fatalities and serious injuries, impaired driving, occupant protection, speeding, and motorcycle safety).

Federal Motor Carrier Safety Administration (FMCSA)

The STAA requires DOT to set a national goal for reductions in crashes and fatalities of commercial vehicles, and states are required to set targets for enforcement activities to reduce crashes and fatalities (but not targets for the reduction of crashes and fatalities themselves). These targets must increase each year (subject to funding). The bill also converts an existing funding set-aside for high-priority commercial vehicle enforcement activities to an incentive grant program, which would reward states for reducing commercial motor vehicle crashes and fatalities. The bill also strengthens requirements for states to improve their commercial drivers licensing programs.

The draft bill establishes a national clearinghouse for drug and alcohol test results of commercial drivers. This addresses the issue of commercial drivers who have failed such tests not notifying their employer of the result, or drivers who have been suspended for failing a test moving to another employer which may not be aware of the drivers' test results. This clearinghouse would make it more difficult for drivers to evade the consequences of failing these tests.

The bill also requires that motor carriers subject to DOT's hours-of-service regulations equip their commercial motor vehicles with electronic on-board recorders. This addresses the issue of commercial drivers who do not keep accurate records of their hours of service, and who may pose an increased hazard due to driving while fatigued. The National Transportation Safety Board has been recommending the use of on-board recorders in commercial vehicles for many years.

Transit Provisions

The draft bill released by the House Transportation and Infrastructure Committee (T&I) appears to make significant changes to the structure of the overall federal transit program, along with some major and minor changes to individual programs. These proposed changes are emphasized in summaries of the legislation published by T&I, but, as noted earlier, the draft bill does not

provide details of how the funding will be distributed among the programs, making it impossible to fully assess the changes that are being proposed.

Transit Funding

One of the most closely watched aspects of the new authorization will be the amount of funding that is directed to transit and transit's share of the whole bill. Funding numbers are not available from the committee print, but the supporting documents released with the bill by T&I indicate that the federal transit program would be authorized at $99.8 billion over six years, with a proposed $87.6 billion (88%) from the mass transit account of the Highway Trust Fund and $12.2 billion (12%) from the general fund of the U.S. Treasury.[27] The proposed average annual authorization under the STAA, therefore, would appear to be $16.6 billion. Ignoring highway program funds that allegedly may go to support transit projects and the $50 billion that is proposed for high speed rail, the share of the funding that is directed to transit by the STAA could be 22% ($99.8 billion of $450 billion).

In addition to the increases in funding and funding share for the transit program itself, there may also be more money for transit projects available from highway programs funds. To begin with, the bill appears to provide blanket permission to transfer (or "flex" as it is sometimes referred to) highway program funds to transit programs and vice-versa (Section 1103). Funding from three current highway programs – NHS, STP, and CMAQ – can be used to directly support transit projects. In addition, funds from NHS, IM, and the Bridge Program can be transferred to STP and then used to fund transit. Some transit funds are available for highway uses, but generally the flexibility provisions have been used to transfer highway funds to support transit projects. In the period from FY2004 through FY2007 an average of about $1 billion of highway funds per year were flexed to transit. The blanket provision in STAA might make it easier and more likely that such funds will be flexed. Furthermore, the bill proposes to create a new $50 billion Metropolitan Mobility and Access (MMA) program to tackle highway traffic congestion, a portion of which is likely to end up supporting transit.

Transit Program Structure

In terms of the structure of the federal transit program, there appear to be three major changes in the STAA from current law. First, the proposed legislation appears to abolish the discretionary, but heavily earmarked, Bus and Bus-Related Facilities Capital Program, with the program's funds and functions absorbed into the existing Urban and Rural Formula Programs (Sections 3006 and 3010) and a new discretionary Intermodal and Energy Efficient Transit Facilities Program (Section 3007) that replaces the existing Clean Fuels Grant Program. This new Intermodal and Energy Efficient Transit Facilities Program makes funding available to build, replace, or rehabilitate facilities that are intermodal, in that they connect public transportation to another transportation mode, or will reduce energy and greenhouse gas emissions.

[27] U.S. Congress, House Committee on Transportation and Infrastructure, *The Surface Transportation Authorization Act of 2009: A Blueprint for Investment and Reform, Executive Summary*, 111th Cong., 1st sess., June 18, 2009, p. 4, http://transportation.house.gov/Media/file/Highways/HPP/Surface%20Transportation%20Blueprint%20Executive%20Summary.pdf.

Making Bus Capital Program funds distribution partly formula and partly discretionary appears to be something of a compromise between those that argue for making the funds entirely formula driven and those that argue for keeping them discretionary. Some argue that distributing the funds by formula would be more equitable, would simplify the process and eliminate the vagaries of earmarking, and would make funding more reliable from year to year so that transit agencies can develop long term investment plans. Those in favor of discretionary spending argue that the Bus Program provides an important way for transit agencies to make expensive periodic bus purchases and facility investments that cannot be met with formula funds, and that earmarking provides an important way for Congress to control this funding stream.

The second major change is the creation of a new Metropolitan Mobility and Access (MMA) program (Section 1205). Although this new program is in Title I of the bill, the highway title, this new program may provide a major new funding source for transit provision in large urban areas, those with more than 500,000 residents. The MMA is similar to a recommendation of the National Surface Transportation Policy and Revenue Study Commission for a highway congestion relief program, although the commission recommended such a program for metropolitan areas with a population of one million or more.[28] Funding from this program in STAA would be distributed by formula according to population and highway traffic congestion. Funds would be available to fund improvements on a mode-neutral basis. As was mentioned earlier, in the creation of this new program a major change is being proposed in the relationship between federal, state, and local government in the federal-aid highway program. In the MMA program, as currently conceived, federal highway funds, for the first time, would be provided directly to metropolitan planning organizations (MPOs) instead of to and through state DOTs.

The third major change is the creation of the Coordinated Access and Mobility Grants Program (Section 3009) that is created by combining the existing Elderly and Disabilities Program, the JARC Program, and the New Freedom Program.[29] There has been criticism that as separately constituted funding streams, these programs have inhibited the coordinated development of human-services transit service and are administratively burdensome. Funding in the new program will be distributed by formula based on the number of people who are elderly, disabled, low-income, or welfare recipients. Under the program, recipients will be required to develop a performance plan with performance measures that at a minimum "ensure that transit systems and operations are fully compliant with the regulations established under Title 37 of the Code of Federal Regulations for Americans with disabilities." Flexibility for funding projects under the program is constrained if a recipient fails to meet the goals set forth in its performance plan.

Transit Program Changes

In addition to structural changes in the federal transit program, there are also important changes proposed within some of the major existing programs. Within the Urbanized Area Formula Program (Section 3006) a major change proposed by the bill is to allow transit operators in urbanized areas of 200,000 or more to use some funds for operating costs. Currently, only transit agencies in urbanized areas of 200,000 or less are permitted to use funds for operating purposes,

[28] National Surface Transportation Policy and Revenue Study Commission, *Transportation for Tomorrow*, Washington, DC, 2007, http://www.transportationfortomorrow.org/final_report/.

[29] This program also includes elements of several smaller programs with similar purposes including ADA Project Action (49 U.S.C. §5314(a)(2)), the Human Services Transportation Coordination program (P.L. 109-59, §3046(a)(9)), the National Technical Assistance Center for Senior Transportation (49 U.S.C. §5314(c)).

although SAFETEA changed the definition of a capital expense to include some things that are traditionally considered operating expenses. The change in the proposed legislation would permit agencies in areas between 200,000 and 500,000 to use 20% of their federal funds for operating expenses; agencies in areas of between 500,000 and 1 million to use 10%; and areas over 1 million to use 5%. A requirement for the use of federal funds to cover operating expenses is that the transit agency must have a dedicated source of state or local government revenue for its operating costs or the non-federal share of operating costs (excluding system-generated revenues) must be greater than during the previous year. Current federal matching shares are left unchanged in the STAA, with capital expenses generally having a maximum federal share of 80%, and operating expenses having a maximum federal share of 50%.

The use of federal funds for operating expenses has been controversial since the beginning of the federal transit program in the 1960s. Support for using federal funds in this way tends to rise when transit service is threatened by such things as high fuel prices, inflationary pressures, and fiscal problems at the state and local level. Opponents contend that while federal operating support has probably maintained a higher level of transit service than would have prevailed without it, such support causes productivity to decline (the amount of transit output relative to inputs). This is because government support, particularly from the federal government, allows transit operators to de-emphasize the need to control costs and generate revenues.

Details on how the Rural Formula Program would be modified are largely missing from the draft legislation. However, in the T&I Committee's bill summaries it states that the formula for distributing funds will be altered to include transit service provided and consumed, factors that are not currently considered. It also states that the legislation will increase the funding directed to small urban and rural transit service, although it is unclear from this whether the increase is in terms of the dollar amount or share of overall transit program funding.[30] With most transit funding going to large urban areas, there has been a push by advocates of small cities and rural areas for more transit funding over the last few authorization cycles. Incorporating transit service factors in the funding formula would be a way to reward transit providers for their effort to provide service in places where it tends to be very costly to do so.

Another major programmatic change proposed by the act is the simplification of New Starts/Small Starts project development and funding approval (Section 3008), a rigorous but time-consuming process that has been the subject of a lot of criticism.[31] The current New Starts process requires an application to FTA for approval at three different stages of project development: entry into preliminary engineering, entry into final design, and approval of a Full Funding Grant Agreement (FFGA). The legislation proposes to reduce this to one step, the approval of a FFGA. Project sponsors must also have FTA approve the project for entry into project development, but this is assured if the project has been chosen as the locally preferred alternative as required under the metropolitan transportation planning process.

The bill also does away with the alternatives analysis required under the New Starts program that was often seen as a duplication of the alternatives analysis required under the National

[30] U.S. Congress, House Committee on Transportation and Infrastructure, *The Surface Transportation Authorization Act of 2009: A Blueprint for Investment and Reform*, 111th Cong., 1st sess., June 18, 2009, p. 47, http://transportation.house.gov/Media/file/Highways/HPP/Surface%20Transportation%20Blueprint.pdf.

[31] U.S. Government Accountability Office, Public Transportation: Better Data Needed to Assess Length of New Starts Process, and Options Exist to Expedite Project Development, GAO-09-784, August 2009, http://www.gao.gov/new.items/d09784.pdf.

Environment Policy Act (NEPA). To expedite projects, the act would also allow the Secretary the ability to fast track some projects, and would base FTA's evaluation partly on the amount of federal assistance being sought by the applicant. Finally, as mentioned earlier, the act would create an Office of Expedited Project Delivery within the FTA to speed capital projects, particularly New Starts/Small Starts projects. The Office would be expected to monitor project progress, promote best practices, help with coordination, use conflict resolution techniques, and coordinate with the Office of Expedited Delivery in FHWA.

Advocates of simplifying the New Starts process argue that it will significantly shorten project delivery times. According to some, quick approval of federal funding is particularly appropriate where the risks are low, such as when the federal funding amount/share are relatively low, and where project benefits are likely to be high relative to costs. Critics worry that such changes may damage the rigor of the evaluation process, ultimately leading to federal support of less competitive projects. Simplifying the process by creating a low hurdle for entry into the New Starts pipeline also creates the possibility that FTA may receive a large number of projects that it has to manage through the evaluation process to ultimate denial. Another possibility is that FTA will approve or intend to approve many more projects for funding than can be supported by the available commitment authority. This may mean relatively quick funding approval for projects that then languish while waiting in line for more commitment authority to be made available by Congress.

The STAA would also make a number of other changes to the New Starts/Small Starts program. The bill would alter the definition of a New Starts project to one which receives federal assistance of $100 million or more, up from the current $75 million; a Small Starts project would be defined as a project in which federal assistance is less than $100 million. Additionally, the bill attempts to clarify the way in which the evaluation factors are used by FTA to decide among projects. Many have criticized FTA for relying too heavily on the cost-effectiveness index that measures the time savings to transit system users. The bill therefore states that FTA must take into account a range of factors: mobility and accessibility, congestion relief, energy and environment, economic development, and supportive land uses and future patterns of land use. Furthermore, the legislation prohibits FTA from using a cost-effectiveness index, and only permits using a transportation system user benefit calculation to evaluate mobility.

The STAA may make some major changes to the way in which funding under the Fixed Guideway Modernization Program is distributed, although details of how this would work are missing from the committee print. In summary material, T&I says that the complicated 7-tier formula for distributing funds will be simplified. Funding instead will be distributed by a formula "using readily available transit data that most closely aligns with maintenance needs."[32] The summary also states that there will be no prohibition to funding going to fixed guideway systems in urbanized areas of 200,000 or less. There may also be a performance plan component, whereby recipients are required to develop performance goals related to bringing and keeping transit assets in a state of good repair.

Performance planning, goal setting, and measurement is a pervasive theme throughout. Performance plans are required generally as part of the metropolitan transportation and statewide planning processes, and specifically as part of the Urbanized Area Formula Program, the Rural Formula Program, and the Coordinated Access and Mobility Grants Program. As noted above,

[32] T&I, *A Blueprint for Investment and Reform*, p. 45.

performance planning may also be required as part of the Fixed Guideway Modernization Program. In the case of the Urbanized Area Formula Program, for example, to be able to receive federal funds, designated recipients will have to develop performance goals as part of a performance plan and have that plan accepted by FTA. Updates to the plans will be required periodically, and acceptance of an updated plan will rest to some extent on whether the recipient has made sufficient progress toward its goals. In other words, the legislation proposes to cut off federal funding to a recipient if it does not meet its performance goals. It almost goes without saying that this would be highly controversial. The legislation, therefore, provides FTA with the authority to reduce the performance targets, if appropriate, to keep federal funding flowing to a transit funding recipient.

Environmental Issues

Congestion Mitigation Air Quality Program (CMAQ)

The STAA proposal would amend Title 23 provisions regarding the Congestion Mitigation Air Quality (CMAQ) improvement program.[33] Generally, the entire section of the current law would be rewritten. More specifically, changes would be made to the following sections of the law:

- **Eligible Projects**—changes to this section of the law primarily result from reformatting the existing language. Changes to the law include listing the acquisition of certain public transportation vehicles as an eligible use for CMAQ funds. The proposal also eliminates the listing of certain types of projects as eligible for CMAQ funds. That does not mean those projects would no longer qualify for CMAQ funds, just that they are not specifically identified in the law.
- **States Receiving Minimum Apportionment**—the proposal would eliminate the current method of determining project eligibility for projects in states receiving the minimum apportionment.
- **Interagency Consultation**—the proposal would require (as opposed to the current law that *encourages*) state and local metropolitan planning organizations to cooperate with state and local air quality agencies in nonattainment and maintenance areas on estimated emission reductions from proposed CMAQ programs and projects.
- **Evaluation and Assessment of Projects**—the proposal would amend the current law to specify how information regarding best practices should be made publically available.

Under the current proposal, requirements regarding partnerships with nongovernmental entities would be eliminated. Also eliminated from the law would be a requirement that the Environmental Protection Agency (EPA) produce technical guidance with regard to diesel emission reductions from diesel retrofits. EPA has gathered the information required under current law and made it publically available.

[33] 23 U.S.C. 149.

Expediting Environmental Review Requirements

Under current law, final design activities, property acquisition, purchase of construction materials or rolling stock, or project construction are not allowed to proceed until FHWA or FTA has completed the appropriate environmental review pursuant to the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.). DOT's NEPA regulations require FHWA and FTA to perform the work necessary to complete the appropriate NEPA documentation[34] and to demonstrate compliance with any *other* related environmental laws and regulations during the NEPA process.

Depending on a host of factors, an individual surface transportation project may involve compliance with any of a number of environmental requirements. For example, transportation projects often must comply with provisions of the Endangered Species Act, National Historic Preservation Act, Clean Water Act, and "Section 4(f)"of the Department of Transportation Act of 1966. To comply with applicable requirements, various local, state, and federal agencies (over which DOT has no authority) such as the U.S. Fish and Wildlife Service, the Advisory Council on Historic Preservation, the U.S. Army Corps of Engineers, or EPA may be required to perform scientific analysis, issue permits, or specify certain mitigation measures.

Previous reauthorization legislation has included provisions intended to expedite the time it takes the various agencies to coordinate their required activities and comply with applicable environmental requirements. Specifically, SAFETEA amended Title 23 to include §139, "Efficient environmental reviews for project decisionmaking." To further address issues associated with the NEPA process, the STAA would:

- Amend §139 to allow certain elements of a state's transportation planning product to be integrated into an individual transportation project's NEPA documentation. Included in the proposal is a requirement to issue a final record of decision and allow a project to move to its final design stage no later than 120 days after a final EIS is completed (the proposal specifies conditions under which delays would be allowed).
- Amend §139 to encourage programmatic approaches regarding environmental programs and permits. The Office of Expedited Project Delivery is also encouraged to establish programmatic agreements in meeting a project's NEPA requirements.
- Direct the Office of Expedited Project Delivery to ensure that federal agencies and other relevant agencies are implementing §139 requirements, particularly with regard to implementing a schedule for public and agency participation (however, DOT has no authority to dictate compliance requirements, including the implementation of deadlines or timeframes, to other agencies).
- Amend Title 23 regarding the advance acquisition of real property[35] to authorize DOT to encourage states to acquire transportation rights-of-way sufficient to

[34] The appropriate NEPA documentation would include an Environmental Impact Statements (EIS) for projects known to have a "significant" impact on the environment or Environmental Assessments (EA) for projects for which the level of significance is unclear. Projects that do not individually or cumulatively have a significant environmental effect are processed as Categorical Exclusions (CEs).

[35] 23 U.S.C. § 108.

accommodate long-range transportation needs (the law currently requires the state to complete the NEPA process before property acquisitions can be made, the bill does not waive that requirement).

Greenhouse Gas Provisions

New to the surface transportation bill this year is an emphasis on reducing greenhouse gas (GHG) emissions through transportation planning. Transportation sources accounted for 28% of U.S. emissions of GHGs in 2007, according to the EPA, up from 25% in 1990.[36] Cars, trucks, and rail account for most of the transportation total and are among the fastest growing components of U.S. emissions: GHG emissions from passenger cars and light duty trucks have grown 24% since 1990; rail emissions grew 50%; medium- and heavy-duty truck emissions grew 80%.[37]

As a separate bill moves through Congress to require GHG emission reductions as great as 80% over the next four decades,[38] it is clear that the nation cannot achieve that goal without reductions in emissions from the transportation sector. To achieve such reductions, a variety of measures might be implemented, including improving the fuel efficiency of each mode, switching to lower carbon fuels, switching to more efficient / lower emitting transportation modes, and reducing demand for transportation by better coordination among land use, housing, and transportation projects.

The latter two options are among the goals of the proposed STAA. The bill would require that transportation plans prepared by MPOs and by states "address transportation-related greenhouse gas emissions by including emission reduction targets and strategies." (Sections 1508(h) and 1509(c)(1)(E)). The targets and strategies are to: be based on models and methodologies established by EPA; address sources of surface transportation-related GHGs; include efforts to increase public transportation ridership; and include efforts to increase walking and bicycling.[39] The bill requires the Secretary of Transportation to develop performance measures including, for areas with populations of more than one million, a measurement of the degree to which the long-range transportation plan is developed through an assessment of: land use patterns that support reduced dependency on single occupant motor vehicle trips; limited impacts on air quality; a reduction in greenhouse gas emissions; an increase in energy conservation and efficiency; and other factors.

The bill would require annual reporting by MPOs of their progress in meeting their performance targets, but it does not seem to contain any sanctions for failure to achieve the stated goals.

[36] U.S. EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2007*, at http://www.epa.gov/climatechange/emissions/usinventoryreport.html, Table ES-8.

[37] See CRS Report R40090, *Aviation and Climate Change*, by James E. McCarthy, Table 2.

[38] H.R. 2454 passed the House June 26, 2009. For a summary, see CRS Report R40643, *Greenhouse Gas Legislation: Summary and Analysis of H.R. 2454 as Passed by the House of Representatives*, coordinated by Mark Holt and Gene Whitney.

[39] Section 222 of H.R. 2454, the greenhouse gas cap-and-trade bill passed by the House on June 26, 2009, contains similar requirements for transportation emissions reduction goals/plans for states and MPOs.

High Speed Intercity Passenger Rail

The STAA, according to the committee's documents, would authorize $50 billion over six years ($8.3 billion per year) for the development of intercity high-speed passenger rail corridors. The source of funds would be the General Treasury, not the Highway Trust Fund. This level of funding for high-speed rail is a substantial increase over the $100 million per year authorized in SAFETEA (section 9001) and the $300 million per year authorized in the Passenger Rail Investment and Improvement Act (P.L. 110-432, section 501) enacted in October 2008. It is more in keeping with the $8 billion appropriated in the American Recovery and Reinvestment Act (ARRA, P.L. 111-5) for high-speed rail. The bill defines "high-speed" as rail service that is reasonably expected to reach speeds of at least 110 miles per hour. The high-speed rail development program, as promulgated in section 6001 of the draft bill, would require a local match of 20% and allow the Secretary of Transportation to issue "letters of intent" regarding federal funding of specific projects in future years. States or Amtrak may enter into a cooperative agreement with any public, private, or non-profit entity to implement a high-speed rail project.

Although the bill authorizes a substantial increase in funding for modernizing the nation's passenger rail network, without a dedicated funding source, which has benefitted the development of other modes of intercity travel, it is uncertain whether Congress can sustain, over the long-term, the level of funding it recently appropriated to passenger rail in ARRA. Sustaining higher levels of capital funding is not the only challenge confronting decision-makers. On many of the proposed routes it is unlikely that ticket and other revenues will be sufficient to cover operating costs, requiring public assistance to cover these losses in addition to funding infrastructure maintenance and improvements.

Related Legislation

Several Members of Congress have introduced legislation that would, if adopted or incorporated into the major reauthorization bill, have an impact on federal surface transportation policy.

Clean, Low Emission, Affordable, New Transportation Efficiency Act (S. 575/H.R. 1329)

This bill, sometimes referred to as CLEANTEA, establishes a new trust fund, the Low Greenhouse Gas Transportation Fund, to be funded with monies coming from the auctioning of greenhouse gas emissions allowances that might arise with the enactment of a cap-and-trade system. The bill requires money from 10% of the auctioned allowances to be deposited in the fund. Monies in the fund, distributed by formula, are to be used by states and MPOs to develop plans and targets to reduce GHG emissions from transportation, and to help fund projects that are planned.

Highway Fairness and Reform Act of 2009 (S. 903)

This bill would allow states to opt out of the Federal-Aid Highway program beginning in FY2011. A state opting out of the highway program would instead receive an amount equivalent to the state's contribution to the highway account of the Highway Trust Fund, less an amount to

be determined by the Secretary to pay a portion of the funding necessary to maintain NHTSA and FMCSA activities. As part of this transfer, the state would agree to continue certain aspects of the existing highway program, such as the urbanized area suballocation distribution that would have occurred as part of the STP program. In addition, a state would agree to maintain the interstates and submit a plan on how the funds obtained from this transfer would be utilized.

S. 903 is a donor state bill. By transferring funds directly to the state instead of through the existing federal aid program it addresses many of the long standing complaints expressed by donor states that they do not receive a full return on their contributions to the trust fund. At its core the bill is a policy statement favoring partial devolution of the surface transportation assistance program. It is partial because it deals only with the spending side of the program. The federal government would still be required to collect taxes and transfer them to the states. In some ways this process would be similar to the revenue sharing policies adopted during the Nixon Administration and repealed under the Reagan Administration.

The bill as introduced does not contain detailed implementation provisions. The bill does not, for example, provide guidance on how the regulatory structure for this program restructuring would be created. One could assume that the Secretary would have this role, but the legislation does not make this clear.

Federal Surface Transportation Policy and Planning Act of 2009 (S. 1036)

The Federal Surface Transportation Policy and Planning Act of 2009 (S. 1036), introduced by Senators Rockefeller and Lautenberg, sets out a number of national surface transportation policy objectives, and establishes 10 goals. The policy goals are:

- to reduce national per capita motor vehicle miles traveled on an annual basis;
- to reduce national motor vehicle-related fatalities by 50% by 2030;
- to reduce national surface transportation-generated carbon dioxide levels by 40% by 2030;
- to reduce national surface transportation delays per capita on an annual basis;
- to increase the percentage of system-critical surface transportation assets, as defined by the Secretary, that are in a state of good repair by 20% by 2030;
- to increase the total usage of public transportation, intercity passenger rail services, and non-motorized transportation on an annual basis;
- to increase the proportion of national freight transportation provided by non-highway or multimodal services by 10% by 2020;
- to reduce passenger and freight transportation delays and congestion at international points of entry on an annual basis;
- to ensure adequate transportation of domestic energy supplies; and
- to maintain or the reduce the percentage of gross domestic product consumed by transportation costs.

In order to achieve the policy, objectives, and goals in the act, the Secretary of DOT is required, in consultation with a wide range of state and local governments, non-profits, and private entities, to develop and implement a National Surface Transportation Performance Plan. The Secretary is also required to evaluate how well federal surface transportation programs contribute to achieving the policy, objectives, and goals, and must "align the availability and award of Federal surface transportation funding to meet the policy, objectives, goals, and performance criteria established."

Appendix A. CRS Surface Transportation Reauthorization Reports

CRS Report R40053, *Surface Transportation Program Reauthorization Issues for the 111th Congress*, coordinated by John W. Fischer

CRS Report RL34675, *Surface Transportation Reauthorization: Selected Highway and Transit Issues in Brief*, by Robert S. Kirk

CRS Report RL33995, *Surface Transportation Congestion: Policy and Issues*, by William J. Mallett

CRS Report R40451, *The Donor-Donee State Issue: Funding Equity in Surface Transportation Reauthorization*, by Robert S. Kirk

CRS Report RL34127, *Highway Bridges: Conditions and the Federal/State Role*, by Robert S. Kirk and William J. Mallett

CRS Report R40629, *Freight Issues in Surface Transportation Reauthorization*, by John Frittelli and William J. Mallett

CRS Report RL34183, *Public Transit Program Funding Issues in Surface Transportation Reauthorization*, by William J. Mallett

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

CRS Report RL34305, *Motorcycle Safety: Recent Trends, Congressional Action, and Selected Policy Options*, by David Randall Peterman

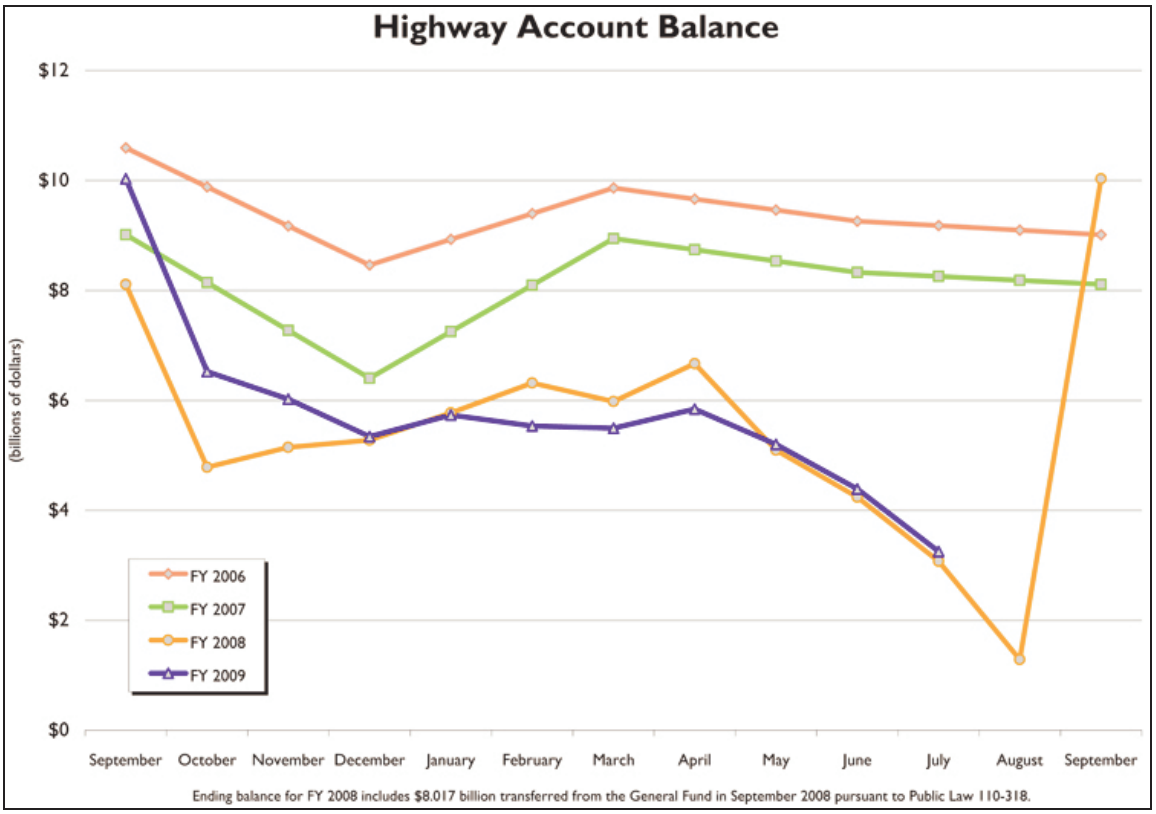
CRS Report RL34153, *Seat Belts on School Buses: Overview of the Issue*, by David Randall Peterman

CRS Report RL34657, *Financial Institution Insolvency: Federal Authority over Fannie Mae, Freddie Mac, and Depository Institutions*, by David H. Carpenter and M. Maureen Murphy

CRS Report RL33492, *Amtrak: Budget and Reauthorization*, by John Frittelli and David Randall Peterman

Appendix B. Trust Fund Financial Data

Figure B-1. Highway Account Balance: FY2006-FY2009



Source: Federal Highway Administration, http://www.fhwa.dot.gov/highwaytrustfund/index.htm#b.

Table B-1. CBO Spring FY2009 Baseline 2007-2018

(Billions of Dollars)

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Highway Account													
Fed-Aid Oblim (Gross)	39.1	41.2	40.7	41.1	41.3	41.6	41.8	42.2	42.7	43.4	44.1	44.7	45.5
Oblim Transfer to Transit (Flexing)	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0
Safety Resources (Oblim)	1.3	1.2	1.3	1.3	1.3	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.5
BOY Balance	9.0	8.1	10.0	2.3	-3.9	-9.6	-20.2	-30.4	-41.4	-52.0	-61.4	-70.3	-79.0
Est. Flexing—Transfer of Cash	-0.2	-0.4	-0.6	-0.7	-0.8	-0.9	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0
Receipts	34.3	31.3	31.6	31.7	32.2	32.9	33.7	34.4	35.0	35.3	35.7	35.9	36.2
Adjustment for negative Balances	0	0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
General Fund Transfer	0.0	8.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Outlays	35.0	37.0	38.8	37.2	37.2	42.6	43.0	44.4	44.6	43.7	43.6	43.6	44.2
EOY Balance[a]	8.1	10.0	2.3	-3.9	-9.6	-20.2	-30.4	-41.4	-52.0	-61.4	-70.3	-79.0	-87.9
Transit Account													
Transit Oblim (gross)	8.2	8.8	9.3	9.3	9.4	9.4	9.5	9.6	9.7	9.8	9.9	10.1	10.2
BOY Balance	6.2	7.3	6.8	5.3	3.0	0.8	-1.9	-5.3	-9.5	-13.5	-17.1	-20.6	-24.2
Est. Flexing—Transfer of Cash	0.2	0.4	0.6	0.7	0.8	0.9	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Receipts	5.1	5.0	4.8	4.8	4.8	4.9	5.0	5.1	5.2	5.2	5.2	5.2	5.2
Adjustments for Negative Balances	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Outlays	4.2	6.0	6.9	7.7	7.8	8.4	9.4	10.3	10.1	9.8	9.7	9.8	9.9
EOY Balance[a]	7.3	6.8	5.3	3.0	0.8	-1.9	-5.3	-9.5	-13.5	-17.1	-20.6	-24.2	-27.9

Source: Congressional Budget Office.

Note: Estimates of trust fund balances reflect CBO's best estimate of likely outcomes under current law. Actual balances could be higher or lower, depending on the accuracy of revenue and spending estimates.

a. Under current law, the Highway Trust Fund cannot incur negative balances. A negative balance, as shown, represents obligations and the ability of the Trust Fund to pay those obligations. Future spending on programs financed by the Highway Trust Fund would continue, although the rate of outlays would likely slow.

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Alternative Fuels & Advanced Technology Vehicles	Brent Yacobucci	RSI	7-9662
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Division abbreviations: RSI = Resources, Science, and Industry Division; KSG = Knowledge Services Group; ALD = American Law Division.