

Report for Congress

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Highway and Transit Program Reauthorization

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Highway and Transit Program Reauthorization

Summary

Authorizing legislation for the existing federal highway, highway safety, and transit programs will expire at the end of FY2003. Reauthorization of these programs will be considered in the 1st Session of the 108th Congress. The Bush Administration is expected to send its version of a reauthorization bill to Congress along with the FY2004 budget request in early February 2003. This will start a cycle of congressional action that should conclude before October 1, 2003. The last two reauthorization bills, however, were passed well after the authorization contained in the previous Act had expired.

The current 6-year authorization, the Transportation Equity Act for the 21st Century (TEA21) (P.L. 105-178 and P.L. 105-206), was significantly different than its predecessors in several respects. Most notably it provided for a dramatic increase in funding for federal surface transportation programs. This was in large part the result of a successful effort to link the revenue stream for the highway trust fund to significant increases in spending for the highway, highway safety, and transit programs. TEA21 provided 40% more funding than the previous 6-year program authorization. Furthermore a mechanism created by TEA21, revenue aligned budget authority (RABA), has provided the federal highway program with an additional \$9.1 billion in funding over TEA21's six-year authorization period, although difficulties with this mechanism in the last session of Congress will make RABA a reauthorization issue in the coming debate.

From the public's perspective the surface transportation reauthorization is taking place against the backdrop of growing concern about congestion and sprawl in urbanized areas, and increased concern about maintaining access to the national system in rural areas. The congressional debate that will take place as part of the highway and transit program reauthorization process in the 108th Congress is shaping up primarily as a debate about money. Given the large increase in funding made available by TEA21, there appears to be an expectation in some quarters that the reauthorization under discussion should also provide for a large increase in funding. The economy, the return of the deficit, and other policy concerns, however, make such a large increase problematic.

The money question aside, there appears to be very little interest in making major changes to the overall structure of the highway, highway safety, and transit programs. Rather, the interest appears to be in tweaking these programs to allow spending for some additional activities and perhaps adding some new stand alone programs or consolidating several traffic safety programs into a single program. Among the issues likely to be considered are: allowing states greater flexibility in how they use their transportation funds; retention of the existing highway trust fund funding framework established by TEA21; financial assistance for physical infrastructure security; streamlining of environmental evaluations required by the project approval process; a new categorical grant program for highway safety; and an increased focus on reducing drunk driving and increasing seat belt use. This report is intended as a resource document for the reauthorization debate. It will not be updated.

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

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Highway and Transit Program Reauthorization

The Transportation Equity Act for the 21st Century (TEA21), which expires at the end of FY2003, provided a dramatic increase in funding for federal surface transportation programs. This was in large part the result of a successful effort to link the revenue stream for the highway trust fund to significant increases in spending for the highway, highway safety, and transit programs. TEA21 authorized funding at a level of almost \$218.0 billion for the period FY1998 through FY2003. Of this total \$177 billion was provided for a broad range of highway and highway safety programs, and just under \$41.0 billion was provided for transit programs.¹ The total TEA21 authorization was about 40% more than the amount that had been authorized in the previous 6-year program authorization, ISTEA (Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240). Of the total TEA21 authorization, \$198.0 billion was guaranteed by the fixed limitation on obligations (to be described later); that is, these funds were not subject to reduction as part of the annual budget/appropriations process. Further a mechanism created by TEA21, revenue aligned budget authority (RABA), has provided the federal highway program with an additional \$9.1 billion over the authorization period.²

From the public's perspective the surface transportation reauthorization is taking place against the backdrop of growing concern about congestion and sprawl in urbanized areas and increased concern about maintaining access to the national transportation system in rural areas. The congressional debate that will take place as part of the highway and transit program reauthorization process in the 108th Congress is shaping up primarily as a debate about money. Given the large increase in funding made available by TEA21 there appears to be an expectation in some quarters that the reauthorization under discussion should also provide for a large increase in funding. At the time TEA21 was passed, a confluence of circumstances had provided for a considerable boost to highway trust fund revenues. Unfortunately, for those seeking extensive new funding, no similar confluence of events appears likely during the next year.

As a result, much of the discussion in the coming months will turn on whether significant additional funds can be found for federal surface transportation programs,

¹For the purposes of this report, the highway program refers to spending for all activities funded through the highway account of the highway trust fund. This includes monies for highways, highway safety and a wide range of other activities. Transit refers to federal mass transportation programs, which includes aid to bus and subway systems, among others.

²At the time of this writing, the second emergency supplemental appropriation for FY2002 had eliminated the RABA adjustment for FY2003. This situation may still be subject to change as part of the incomplete FY2003 appropriations process.

or whether funding for these programs will be limited to the modest growth forecast for the highway trust fund over the next 6 years. If new funds can be found, many of the programmatic and policy issues discussed in this report are likely to be considered in earnest. At the same time, additional new funding would likely lessen potential disputes about fund allocations between states, and between rural, suburban, and urban interests. Without significant new funding sources, a competition for the existing pot of funds will almost surely ensue amongst the various state, regional, and programmatic stakeholders.

The money question aside, there appears to be very little interest in making major changes to the overall structure of the highway, highway safety, and transit programs. Rather, the interest appears to be in tweaking these programs to allow spending for some additional activities and perhaps adding some new stand alone programs or consolidating several traffic safety programs into a single program. Among the issues likely to be considered are: allowing states greater flexibility in how they use their transportation funds; retention of the existing highway trust fund funding framework established by TEA21, including modification of the annual adjustment process provided for by RABA; financial assistance for physical infrastructure security; streamlining of environmental evaluations required by the project approval process; a new categorical grant program for highway safety; and an increased focus on reducing drunk driving and increasing seat belt use.

Highway Program Structure³

The federal-aid highway program is fundamentally a state run program. Funds are provided annually to each state Department of Transportation (or equivalent) to construct and maintain a designated system of roads known as the federal-aid highway system. The modern federal-aid highway program dates to the 1956 enactment of legislation that provided for the construction of the interstate highway system and created the highway trust fund to finance its construction. The program has been reauthorized and expanded on numerous occasions during the last four and a half decades.

Core (Apportioned) Programs

Most highway funding is reserved for five major programs, which are usually referred to as the core programs. They along with the minimum guarantee account for the vast majority of highway spending, 86% of the FY2003 authorized amount. These programs are: the national highway system program (NHS); the interstate maintenance program (IM); the surface transportation program (STP); the bridge replacement and rehabilitation program; and the congestion mitigation and air quality improvement program (CMAQ). Each of these programs provides funding for specific segments of the federal-aid highway system and/or other statutorily enunciated activities, e.g. congestion relief projects using CMAQ funds.

³This section provides a brief overview of the organization of the federal highway program. For greater detail see: [<http://www.fhwa.dot.gov/tea21/index.htm>]

Although it does not itself provide direct spending for highways, the minimum guarantee program, which will be discussed in greater detail in a moment, could also be thought of as a core program because it provides additional funds for each of the five core programs. The minimum guarantee in fact is the largest highway program. In the FY2003 authorization, for example, it provides fully 20% of all funding. NHS and STP are the next two largest programs by far, accounting for 16.5% and 19.3% of total funding respectively. Funds for these programs are apportioned to the states on an annual basis using formulas found in TEA21. As a result they are sometimes referred to as the “apportioned” programs.

In addition to the core programs there are a couple of additional and much smaller apportioned programs; metropolitan planning and the recreational trails program. TEA21 also sets some formulas within the formulas. This is most notably the case for STP for which 10% must be set-aside for both transportation enhancements and safety, and creates a separate sub-state distribution formula for the remaining funds.

Allocated (Discretionary) Programs

All remaining highway programs are subject to allocations that are based on criteria established in highway authorization and appropriation law and/or subject to congressional earmarking. Although all of the programs in this category are smaller than the core programs there are none-the-less some programs with significant funding. The largest allocated program is for congressionally mandated high priority projects. This program, which has an FY2003 authorization of almost \$1.78 billion, is reserved for projects specifically designated in TEA21. Other relatively good sized programs in the allocated category are the federal lands program, the national corridor planning and development and coordinated border infrastructure program (CORBOR), the interstate maintenance discretionary program, the bridge discretionary program, and the transportation and community and system pilot preservation program (TCSP). **(CRS contacts: John Fischer and Bob Kirk)**

TEA21 Funding Levels⁴

TEA21 created the largest surface transportation program in U.S. history. For the most part, however, it did not create new programs. Rather, it continued most of the highway and transit programs that originated in its immediate predecessor legislation, ISTEA. Programmatically, TEA21 can be viewed as a refinement and update of the ISTEA process. There are a few new funding initiatives in the Act, such as the border infrastructure program, but the vast majority of funding is reserved for continuing programs.

⁴This section provides a brief overview of the distribution of TEA21 funding amongst eligible transportation programs. Additional details about individual programs can be found at <http://www.dot.gov/tea21/>

The funding system for highways and transit is complex and will be discussed in greater detail later in this report (terminology is defined in Appendix 1). Table 1 shows the actual amounts authorized by TEA21 at time of passage. This was accomplished by providing for specific levels of funding in the Act, these limitations on obligations (also known as the obligation limitation or ob limit) were attributed to specific programs. In the parlance of the Act, these are the so called spending guarantees. Additional funds outside of the guarantee were also authorized, but these required specific action through the appropriations process before they could be spent. Table 2 shows actual appropriations during the life of TEA21. As can be seen, the limitations on obligations have been spent and/or exceeded by virtue of the addition of revenue aligned budget authority funds (RABA). Additional authorized funds subject to appropriation, however, have been spent sparingly. Appropriations for FY2003 are not yet complete.

Table 1: TEA21 Authorizations: FY1998 - FY2003
(Millions of dollars)

	FY1998 ^a	FY1999	FY2000	FY2001	FY2002	FY2003	Total
Highway (oblomit)	21,841 ^a	25,883	26,629	27,158	27,767	28,233	157,511
Highway Exempt (outside oblomit) (mandatory)	739 ^a	739	739	739	739	739	4,434
Additional Highway Authorization ^b	2,045	2,553	2,564	2,654	2,504	2,634	14,945
Highway Total	24,625	29,175	29,932	30,551	31,010	31,606	176,890
Transit guarantee	4,844 ^a	5,365	5,797	6,271	6,747	7,226	36,250
Additional Transit Authorization	—	976	1,013	1,003	990	968	4,950
Transit Total	4,844	6,341	6,810	7,274	7,737	8,194	41,000
TEA21 Total	29,469	35,516	36,742	37,816	38,747	39,800	217,890

^a Spending guarantees (Firewalls) did not apply in FY1998

^b Additional Highway Authorizations contain numerous programs outside the core highway programs, including items such as Maglev and light density rail

Source: P.L. 105-178, P.L. 105-206, and www.fhwa.dot.gov/tea21/

**Table 2. TEA21 Appropriated Funding FY1998 - FY2003
(millions of dollars)**

	FY1998	FY1999	FY2000	FY2001 ^b	FY2002	FY2003 ^c
Highway (ob limit) (includes RABA adjustment)	21,500	25,611	27,701	29,597	31,799	NA
Highway Exempt (mandatory)	1,390	1,212	1,207	1,069	955	NA
Highway additional authorizations	NA	NA	NA	2,759 ^a	200 (general fund)	NA
Highway Total	NA	26,823	28,908	33,425	32,954	NA
Transit Total	4,844	5,390	6,321	6,253	6,747	NA
TEA21 Total	27,734	32,213	35,229	39,678	39,701	NA

^a Includes \$599 in general funds.

^b Includes government-wide rescissions and additional appropriations

^c Appropriations action incomplete, government operating on continuing resolution

Source: House Committee on Appropriations and/or Conference Report for specific year

Donor-Donee Issues, Formulas, and the Minimum Guarantee

Since the 1980s few issues have raised such heated debate as the persistent arguments over how closely federal-aid highway program payments to the individual states should match the amount of federal highway taxes each state pays into the highway account of the Highway Trust Fund. The issue is commonly referred to as the donor-donee issue. The overall issue for Congress is how to structure and maintain a federal-aid highway program that meets federal highway policy objectives and still provide for as equitable as possible a return to the states on each tax dollar the states' highway users pay into the highway account of the trust fund. Donor-donee issues have generally surfaced in the context of the broader debate over the periodic reauthorization of federal surface transportation programs—as was the case for TEA21. This legislative context is important because it means that any “equity adjustment” provisions must fit with the overall compromises that create a reauthorization bill that can pass both houses of Congress.

TEA21 (P.L. 105-178) included a number of equity provisions which emerged from the reauthorization debate. Historically, a significant characteristic of the debate has been the importance of regional interests. Typically this pitted growing southern, mid-western, and south-western donor states against northeastern, Pacific coast, and sparsely populated western donee states. Also in play were different philosophies of the appropriate role of the federal government vis-a-vis the states, e.g. is the intent of the federal highway program creation of a national system of roads or a revenue sharing program operated for the states?

Minimum Guarantee⁵

TEA21 included a state minimum guarantee (MG) program with three major components: 1) Guaranteed Base Share—TEA21 guarantees each state a percentage share of the total program, defined as all the apportioned programs: Interstate Maintenance Program (IM), National Highway System Program (NHS), Surface Transportation Program (STP), Highway Bridge Replacement and Rehabilitation Program, Congestion Mitigation and Air Quality Program (CMAQ), Metropolitan Planning, Recreational Trails Program, Appalachian Development Highway System Program and Minimum Guarantee, as well as High Priority Projects; 2) 90.5% guaranteed return on payments—TEA21 guaranteed each state a minimum share return of 90.5% of its payments to the trust fund. If a state's base share is less than 90.5%, then the share is adjusted upward until the 90.5% share is reached. The money to raise shares to 90.5% is provided by “squeezing” down the percentages, but not the dollar amounts, of those states that are above the minimum; 3) \$1 million MG minimum—each state is guaranteed that it will receive at least \$1 million in MG funds.

In practice this 90.5% return is not absolute on a year-to-year basis. There are several reasons for this. First, there are significant concerns about the Internal Revenue Service data, mostly extrapolated from state fuel tax data, that are used to determine the annual state revenue contribution. These data were not previously envisioned as a basis for the formula distribution of federal funds. Some states have already indicated that they believe the data undercounts their contribution to the highway account. Second, there are administrative take downs for certain items, such as FHWA operating costs, that are part of the total limitation on obligations that will be unavailable during the state apportionment process. Finally, the Act requires the use of the most recent data in its annual program formula distributions. The most recent data normally lags two years behind the year for which the minimum guarantee calculation is being made. Also many of the variables used in the calculation have changed during the life of the Act, especially as a result of the 2000 census. As program distribution changed, the role of the minimum allocation process has grown in relative importance.

Formulas

During the past two reauthorization cycles there has been considerable discussion about the structure of the formulas associated with the core highway programs. Formulas clearly influence how federal highway dollars will be distributed to the states. TEA21 made changes to some program formulas that at the time were perceived as benefitting donor states. For example, the Act provided new formula categories that were based on a state's percent share of annual payments to the trust fund for both the IM and STP programs.

Actual formula components, however, remain somewhat mysterious even to those familiar with the highway program. By way of example, NHS funds are

⁵ For information on state distribution see Highway Statistics annual for the appropriate year: www.fhwa.dot.gov/ohim/hs00/fe221.htm

distributed on the basis of four factors: 25% based on lane miles on principal arterial routes (excluding the interstate system); 35% based on vehicle miles traveled on principal arterial routes (excluding the interstate system); 30% based on diesel fuel used on highways; and 10% based on total lane miles on principal arterial highways divided by the state's total population. In addition, before the formula distribution for NHS is determined, 0.5% of total combined NHS and IM funds is reserved for each state as a minimum apportionment.

As can be seen easily from the discussion above, the formulas in play during reauthorization are complicated. The data in the formulas is publically available, but in practice it is not practicable for congressional committees and agencies to run endless "what if" permutations of possible formula models. As a result, the FHWA is regarded as the sole arbiter of how changes to formulas affect distribution of funds and typically only its computer runs are viewed as accurate during reauthorization discussions.

Although much focus has been placed on formulas, especially as part of the donor-donee debate, the reality is that formulas are less critical as a part of the funding distribution debate than they might appear. There are a couple of reasons for this. First and foremost, the formulas have to correspond to any minimum guarantee level found in the bill. If the minimum funding guarantee for states is set at 90.5% for example, as it is in TEA21, this has the effect of reserving at least this amount for core programs. Second, in order for each state to reach the minimum guarantee level there must be a separate pot of money available to FHWA to make up annual differences in how the formulas are applied. As a result, the reauthorization process more or less dictates that the minimum guarantee sets the amount of total funding available for apportionment by formula. Hence, the minimum guarantee influences the formula factors and/or the minimum guarantee program set-aside, not the other way around.

During the TEA21 authorization debate, what many observers had predicted would be a major battle between donor and donee states, was resolved relatively amicably. The Taxpayer Relief Act of 1997 shifted revenues generated by the 4.3 cent deficit reduction gas tax to the trust fund. Congress, therefore, was able to provide for large increases in highway funding for all states. The extra money made the donor-donee debate less urgent to the donor states. As the TEA21 authorization entered its final year (FY2003), however, the donor-donee state issue has resurfaced.

Donor-Donor Issues in the Reauthorization Debate

Donor State Arguments. The basic argument is a relatively straightforward call for equity or fairness. Donor state advocates generally contend that for too many years they have been subsidizing the repair and improvement of donee state infrastructure, especially the older highway infrastructure in the northeast. The southern donor states have been fast-growth areas relative to many of the donee states and argue that their needs are just as great or greater. A secondary argument for some of these states is that they are generally more dependent on roads and do not benefit from federal transit spending to the degree that some donee states, in particular New York, do. Finally, some of the donor state advocates argue that with

the completion of the Interstate Highway System the rationale for the donor-donee disparity in federal highway funding is so weakened that the federal-aid highway programs should be streamlined or eliminated and the FHWA should be little more than a conduit for block grants to the states.

Donee State Arguments. Donee state advocates generally argue that fairness should not be separated from needs. Donee states argue that their position as donees is justifiable because of the age of their infrastructure, especially in the northeast, the high cost of improving already heavily congested urban roads, and the limited financial resources in large sparsely populated western states. Donee state advocates have also argued that when all federal programs are considered, not just the federal-aid highway program, northeastern states are often donors while southern states are often donee states. Donee state supporters also argued that southern and midwestern states spend less of their state and locally derived resources on highways than the donee states and chide the donor states for pleading for federal funds when they are not willing to ante up their own resources. Finally, donee states argue that it is unreasonable to expect FHWA to become little more than a tax collector for the states. They argue that there are needs that are federal rather than state and that a national highway network cannot be based on state or regional boundaries.

Reauthorization Options

Raising the Minimum Guarantee. Some state departments of transportation and road building interests have suggested increasing the minimum state share from 90.5% to 95%. To achieve this level, authorizers would probably have to make the 95% return on payments to the trust fund their starting point and reexamine the federal-aid highway programs with an eye toward adjusting or eliminating programs or program features to meet this goal. Some proponents argue that bringing the discretionary highway programs under the minimum guarantee umbrella would make achieving a higher minimum guarantee percentage easier. Some of these programs, however, were designed to meet inherently national needs and might not be easily divided among all the states and still meet the programs' goals.

Changing the Base Shares. Perhaps the most straightforward option would be to adjust up the donor state base shares and adjust down the shares of the donee states. However, donee states will almost certainly resist any attempt to eliminate or significantly reduce either their base shares or funding totals. Ironically, assuming the money were available, donor states might actually get more money in absolute terms by leaving the base shares as they are, and accept, as they did in TEA21, the benefits of larger minimum guarantee apportionments.

More Money. A large increase in revenues to the trust fund would probably defuse the donor-donee issue, as happened in the last reauthorization, by providing more money to all the states. Given the current economic and budget environment, this would probably require significant tax increases or redirection of existing tax revenues to the trust fund. As the next segment of this report will discuss, finding these funds will probably be a difficult task. (CRS contacts: Bob Kirk and John Fischer)

Highway and Transit Finance

Highway Trust Fund Origins

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

The highway trust fund is the oldest and largest of the transportation trust funds. The fund was created by a separate revenue title in the Federal-Aid Highway Act of 1956 (1956 Act) (P.L. 84-627). The 1956 Act provided funding for construction of the now virtually complete Dwight D. Eisenhower System of Interstate and Defense Highways. In addition, the 1956 Act provided some funding for other federal highway programs.

Over the last 40 plus years, the highway trust fund and the federal programs it supports have been changed numerous times.⁶ In almost every instance, Congress has chosen to expand the scope of the federal highway program. At various times over the same period Congress has also chosen concomitantly to increase the revenue stream into the trust fund by raising federal excise taxes on motor fuels. The most recent change in the structure of the federal highway program occurred as part of TEA21, which reauthorized the trust fund revenue system through FY2005.

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

The highway trust fund is financed by 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.⁷ The majority of the motor fuel revenue dedicated to the trust fund is derived from an 18.4 cents per gallon tax on gasoline of which 18.3 cents is dedicated directly to the highway trust fund. The highway account receives an allocation equivalent to 15.44 cents of the tax and the transit account receives the revenue generated by 2.86 cents of the tax. The remaining 0.1 cents goes into the leaking underground storage tank (LUST) trust fund.

⁶For a more detailed history of the trust fund see: U.S. Library of Congress. Congressional Research Service. *The Federal Excise Tax on Gasoline and the Highway Trust Fund: A Short History*. CRS Report RL30304. by Louis Alan Talley.

⁷For a discussion of federal transportation fuel taxes see: U.S. Library of Congress. Congressional Research Service. *Transportation Fuel Taxes and Legislative Issues*. CRS Report RS20281. by Bernard A. Gelb.

Trust Fund Policy Changes Made by TEA21

TEA21 changed the way the highway trust fund relates to the Federal Unified Budget in two ways: First by creating new budget categories and second by setting statutory limitations on obligations. The Act amended the Balanced Budget and Emergency Deficit Control Act of 1985 to create two new budget categories: highway and mass transit. The Act further amended the budget process by creating a statutory level for the limitation on obligations in each fiscal year from FY1999 to FY2003. In addition, TEA21 provided a mechanism, RABA, to adjust these amounts in the highway account, but not the transit account, so as to correspond with increased or decreased receipts in highway generated revenues. RABA issues will be discussed in greater detail later in this report.

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

Trust Fund Structural Issues

Maintaining the TEA21 Budget Structure. The current trust fund regime was created over the objections of many Members of the Budget and Appropriations Committees in both the House and the Senate. Although some Members of these same committees have indicated support for the existing highway/transit trust fund budget accounts, there remain Members unhappy with the restrictions that they believe TEA21 places on what they view as the historical discretion of the appropriations process.

The transportation community believes that continuation of the link between revenues and spending created by TEA21 is essential. They view the system created as a step forward in guaranteeing a continued substantive federal role in the provision of surface transportation infrastructure.

From the perspective of supporters of the current trust fund budgetary system, the system might need a little tweaking, especially as regards RABA. Otherwise it is their hope that the structural issues that dominated the TEA21 debate will be absent during the upcoming reauthorization debate.

Reforming Revenue Aligned Budget Authority (RABA).⁸ As already has been noted, TEA21 provides a link between the highway generated revenues that flow

⁸For more information see: U.S. Library of Congress. Congressional Research Service. *Highway Finance: RABA's Double-edged Sword*. CRS Report RS21164. by John W. Fischer.

into the highway account of the trust fund and highway spending. When RABA was created it was done with the understanding that highway funds would be reduced if there was a reduction in trust fund revenue. This situation was viewed as unlikely, however, as revenue growth into the trust fund has increased continuously during the life of the trust fund.

The first RABA adjustment occurred in FY2000. Between FY2000 and FY2002, RABA provided almost \$9 billion in additional funding for designated highway programs. The RABA adjustment in the FY2003 budget, however, a negative \$4.3 billion, surprised even those who expected a small decline in RABA as a result of the recession that began in 2001. The \$4.3 billion negative RABA would have resulted in an actual year over year decline of \$8.6 billion in federal highway assistance provided to the states.

In simple terms this year-over-year drop in the program was more than Congress was willing to allow. As part of the FY2002 second emergency supplemental bill (P.L. 107-206), the RABA adjustment for FY2003 was eliminated. This means that FHWA spending for FY2003 is now set at \$27.7 billion, which is still considerably below the \$31.8 billion provided in FY2002. Efforts to raise the amount to the FY2002 level continue, pending congressional completion of consideration of FY2003 appropriations legislation.

The events of the last year have created interest in amending the RABA mechanism during the reauthorization debate to reduce very large annual swings in RABA adjustments. There are also some who would like to see the possibility of negative RABA adjustments eliminated entirely. A number of mechanisms that would “smooth out” RABA are under discussion. These involve primarily technical changes such as changing the data used in the RABA calculation.

Revenue Raising Proposals

Much of the debate about the need for new revenues focuses on the concept of unmet highway and transit system needs.⁹ According to a soon to be released biannual study by the FHWA and the Federal Transit Administration (FTA) the amount of unmet needs of the surface transportation system continues to grow, even as the physical condition of the system has improved during the life of TEA21. The report, according to FHWA, will indicate that costs required to improve the surface

⁹There is general acceptance of the idea that there are significant unmet surface transportation capital infrastructure needs. There are, however, numerous questions about its measurement. The FHWA and the Federal Transit Administration (FTA) needs studies of the last few years are viewed as much improved in this regard over the studies done a decade ago. Questions still arise as to how needs are determined, how the costs associated with these needs are derived, and how state “wants” are separated from actual state “needs”. As a result, the issue of highway and transit system conditions and needs is complex and beyond the scope of this paper. Additional information can be found at: <http://www.fhwa.dot.gov/pressroom/test020926.htm> and <http://www.transportation.org/bottomline/>

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

Transportation organizations while not advocating major structural changes in the federal highway and transit programs are advocating an increase in funding comparable to that in TEA21 (which was 40% plus larger than its predecessor, ISTEA). They do not, however, have a ready source of funds to accommodate this increase. Many, but not all, in the transportation community are reluctant to seek fuel tax increases at this time. They are concerned that the Bush Administration will be reluctant to support tax increases and they are concerned that the same sentiment exists in Congress. As a result, there are a number of possible revenue raising ideas under discussion that are discussed below.

Increasing the Federal Fuels Tax. The American Road and Transportation Builders Association (ARTBA) is the one organization actively promoting an increase in the federal fuels tax.¹⁰ Its proposal “two cents makes sense” would raise the federal fuels tax two cents per year during the life of the next reauthorization. According to ARTBA raising the tax by 8 cents would raise an additional \$ 17 billion for highways and transit. This, in ARTBA’s view, would go a long way to meeting the unmet needs of the system.

Few other transportation organizations have come out in active support of ARTBA’s plan. Most other groups are concerned that the political climate might not be right for a tax increase at this time. At least one Member, Senator Voinovich, has taken a public position in favor of a federal fuels tax increase.

Redirecting a Portion of the Gasohol Tax (2.5 cents) to the Trust Fund and Increasing Trust Fund Receipts by an Amount Equivalent to the existing Gasohol exemption (5.3 cents). As part of federal policy to promote the use of gasohol as a substitute for gasoline, gasohol has been exempt from a portion of the federal fuels tax, usually 5.3 cents per gallon. In addition, 2.5 cents of the tax levied on gasohol based fuels has been deposited directly into the U.S. Treasury’s general funds. From the perspective of the transportation community these factors are depriving the trust fund of income that it deserves. Gasohol users, after all, use the highway system, and in this view, are not paying their fair share for its upkeep and improvement.

According to some estimates, transferring the 2.5 cents to the trust fund would net the fund \$700 million per year. Crediting the trust fund with the equivalent of the 5.3 cent exemption would result in an additional \$1.5 billion.¹¹ This \$2.2 billion would obviously make a significant potential contribution to the highway program.

¹⁰http://www.artba.org/government/tea-21/tea_21.htm

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

Legislation that would provide for these changes was introduced in the 107th Congress.¹²

The problem for those supporting changes in gasohol taxation is the unified congressional budget. With the budget back in a deficit situation any action that will potentially increase the overall deficit will be greeted with a certain amount of caution and potential opposition. Diverting the 2.5 cents is a straightforward decision about the appropriate destination for these funds in the budget. Crediting the trust fund with funds equivalent to the 5.3 cent exemption is more problematic. The \$1.5 billion would likely have to be derived from funds already deposited in the Treasury from non-transportation sources. Those who perceive that a redirection of an annual \$1.5 billion might come at the expense of other government programs important to them can be expected to object to such a move.

Paying Interest on Highway Account Unexpended Balances. All U.S. Treasury managed trust funds, with the exception of the highway trust fund, receive interest payments on their unexpended balances. One of the changes made as a result of TEA21 was to stop paying interest on the unexpended balance in the highway trust fund. The rationale behind this decision was the creation of RABA, which is supposed to reduce growth in the unexpended balance by making funds more immediately available for highway projects.

For a number of reasons that are beyond the scope of this report, the unexpended balance in the highway trust fund has continued to grow, albeit at a much slower rate than it did in the years prior to TEA21. Interest payments could be lucrative for the trust fund. According to the Congressional Budget Office (CBO) interest payments to the fund for FY2004 alone could stand at \$550 million (this assumes that the gasohol taxes described above have been redirected as discussed).¹³

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

Indexing the Fuels Tax. Depending on the source of the estimate, a one cent increase in the fuel tax will add between \$1.3 billion and \$1.5 billion to the trust fund on an annual basis. Supporters of this idea believe that the trust fund should be indexed to the consumer price index (CPI) or some other measure of national economic growth to allow revenues to the trust fund to keep pace with inflation. Over the last decade indexing would likely have added a few cents to the fuel tax with a

¹²S. 2678, Maximum Economic Growth for America through the Highway Trust Fund: The MEGA Trust Act. Senator Baucus.

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

concomitant increase in revenues. More recently, however, inflation has been under control and there are in fact some economists who are more concerned about deflation. As a result, indexing as a long term strategy could add significant funds to the trust fund. In the short term it is unlikely to provide significant new funding to the trust fund relative to the estimated needs of the system.

The Transportation Finance Corporation (TFC). The American Association of State Highway and Transportation Officials (AASHTO) is proposing the creation of a new \$59.5 billion bond program as an alternative vehicle for financing surface transportation projects. A new private, non-profit organization to be known as the Transportation Finance Corporation (TFC) would be established by Congress to issue bonds. The TFC would issue tax credit bonds for sale in the open market. AASHTO hopes that, after establishment of an escrow/sinking fund, the program would net \$34.1 billion for highways and \$8.5 billion for transit during the 2004 - 2009 period. Most funds would be made available to the states in a manner similar or identical to those employed by existing FHWA and FTA apportioned programs.

The tax credit bonds to be issued are somewhat unique in the federal scheme of things. Bond holders would not receive interest on their bonds. Rather, they would receive tax credits that could be applied against a bond holder's tax liability. Only one other federally created program run within the Department of Education uses a similar type of bonding.

The proposed TFC reflects AASHTO's concern that a significant increase in the federal fuels tax may be unlikely in the current economic and political climate. AASHTO believes this program could leverage a large portion of the predicted unmet need for federal highway and transit construction funds.

The proposal is not entirely without a federal component, as it suggests that the budgetary costs of the program (arising from the provision of tax credits) be derived from a source such as indexing of the federal fuels tax or any of the other revenue raising initiatives discussed above. The cost to the federal government is a concern to those who might object to this proposal. Other objections are likely to mimic those already associated with existing innovative finance programs, which are discussed in the next section of this report.

Long Term Viability of the Trust Fund System. Many observers are concerned that the funding uncertainties created by last year's RABA debate and increasing interest in identifying alternative power sources in the auto industry, e.g. fuel cells and hybrid power, should alert Congress and the transportation industry to the fact that its long-standing trust fund revenue sources should be reviewed. This is especially true in terms of gasohol if none of the gasohol provisions described above are adopted. If as expected, gasohol use increases, the lower tax levels on this fuel will cause trust fund revenues to decline on a relative basis even if overall fuel use increases.

There is a growing recognition of this problem, but specific suggestions as to how the long term health of the trust fund could be ensured are few in number. Some observers now support a provision in the reauthorization act that would create a

commission to study this issue so that its recommendations might be acted upon during the next reauthorization cycle. At least one piece of legislation introduced in the 107th Congress calls for such a commission.¹⁴

No New Funding

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

If none of the revenue raising proposals discussed above are adopted, income to the trust funds is still predicted to increase. According to one estimate the additional income available for the trust fund during the 6-year reauthorization could be between \$10 billion and \$17.6 billion. This increase, however, is modest by comparison with the program growth experience during TEA21. In addition, this increase is subject to revision and is closely related to the fate of the national economy during the expected 6-year reauthorization period.¹⁵ This modest increase will not provide the funds that many highway program advocates view as essential to improving highway and transit infrastructure. This is especially true in the current environment with states facing their own budget crises.

The most significant potential problem resultant from a no new funding scenario is the likelihood of an enhanced donor/donee struggle that might very well spill over from the highway program into the transit program. There also would likely be enhanced competition between programmatically focused interest groups, e.g. highway safety interests could seek a growth in safety related set asides within existing programs (STP). This competition for scarce resources could, in the extreme, divert attention from any of the many new programmatic initiatives under discussion and change the whole tenor of the reauthorization debate. **(CRS contact: John Fischer)**

Highway Program Issues

Flexibility

Flexibility as used in the context of the highway and transit programs refers to the ability of states to transfer funds apportioned in one program, e.g. STP, and use these monies to finance activities funded primarily by other federal programs, e.g.

¹⁴S. 2678, Maximum Economic Growth for America through the Highway Trust Fund: The MEGA Trust Act. Senator Baucus.

¹⁵www.transportation.org/publications/HTMLJournal.nsf/ViewItems/Volume+102,+...

transit.¹⁶ These conditions are also known as transferability provisions. Increased funding flexibility has been an important part of the last two highway reauthorizations, TEA21 and ISTEA, and has been seen as an essential element of the planning provisions included in each Act.

There are statutory limits on how much funding in any given program can be transferred to another activity. There are also additional rules preventing certain types of program transfers. In some cases these limitations are the result of set-asides or other features of particular programs.

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

There is considerable support within the transportation community for an expansion of flexibility as part of the upcoming reauthorization. This is justified on the basis of improved intermodal planning. It also reflects many states growing familiarity with the process used to transfer funds between programs and their respective satisfaction with this option. At the moment, no interest group seems to be opposing increased flexibility, although there is considerable discussion as to how broadly any increase in transferability should be applied.

High Priority Projects (Earmarking)

In the view of some observers the most controversial feature of TEA21 is found in Section 1601 which establishes the “high priority projects program”. This section lists 1,850 specifically identified projects throughout the United States and provides a specific dollar authorization for each project. In total almost \$9.4 billion in authorizations are provided for this program. This compares with 538 congressionally designated projects in ISTEA that were provided with \$6.2 billion in funding.

Earmarking was not a major feature of surface transportation reauthorization bills until the 1990s. Since then, as the above paragraph shows, the growth has been rapid. The growth in earmarking here, however, is not isolated. Earmarking in transportation appropriations legislation has also grown dramatically in the last decade. In fact, certain programs, such as CORBOR and TCSP that were established as competitive discretionary funding programs in TEA21 are now entirely earmarked in appropriations legislation.

There are numerous philosophical arguments both for and against earmarking at the congressional level. In the surface transportation context the argument has always been between Members meeting what they see as their representational requirements and meeting the overall planning and other national goals embedded in the rationale

¹⁶The highway programs have limitations on how funds can be transferred among programs. Further information on the TEA21 structure can be found at: www.fhwa.dot.gov/tea21/factsheets/transfer.htm

behind federal formula and discretionary program goals. To the extent that earmarks can be structured to meet overall program goals, the tension between these two perceptions is somewhat mitigated.

Earmarks do have some significant effects on policy questions that will arise during the reauthorization debate. Earmarking does affect the donor/donee computation. Within the context of a state's total program spending, if the state receives a significant number of earmarks, the state will see its discretion over total program spending somewhat reduced. This will have an effect on state and local planning during the life of the next Act and can tie up state/local matching funds that could have been used for other projects.

Growth in earmarks in TEA21 mimicked the growth in overall program spending. If significant new funds are not part of the reauthorization process, increased earmarking might reduce the availability of formula funds for state and local projects. Because states and localities tend to have much greater interest in formula and discretionary funds that they direct, as opposed to those that are earmarked, this could be a growing source of tension between legislators and their otherwise supportive state and local constituencies.

Innovative Financing Mechanisms

Created by highway legislation primarily in the 1990s, innovative financing mechanisms attempt to use the guarantee of future highway funds as a way to speed project completion and to leverage additional funds for highway projects. There are three mechanisms currently in use: grant anticipation revenue vehicles (GARVEEs); and credit assistance available as a result of the Transportation Infrastructure Finance and Innovation Act (TIFIA) and state infrastructure banks (SIBs). Each of these mechanisms have specific strengths and weaknesses that have been studied and described by GAO, CBO, and FHWA.¹⁷

Interest in innovative finance during reauthorization is driven by the same search for finding new sources of project finance as those described in the previous highway finance section of this report. In fact, interest in innovative finance is heightened if the highway community is unable to find significant new funds by these other means. The belief among proponents of innovative financing mechanisms is that they are not currently used to their maximum potential because of a number of factors that limit their application and/or attractiveness. As part of the reauthorization debate supporters of innovative financing mechanisms hope to address some of these factors thereby making this type of project finance more attractive. Opposition to innovative

¹⁷U.S. GAO. *Transportation Infrastructure: Alternative Financing Mechanisms for Surface Transportation*. Testimony before the Committee on Finance and Committee on Environment and Public Works. September 25, 2002. [<http://www.gao.gov/new.items/d021126t.pdf>] And FHWA [<http://www.fhwa.dot.gov/innovativefinance/>] and U.S. CBO. *Innovative Financing of Highways: An Analysis of Proposals*. January 1998. <ftp://ftp.cbo.gov/3xx/doc320/finhighways.pdf>

finance, however, might arise if innovative finance was expanded primarily because it would be likely to result in increased overall project costs and expose the U.S. and or State treasuries to some modicum of risk. Another concern is that innovative finance techniques mask who bears the cost. And it often simply shifts the cost from current taxpayers to future taxpayers. **(CRS contacts: John Fischer and Bob Kirk)**

Transportation Enhancements

Transportation Enhancement (TE) activities were first authorized as part of ISTEA in 1991 and reauthorized by TEA21 in 1998. The purpose of the TE program is “to fund transportation-related activities that strengthen the cultural, aesthetic, and environmental aspects of the Nation’s intermodal transportation system.”¹⁸ ISTEA authorized 10 TE activities as part of the Federal-aid Highway Program and TEA 21 modified two activities and added another two activities.¹⁹

The TE program defines a broad range of activities, although there are restrictions on how funds can be spent. TE activities can be broadly grouped into three major categories:

1. bicycle and pedestrian facilities, rail-trails, and safety and education for bicyclists and pedestrians (55% of federal TE funds, or 8,105 projects²⁰);
2. historic preservation and preservation of historic transportation buildings, transportation museums, and provision of tourist and welcome centers (24% of federal TE funds, or 3,203 projects);
3. Landscaping, beautification, and environmental mitigation (21% of federal TE funds, or 3,601 projects).

The TE program is funded through a 10% set-aside from the Surface Transportation Program (STP). As noted elsewhere, STP is a core (apportioned) program that provides flexible funding to states according to formula. Since the TE program was first authorized, \$2.8 billion was made available under ISTEA and a further \$3.6 billion was authorized by TEA21. Between FY1992 and FY2001, \$5.24 billion was apportioned to states for eligible TE projects, with \$4.93 billion (94%) of available funds reportedly programmed by state DOTs.²¹ Funds obligated by state

¹⁸ For a basic information on the TE program, see: U.S. DOT. *TEA21 Fact Sheet: Transportation Enhancements*. [<http://www.fhwa.gov/tea21/factsheets/te.htm>].

¹⁹ See [<http://www.fhwa.dot.gov/environment/tequalif.htm>] for a detailed list of the 12 activities that qualify under the TE program.

²⁰ Projects obligated FY1992 - FY2001.

²¹ National Transportation Enhancement Clearinghouse (NTEC). *Connections*. “National TE Obligation Rate Continues to Climb.” Summer 2002. Data on Available, Obligated, Reimbursed, and Transferred fund amounts are derived from the Federal Highway Administration (FHWA) Fiscal Management Information System (FMIS). Programmed funds data is collected from State DOTs. Detailed funding information is available at [<http://www.enhancements.org/connections/vol5no3.pdf>].

DOTs totaled \$3.66 billion (70%), with obligation rates ranging from 100% for a few states to a low of 38.6%.

Reauthorization Issues. The TE program is popular with local governments and metropolitan planning organizations (MPOs), which may be designated for suballocation of TE funds. The National League of Cities notes the positive effect on the quality of life that the locally oriented TE program has on cities.²² The American Public Works Association (APWA) also supports continuation of local programs, citing “the Congestion Mitigation and Air Quality Improvement (CMAQ) Program... and the Transportation Enhancements program set-aside of STP” as examples of such programs. Hank Dittmar, on behalf of the Surface Transportation Policy Project testified:

The Enhancements program symbolizes how transportation investment, even relatively modest commitments, can reshape the public’s view of transportation and the federal partnership... These projects both improve transportation services and help to revitalize rural and urban communities. With only a few pennies on a dollar, the Enhancements program has been so successful that the public, including many local elected officials, often think that this is what TEA-21 does. Enhancement projects are also particularly important in showing the public that their dollars are making steady, while modest, improvements through smaller projects in their neighborhoods and communities.²³

One issue that is occasionally mentioned is the broad categories of projects that are allowed under the TE program. According to APWA, both the CMAQ and the TE programs have allowed communities to consider a diversity of projects eligible for federal funding.²⁴ Some supporters of the program, such as APWA believe that the TE program “should be strictly limited to only those projects that are related to surface transportation.”²⁵ Critics occasionally take aim at spending on transportation museums, historic preservation, or other permitted activities that they believe have a tenuous link to transportation. Nevertheless, Congress established a limited list of activities for which TE funds could be spent in ISTEA and reaffirmed and expanded the list in TEA 21. Historic preservation activities account for less than a quarter of TE program spending.

²² National League of Cities. *Priorities for TEA 21 Reauthorization*. [<http://www.ampo.org/policy/partners/NLCTEA3Priorities-arial.doc>].

²³ Testimony of Hank Dittmar, on behalf of the Surface Transportation Policy Project. House Subcommittee on Highways and Transit of the House Transportation and Infrastructure Committee, U.S. House of Representatives, September 19, 2002. [<http://www.house.gov/transportation/highway/09-19-02/dittmar.html>]. Also see the testimony of Mayor John DeStefano of New Haven, CT on behalf of the National League of Cities. [<http://www.house.gov/transportation/highway/09-19-02/destefano.html>]

²⁴ American Public Works Association. “Policy on the 2003 Reauthorization of Federal Surface Transportation Programs.”

²⁵ *Ibid.*

Through a number of project categories, the TE program also supports improved mobility, multimodal approaches to transportation, environmental mitigation, and increased decisionmaking at the local level. Many local governments have gained flexibility in the use of federal funds and, through their participation in TE and other flexible programs, now have a better understanding of the way the federal transportation program operates. Furthermore, support for multimodalism and transportation alternatives appears to be especially high among those local governments that have actively pursued projects.

Some TE program advocates would like to see the federal government provide direct funding to localities to pursue enhancements without having to rely on states for discretionary grants. For example, the National League of Cities (NLC) takes the position that funding for this program should be distributed directly to cities, which, it believes, will reduce local government dependence on discretionary grant programs at the state level.²⁶ Direct funding would potentially increase the burden on the U.S. DOT. Instead of providing TE program grants to states to administer, the U.S. DOT would be put in the position of administering thousands of grants in communities across the country.

One issue recently highlighted in a report prepared for FHWA is the lower-than-expected obligation rate for TE funds. The report found that some states with higher obligation rates also had higher project completion rates and smaller apportionments. In general, the report suggested that states with smaller apportionments appeared to be better equipped to implement the smaller scale TE projects and that such projects had greater significance in smaller states.²⁷ It also identified some of the problems that lead to lower obligation rates, including inexperience of project sponsors, right-of-way issues, and environmental compliance. The study, which contained suggestions for improving overall obligation rates, primarily focused on administrative measures that could be implemented by FHWA and state DOTs. One recommendation, however, called for removing the TE program from the 90% obligation limitation placed on STP funds. The report suggested that this would increase states' abilities to obligate and complete TE projects.²⁸ A concern raised by some transportation professionals is that if a state wants to spend more than the maximum 90% of STP funds allowed by law, they would have to reduce the amount of spending allowed under other parts of the STP program, such as the TE or the CMAQ programs. It was suggested that some states may be choosing to allocate funds in this manner.²⁹

Another reason cited for the relatively slow obligation rate is that funds for TE programs are typically not obligated until project sponsors complete the planning and engineering portions of projects and are ready to begin construction. The delay caused

²⁶ NLC. 2002 National Municipal Policy. Transportation chapter, p. 11.

²⁷ A summary of this study is found in NTEC, "Study Focuses on TE Implementation," *Connections*, Summer 2002.

²⁸ *Ibid.*

²⁹ NTEC. *Making Enhancements Work: Proceedings*. Transportation Enhancements Professional Seminar, September 25-26, 2001, St. Louis, MO. January 2002. [<http://www.enhancements.org/misc/proceedings2001.pdf>]

by planning and engineering can amount to a one-to-two year lag from project selection to obligation of funds.³⁰ (CRS contact: Glennon Harrison.)

Congestion Mitigation and Air Quality Improvement Program

TEA21 authorized a total of \$8.1 billion in guaranteed funds for the Congestion Mitigation and Air Quality Improvement Program (CMAQ) from FY1998 to FY2003. While the CMAQ program represents a relatively modest percentage of total highway funding, it potentially has greater significance from an environmental perspective, since it is the largest source of federal funding for air quality projects. However, questions have been raised about the program's effectiveness, and whether to modify various elements will be a likely topic of discussion in the reauthorization debate.

The primary purpose of the CMAQ program is to fund projects that reduce traffic congestion, and the resulting emissions from motor vehicles. Through funding these types of projects, the program is designed to help mitigate the air quality impacts of highway travel, and thereby assist states in complying with the National Ambient Air Quality Standards (NAAQS) for carbon monoxide, ozone, and particulate matter. The Clean Air Act requires the Environmental Protection Agency (EPA) to develop safe standards for these pollutants, and states with areas that do not meet the standards must develop plans to attain and maintain them. The CMAQ program is based on the fundamental concept that lowering the number of miles traveled by motor vehicles, and reducing congestion to make vehicles operate more efficiently, can reduce emissions and help states improve overall air quality.

Under current law, states with areas that are in nonattainment with the NAAQS, and those that must maintain them, receive CMAQ funds according to a formula based on the severity of air pollution in those areas and the population residing in them. States that do not have any nonattainment or maintenance areas receive 0.5% of the total annual CMAQ apportionment, and have the flexibility to use this amount for transportation projects that are eligible under CMAQ or the Surface Transportation Program. CMAQ projects generally fall into one of the following categories: 1) mass transit; 2) traffic flow improvements; 3) rideshare programs; 4) traffic demand management programs; 5) bicycle and pedestrian projects; 6) public education; 7) vehicle inspection and maintenance programs; or 8) alternative fuel conversions. Historically, more funding has been obligated for mass transit projects than for other activities.

In response to concerns about the effectiveness of the CMAQ program, Congress included a provision in TEA21 that required the National Academy of Sciences (NAS) to study whether the emission reductions from CMAQ projects have been large enough to help states comply with the NAAQS. The NAS released a report on its findings in the spring of 2002. The study concluded that the air quality benefits of individual CMAQ projects are relatively small and less cost-effective than other pollution control measures. However, when assessed collectively, the NAS concluded that overall air quality benefits were likely great enough to help states achieve and maintain the NAAQS in areas that are on the margin of compliance. Consequently,

³⁰ Ibid.

the NAS recommended that the program be continued and suggested various modifications to improve its effectiveness.

The findings of the NAS will likely generate numerous issues in the reauthorization debate. Since the impact of the program on air quality was difficult to quantify, there may be a discussion of whether to shift the focus to reducing traffic congestion in general, rather than linking eligibility to the potential for reducing emissions. There also may be related discussions of whether the statutory formula should be amended to provide a higher amount of minimum funding to states that do not have any nonattainment or maintenance areas, but that would still benefit from a reduction in traffic congestion.

On the other hand, issues related to the statutory formula also may arise in support of increasing funding for air quality projects. For example, the current formula does not include a factor to account for areas that are in nonattainment with the current particulate matter standard, and for areas that would be classified under the new ozone standard. Whether to include a factor for these areas to allow potentially affected states to receive greater funding may be an issue. **(CRS Contact: David Bearden)**

Environmental Streamlining

Many stakeholders at the state and local level have expressed long-standing concerns over delays, duplication of effort, and additional costs frequently associated with the environmental review process for highway construction projects. However, some environmental organizations have argued that thorough reviews are necessary to assess compliance with environmental laws, and that significant time and costs are sometimes warranted due to the extent of alterations to the natural landscape and the potential effects of increased capacity on air quality. The National Environmental Policy Act of 1969 (NEPA, P.L. 91-190) is the primary federal statute which sets the environmental review process in motion. The law requires federal agencies to prepare an Environmental Impact Statement (EIS) for any major activity that significantly affects the environment. This statement must describe the project, characterize the surrounding environment, analyze the environmental effects of all reasonable construction alternatives, and indicate plans for complying with environmental laws and mitigating environmental damage.

According to the Federal Highway Administration, approximately 3% of all federally funded highway projects have a significant enough impact on the environment to require the preparation of an EIS. While this amount represents a small portion of the total projects that receive federal funding each year, such projects are usually large and affect sizeable populations. Consequently, construction delays are often controversial. The preparation of an EIS requires significant amounts of time and money, which can result in substantial delays in construction, especially if plans for complying with environmental requirements are challenged as inadequate. Depending on size and complexity, the Federal Highway Administration reports that the planning and construction of a major highway project typically takes between 9

and 19 years, and that the environmental review process accounts for 1 to 5 years of this time.

To reduce the approval time for highway projects and speed the delivery of federal highway funds to states and local areas, Congress included provisions in Section 1309 of TEA21 which require the Secretary of Transportation to streamline the environmental review process. The Department of Transportation has taken numerous administrative actions in response to this requirement, but has not issued final regulations to put streamlining into practice on a national scale. While the Clinton Administration did submit a streamlining regulatory proposal in May 2000, it was widely criticized on numerous grounds by Congress, the states, highway interest groups, and environmental organizations. The principal criticisms were that it did not fully address the requirements of TEA21, and that it would have added new elements to the planning and development process that may have resulted in further project delays. Due to these concerns, the Bush Administration withdrew the proposal in September 2002, and indicated that a new proposal would not be issued until TEA21 is reauthorized. In the interim, President Bush has issued an executive order which directs federal agencies to expedite environmental reviews for high-priority transportation projects, and has established specific goals to reduce the time frames for review.³¹

Several oversight hearings were held during the 107th Congress to examine the streamlining issue. Some Members expressed their disappointment that the Department of Transportation's actions have mostly been administrative in nature, and that five years after the enactment of the law, streamlining regulations have yet to be finalized. In the conference report on TEA21 (H.Rept. 105-550), Congress stated its expectation that the Secretary of Transportation would implement the streamlining requirements through the regulatory process. The lack of final regulations has increased interest in further legislative action to speed project delivery and meet public demands for transportation infrastructure. Two bills were introduced near the end of the 107th Congress to address the streamlining issue (H.R. 5455 and S. 3031). While there were differences between the two bills, both included proposals to grant the Secretary of Transportation greater authority over the environmental review process, establish statutory deadlines for agency comment periods, and allow qualified states to assume federal responsibilities. Due to the ongoing interest in streamlining, Congress will likely consider similar proposals in its debate over the reauthorization of TEA21. (CRS contact: David Bearden)

Highway Safety Programs

Existing surface transportation law deals with numerous aspects of highway safety. Title I of TEA-21 includes authorization for the Surface Transportation Program, a federal categorical grant program which includes set asides for hazards elimination and grade crossing infrastructure improvements. Funding derived from

³¹<http://www.fhwa.dot.gov/stewardship/index.htm>

both of these set asides helps pay for devices or structures that directly promote highway safety. Title I also authorizes other infrastructure-related funds that help finance reconfiguration of safer highway interchanges and repair of bridges. Title II of TEA 21 contains an authorization to conduct research and development related to traffic safety, as well as authorizations for grants to increase occupant protection, reduce alcohol-impaired driving, improve the collection of state highway safety data, and operate the National Driver Registry. For example, the National Highway Traffic Safety Administration (NHTSA) deploys Title II funds to pay for the development of new strategies for traffic enforcement (e.g., work to advance drug recognition technologies and to train detection experts). Title II funds are used by the states to encourage the deployment of innovative highway safety programs (e.g., the Section 402 program). NHTSA uses Title II funds to conduct evaluations of the effectiveness of different traffic safety strategies (the Section 403 program). Title IV includes authorization for numerous motor carrier safety programs. And, Title V includes authorization for various research and technical assistance and deployment programs and for the Intelligent Transportation Systems (ITS) program (discussed subsequently), which, in part, support activities intended to promote highway safety.

As part of the reauthorization process, funding levels for the safety-oriented activities and grants administered by the NHTSA and the Federal Motor Carrier Safety Administration (FMCSA) are likely to be reviewed. For FY2003, the Administration requested a total of \$430 million for NHTSA. The FY2002 appropriation provides total NHTSA funding and associated state grants to improve traffic safety of approximately \$423.3 million. The FY2003 request for the FMCSA and associated state grants to improve truck and bus safety is \$371 million; the appropriation for FY2002 was \$354.4 million. Other relevant issues include: Should NHTSA's activities and the grants it administers be funded entirely out of the Highway Trust Fund? What is an appropriate level of funding for these activities? Should additional funds be authorized to increase seat belt use rates, to reduce impaired driving, and improve motor carrier safety?

As an outcome of the reauthorization process, Congress determines the total amount of funds specifically set aside for safety initiatives and the allocation of these funds among many competing demands. In view of a recent NHTSA study which estimated that the total costs to society of all traffic crashes was over \$230 billion per year, there is likely to be increased attention to the question of whether there are sufficient funds for traffic safety and whether existing funds are being wisely allocated.³²

To influence this decisionmaking process, various groups continue to offer a wide array of recommendations on the future federal role in traffic or highway safety and the amount of future funding for particular safety-oriented infrastructure or behavioral (primarily driver) investments. For example, the railroad freight industry seeks increased funding to improve the infrastructure and safety of highway/grade crossings and seeks a change in federal law that would allow the Section 130 funds

³²NHTSA. DOT. The Economic Impact of Motor Vehicle Crashes 2000. May 2000. 86p.

to be used to maintain the infrastructure at crossings. Mothers Against Drunk Driving (MADD) seeks additional funding to improve traffic safety (e.g., to combat impaired driving), and the validation by research and testing of impaired driving countermeasures. The American Road & Transportation Builders Association (ARTBA) seeks a \$1 billion per year “High Risk Two-Lane Road Safety Program. Likewise, AASHTO emphasizes the need for safety improvements, especially on two-lane roads, to reduce the high rate of fatalities on rural roads. Most traffic fatalities (24,524 in 2000) occur on rural roads. The American Highway Users Alliance wants Congress to focus on the safety of roadways themselves, because they assert that this area offers the most opportunity for improvement. Also, the American Traffic Safety Services Association seeks a \$3 billion per year “Roadway Safety Program,” that would target with infrastructure improvements many high-risk challenges, such as intersections and run-off-the-road crashes. The AAA recommends that increased attention be paid to interventions that will prevent crashes before they occur. That association recommends improving roads through demonstration projects to improve intersection safety, conducting road safety state audits, integrating safety into the transportation planning process, collecting improved crash causation data, and protecting vulnerable drivers (older and younger drivers).

A major component of the federal role in surface transportation safety is the financial assistance that DOT provides to states and local governments. As part of the reauthorization process, Congress is considering: How could federal funds be better used to assist state and local governments conduct their traffic safety functions? TEA-21 reauthorized two traffic safety grants, and authorized six new grant programs. In retrospect, many state officials maintain that TEA-21 authorized too many grant programs to administer. Not surprisingly, the states, as evidenced by statements from both the Governors Highway Safety Association (formerly the National Association of Governors Highway Safety Representatives) and AASHTO, seek a unified grant approach with rewards for a state’s performance.³³ Congress is beginning to consider the advantages and disadvantages of instituting a unified grant program, including programs similar or comparable to those authorized in TEA-21, including those authorized in sections 2003(b), 410, and 402.

Also, there is likely to be considerable interest in exploring ways to increase seat belt use rates, because this strategy is widely recognized as the most cost effective way to save a substantial number of lives that might otherwise be lost as a result of traffic crashes. Relevant questions include: Should a goal for a national seat belt use rate be set in statute? If so, how could the Nation achieve a significantly higher (e.g., 85% or 90%) seat belt use rate by the end of the next authorization period than the current rate of 75%? How might federal funds be used to promote additional state and local efforts intended to help achieve that objective? If a financial penalty (or sanction) for not having a primary seat belt enforcement law were rejected by Congress, what specific provisions intended to increase seat belt use rates might be incorporated into a highway bill? **(CRS contact: Paul Rothberg)**

³³See statement presented at safety roundtable before the Senate Committee on Environment and Public Works, June 14, 2002.

Intelligent Transportation Systems (ITS)

ITS, often use telecommunications, sensors, or computers, to seek to improve the performance or safety of highway and transit systems. ITS includes traffic management centers receiving real-time video and other measures or indicators of traffic flow, crashes, and roadway or weather conditions. Such information helps operators redirect traffic, coordinate emergency response, or improve the efficiency of the surface transportation system. The federal investment in ITS has been roughly \$200 million per year. TEA-21 specifies the current federal role regarding ITS research and technical assistance as well as deployment. The reauthorization process provides an opportunity to consider ways to improve ITS-related federal policies and programs. The focus of this debate is not likely to be whether there should be a federal role; but rather, the debate is likely to focus on the scope, direction, goals, and funding level for future federally-sponsored ITS activities. Congress is expected to consider the level of future funding for ITS research and technical assistance, and whether and how monies from the federal highway trust fund might be used to accelerate ITS deployment.

Much of the surface transportation community generally would favor continued: 1) federal investment in ITS research, development and technical assistance, focused on advancing and testing new technologies, improving ITS standards and architecture, and conducting training; 2) federal investment to help states deploy the Commercial Vehicle Information Systems and Networks in order to increase the efficiency of the truck and bus inspection process and to yield other regulatory cost savings; 3) federal support of the Intelligent Vehicle Initiative to expedite deployment of crash avoidance technologies and to conduct research on driver distraction issues associated with the use of ITS; and 4) deployment of a nationwide, integrated or coordinated ITS infrastructure by the states to provide more reliable and comprehensive data needed to better manage and operate highway and transit systems and measure their performance. There remains substantial disagreement on how a deployment effort should be funded.³⁴

As part of the reauthorization process, Congress is likely to determine a funding level for federal investment in the National ITS Program, the ITS goals or objectives that the DOT should pursue with those funds, and the federal policy regarding deployment of ITS. Questions that are likely to be discussed include: Should there be a dedicated categorical grant program to accelerate ITS deployment? Should there be a set aside program to accelerate ITS deployment? Congress may also consider whether the scope and direction of the federal role in ITS should focus more on public safety and national security concerns. Other relevant questions include: How might the ITS program contribute more to highway safety? Could the deployment of life-saving crash-avoidance technologies be accelerated? Would a fleet demonstration

³⁴ Rothberg, Paul F. *Intelligent transportation systems for highways and transit: status, federal role, and options for reauthorization*. CRS Report. RL31283 : Feb. 11, 2002. 25 p.

of integrated crash-avoidance technologies and emergency notification systems (perhaps three or more systems in the same vehicle) be a worthwhile investment? **(CRS contact: Paul Rothberg)**

Research and Development and Technology Deployment

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

FHWA conducts an extensive RD and TD program that involves all aspects of the highway system. For these activities, Title V of TEA-21 provides an authorization level of roughly \$200 million per year. These FY2003 RD&TD funds are authorized in the following amounts: \$103 million for surface transportation research, \$50 million for technology deployment, \$20 million for training and education, and \$26 million for University Transportation Research. Research funds are used primarily to advance and deploy technologies intended to improve highway pavements, structures, roadway safety, and highway policies. Much of the technology deployment funds are earmarked for specific types of research or projects; and much of the university-oriented funds are earmarked for specific institutions. Many state and industry experts assert that FHWA's RD and TD funds are of fundamental importance to the states and their long-term ability to maximize the effective use of federal aid funds. The states support continuation of the FHWA RD and TD program as well as the Strategic Planning and Research Program, which is a takedown off of the federal aid program that provides R&D funds directly to the states.

As part of the reauthorization process, Congress is likely to address how much money should be authorized for the core RD and TD activities conducted or supported by the FHWA, which objectives of research and technology deployment should receive emphasis or dedicated funding, and, in some cases, which organizations should conduct research or the training of new investigators. Also, the reauthorization statute is likely to include a specific funding amount for the Local Technical Assistance Program, National Highway Institute, and the University Transportation Centers.

In addition, Congress may also examine ways to strengthen and improve federal involvement in surface transportation RD and TD activities. There are several issues of continuing concern: how to increase and improve stakeholder input into the process, ways to foster more effective accounting and use of RD and TD expenditures, and methods to improve the implementation and coordination of a diverse research program within a decentralized and diverse community. Also, many groups are concerned over the extent of earmarking that historically occurs with these funds. (CRS contact: Paul Rothberg)

Transit Issues

Transit Program Structure

TEA21 made few changes in the overall structure of the federal transit program. There are two major transit programs: the Urbanized Area Formula Grants Program (\$3.3 billion in FY2002) and the Capital Investment Program (\$2.8 billion in FY2002). The Capital Investment Program has three components: New Starts (earmarked funding for new or expanded fixed-guideway systems), Fixed-Guideway Modernization (formula funding for repairs to existing systems), and Bus & Bus Facilities (discretionary funding). There are also several smaller programs, including the Non-Urbanized Areas Formula Program, Grants for Elderly & Individuals with Disabilities, Job Access & Reverse Commute Program, Rural Transportation Accessibility Program, the Clean Fuels Program, and Research and Planning programs.

Transit Reauthorization Issues

Reducing the Federal Share for New Starts. One response to the alleged gap between transit capital funding needs and the level of funds available has been a proposal to reduce the federal matching share for FTA's New Starts program. This program helps finance new fixed-guideway transit systems or extensions to existing systems. The current federal share for transit projects by statute is 80%, the same as for most highway projects (this was raised from 75% in 1991 by ISTEA). Congress has directed FTA not to sign any full-funding grant agreements for New Starts projects that provide a federal share of more than 60% after FY2002³⁵; the Bush Administration has proposed reducing the federal share to 50% after FY2003.³⁶

FTA reports that the federal share for New Starts projects with full funding grant agreements has averaged around 50% over the past 10 years (56% for agreements signed between 1992-1997, and 46% for agreements signed between October 1999-

³⁵House Report 107-308, to accompany H.R. 2299 (the FY2002 Department of Transportation and Related Agencies Appropriations Bill), p. 114.

³⁶Federal Transit Administration, *FY2003 Annual Report on New Starts*, p. 7.

November 2001). However, the individual agreements making up this average ranged from 19% to 80%.³⁷ This reduction in the average federal share for recent New Starts projects may be due in part to FTA's own efforts to stretch available funding by using the amount of federal share requested as a consideration in prioritizing candidate projects.

Critics of the proposal to formally cap the federal share at a lower level point to the success of FTA's efforts as evidence that a blanket lower cap is unnecessary. They argue a blanket lower cap would penalize projects already partly through the New Starts process whose plans are premised on receiving a higher federal share, and that the change could disproportionately hurt poorer communities, which might not have the fiscal resources to provide a higher local match. They also note that state and local officials have testified that lowering the federal share may encourage transportation planners to take advantage of flexible funding and move funding away from transit projects toward highway projects, where the federal match is still 80%.

Supporters of lowering the cap on the federal share argue that the change would simply formalize the current trend of federal cost-sharing in New Starts projects. They also argue that requiring a higher local match would promote a more rigorous review of a project's merits at the local level, perhaps weeding out some marginal projects. They note that the level of local match provided in New Starts projects seems to have little relation to the fiscal ability of the community; rather, the variance in level of local match provided seems related primarily to a community's willingness to ask for a higher federal match, and therefore penalizes communities which provide a higher local match. And they also note that even though FTA has produced a low average federal share recently, a blanket cap would still free up a significant amount of money.³⁸

Increased Funding for Transit as Part of Any Increase in the Federal Fuels Tax. The primary funding source for transit is the previously mentioned Mass Transit Account of the Highway Trust Fund. The account currently receives 2.86¢ of the 18.4¢ federal excise tax (15.5% of the tax), which brings in about \$4.6 billion annually. Transit interests believe that they should share in any new revenue increases for the overall surface transportation program due to a long standing informal agreement that directs 20% of each increase in the federal fuel tax to the Mass Transit Account.

TEA-21 produced a significant increase in the size of FTA's programs, from \$4.8 billion in FY1998 to \$7.2 billion in FY2003. In 2000, total transit spending from all sources was \$32.2 billion: \$9.6 billion for capital investment and \$22.6 billion for

³⁷General Accounting Office, *FTA's New Starts Commitments for Fiscal Year 2003*, GAO-02-603, 24.

³⁸Of the 49 projects currently in final design or preliminary engineering that GAO reviewed for the report cited in footnote #4, a 60% cap on the federal share would save about \$500 million of the proposed \$20.59 billion; a 50% cap would save about \$1 billion. GAO-02-603, p. 24.

operating expenses. Total federal assistance was \$7.7 billion, 24% of total transit spending. Almost all federal transit assistance (94% in FY2000) is for capital investment.

In the face of growing traffic congestion and air quality problems, and increasing transit ridership, many communities without transit systems want them and communities with transit systems want to expand them. As mentioned earlier in this report, a not yet released biannual needs study by the FHWA and FTA is expected to show a large gap between the amount of funding available for transit and the Nation's transit needs. The transit industry, therefore, supports all efforts to provide additional funds during the reauthorization period.

Maintaining the Guaranteed Obligation Limit. One of the innovations of the TEA-21 authorizing legislation described earlier was the creation of guaranteed obligation limits for transportation programs funded from the Highway Trust Fund. Proponents of transit support this guaranteed obligation limit noting that it has provided a steady increase in transit funding during the current authorization period; also, it has enabled recipients to predict their future funding levels, assisting their long-term capital planning and making possible innovations in project financing.

Funding for Small Transit Intensive Cities. The formula for apportioning transit formula funds to small cities—urbanized areas with populations less than 200,000—is different from that used for larger areas. The formula for small cities uses only population and population density as factors, while that for larger areas includes factors reflecting the amount of service that the city provides.

Some argue that as a result, small cities that provide a higher-than-average level of transit service do not receive a level of funding that recognizes their transit efforts. As a result of these concerns, Section 3033 of the TEA-21 directed DOT to study the issue. The DOT study concluded that sufficient issues existed to consider changes in the Urbanized Area Formula program formulas in the next reauthorization.³⁹

Rural Transit. The bulk of transit formula funds (\$3.5 billion in FY2002) go to large urbanized areas: 83% to areas over 200,000 in population, 9% to areas between 50,000 and 200,000, and 6% to non-urbanized areas (populations under 50,000).

Advocates of increased funding for small urban and rural areas assert that transit is needed by people who cannot afford cars or who cannot drive, and that rural areas have few transportation options and limited resources to fund transit; they say transit ridership in those areas would increase if transit were more available. Critics note that transit is most efficient where there are large concentrations of people, and it is also most needed in those areas, because the congestion created by large numbers of people commuting to work overwhelms the road network.

³⁹The study is available at <http://www.fta.dot.gov/library/policy/rtc/>.

Advocates of increased funding for rural transit have proposed that the distribution ratio for transit formula funds be changed to that used for the Job Access and Reverse Commute Program, thus providing more money to small urban areas and especially to rural areas. Critics of this proposal assert that the majority of transit funding should go where the majority of transit ridership is, which is in large urban areas. There were 405 urbanized areas in 2000, of which only 33 had populations over 1 million; these 33 largest urbanized areas alone accounted for 82% of all transit trips in 2000.⁴⁰

Bus Transit Issues. The other large transit program is the Capital Grants program, which received \$2.8 billion in FY2002. The Capital Grants Program is divided into three components: Fixed-Guideway Modernization, New Starts, and Bus & Bus Facilities. The funding for these three programs is divided 40-40-20; thus about 80% of the funding goes to fixed-guideway systems (mostly heavy and light rail, though Bus Rapid Transit also qualifies as a fixed-guideway system).

Some argue that a greater percentage of the Capital Grants Program funds should go to buses, because buses carry the majority of all transit riders, and most communities have little or no fixed-guideway service, and so are not eligible for the 80% of funds distributed to fixed-guideway systems.

Opponents of this policy change argue that while buses carry the majority of riders, the capital costs of bus service are relatively low because bus systems do not have to pay for their own infrastructure. They note that fixed-guideway transit systems are more efficient than buses by some measures; although only 13 cities have heavy rail transit systems, those systems alone account for about one-third of all transit trips, and for almost half of all transit passenger miles traveled. But fixed-guideway systems are expensive to build and maintain. Since the capital needs of fixed-guideway systems are great, while the capital needs of bus systems are relatively small, proponents of the status quo argue that most of the Capital Grants Program funds should go to fixed-guideway systems, rather than to bus systems. **(CRS contact: Randy Peterman)**

Intermodal Issues

Intermodal Connectors

Recent Department of Transportation (DOT) studies have found persistent traffic bottlenecks and inadequate access to freight transfer facilities. The access roads to these terminals are referred to as “intermodal connectors.” In TEA21 (Section 1106), Congress called on FHWA to examine the condition of intermodal connectors. The

⁴⁰Urbanized area figure from Census Bureau; ridership figures from American Public Transportation Association, *Public Transportation Fact Book*, Tables 26 & 28.

FHWA published its findings in January 2001.⁴¹ The Maritime Administration (MARAD) has examined the condition of intermodal connectors with seaports that includes rail as well as road access.⁴² The FHWA study found that the pavement of intermodal connectors is often in poor condition and the roads have deficient geometrics (limited turning radii at intersections, low clearances, inadequate shoulder width, etc.) for the heavy truck traffic they serve. Intermodal connectors that are in poor shape reduce service reliability and predictability. If connectors are a weak link in the transportation system, they raise shipping costs, limiting the productivity and competitiveness of U.S. businesses. Poor intermodal connectors can also result in long lines of idling trucks, reducing air quality and increasing energy consumption. In many cases, poor intermodal connectors also have a serious negative impact on traffic in the communities in which they are located.

As trade volumes have increased at rapid rates, and congestion is increasing on the nation's highway system, the issue of intermodal connections may be a microcosm of broader issues regarding the federal government's role in the nation's intermodal transportation system. Among the issues being discussed are: Do existing institutional arrangements encourage a cross-modal approach for transportation planning? Are existing funding programs too limited to include multimodal projects? Do we plan and operate the system as a system, and not as individual modes or elements? Freight stakeholders have made several proposals to seek what they view as adequate funding for intermodal freight connectors. They include dedicating a portion of NHS funds for intermodal connector projects, specifying that access to ports and gateways qualify for funding under the CORBOR program, and modifying CMAQ language to specify and encourage funding for freight projects. Others have proposed the creation of a multimodal trust fund at either the state or federal level to provide a funding source for intermodal transportation needs.

Freight Rail Infrastructure Funding

Class I freight railroads primarily finance projects themselves with almost no public assistance. Federal programs have funded some rail related projects but relative to other modes, funding is limited. Some policymakers are concerned with the railroads' ability to keep pace with changing economic circumstances. Economic and trade growth have raised questions about the current pace of development in rail freight capacity. Many observers believe that intermodal rail (truck trailers and containers) is a viable means of relieving congestion on certain parts of the nation's interstate highway system. At the same time, intercity passenger and commuter rail are increasingly asking the freight railroads for cooperation in corridor improvements. Intermodal traffic volume has tripled in the last twenty years from 3.1 million trailers

⁴¹U.S. Department of Transportation, *NHS Intermodal Freight Connectors, A Report to Congress*, July 2000. Available at [<http://ops.fhwa.dot.gov/freight/infrastr/nhs/>].

⁴²Maritime Administration, *Intermodal Access to US Ports -Report of Survey Findings*, Transportation Research Board, 27th Annual Summer Ports, Waterways, Freight & International Trade Conference, Pittsburgh, June 23-26, 2002. Available at [<http://gulliver.trb.org/publications/mb/2002Ports/06Chitwood.pdf>].

and containers in 1980 to 9.2 million units in 2000.⁴³ Much of the increase in intermodal volumes is the result of burgeoning trade volumes, particularly in marine containers. When double-stack trains first came into use in the early 1980s, the intermodal traffic absorbed the railroads' excess capacity. Today, however, due in large part to deregulation, supply and demand are in closer balance. If the railroads are to absorb the additional traffic forecasted, they will need to make (and are making) substantial investments in track and terminal capacity.

If policymakers choose to consider additional federal resources for rail capital improvements, among the approaches that have been proposed are the creation of a rail trust fund or the expansion of existing federal programs to include more eligibility for rail related projects. A trust fund, by providing a more predictable and steady source of funding, facilitates the planning and construction of long term projects. However, a rail trust fund could further fragment and compartmentalize federal funding along modal lines. Funding and managing transportation on a modal basis could make it more difficult to target resources where capacity may be needed most, such as the connections among modes. A second approach, permitting the use of highway trust fund dollars for rail projects, might increase the flexibility of local transportation planners in solving their transportation needs. Greater participation by the freight railroads in the local planning process may also augment state and local resources with private sector capital. However, a more liberal dispersion of highway trust fund dollars to non-highway users could diffuse political support for the program. In addition, expanding the eligibility of existing highway trust fund financed programs, such as CMAQ or CORBOR, to include rail, does not ensure that state DOTs and local MPOs will shift more resources to rail related projects. There are also some potential disincentives in law that may cause railroads not seek a greater role in intermodal projects pursued by localities.

A concern with federal assistance for rail freight projects is that unlike other modes, such as highways, waterways, and airways, freight railways are privately owned.⁴⁴ Another important difference with other modes is that railroads do not generally share their infrastructure with competitors. Many question if public funding should be used to support projects in private ownership and under private control. A possible drawback of public financial assistance is that it could, in extreme cases, lead to overinvestment in rail capacity. If public funds were available for construction of a new project, the project may have to pass a lower hurdle in terms of evaluating risk and return than if the project were financed by a railroad on a stand-alone basis. Industry observers caution that the physical life of a freight facility can outlive its economic life. Another concern with government participation in rail project funding is that it could defer the industry's cost saving strategies. Railroads have been improving profitability through mergers, trying to capture more market share from trucks through service improvements, selling light density track to regional and

⁴³Association of American Railroads, *Railroad Facts*, 2001 ed. p. 26.

⁴⁴ Amtrak owns the Northeast Corridor and operates on the tracks of freight railways outside the corridor.

shortline railroads, and investing in more fuel efficient locomotives. (**CRS contact: John Frittelli**)

Appendix 1: Transportation Budget Terminology

Transportation budgeting uses a confusing lexicon (for those unfamiliar with the process) of **budget authority** and **contract authority** — the latter, a form of budget authority. Contract authority, provides **obligational authority** for the funding of trust fund financed programs, such as the federal-aid highway program. Prior to TEA21, changes in spending in the annual transportation budget component had been achieved in the appropriations process by combining changes in budget/contract authority and placing **limitations on obligations**. The principal function of the limitation on obligations is to control outlays in a manner that corresponds to congressional budget agreements.

Contract authority is tantamount to, but does not actually involve, entering into a contract to pay for a project at some future date. Under this arrangement, specified in Title 23 U.S.C., which TEA21 amends, authorized funds are automatically made available to the states at the beginning of each fiscal year and may be obligated without appropriations legislation. Appropriations are required to make outlays at some future date to cover these obligations. TEA21 greatly limited the role of the appropriations process in core highway and transit programs because the Act enumerated the limitation on obligations level for the period FY1999 through FY2003 in the Statute.⁴⁵

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

Both the highway and transit accounts have substantial short- and long-term commitments. These include payments that will be made in the current fiscal year as projects are completed and, to a much greater extent, outstanding obligations to be made at some unspecified future date. Additionally, there are unobligated amounts that are still dedicated to highway and transit projects, but have not been committed to specific projects.

Two terms are associated with the distribution of contract authority funds to the states and to particular programs. The first of these, **apportionments**, refers to funds distributed by the FHWA to the states under formulas set by TEA21. For example, all national highway system (NHS) funds are apportioned to the states. **Allocated** funds, are funds distributed by FHWA, typically to programs under direct federal control. For example, federal lands highway program monies are allocated; the

⁴⁵ Because the limitation on obligations is still included in appropriations limitations the funds provided are still considered discretionary for purposes of the congressional budget.

allocation can be to another federal agency, to a state, to an Indian tribe, or to some other governmental entity. These terms do not appear in the congressional budget, but often provide a frame of reference for highway program recipients, who may assume, albeit incorrectly, that a state apportionment is part of the federal budget per se.

Appendix 2: Reauthorization Hearings in the 107th Congress, 2nd Session

- U.S. Congress. Senate. Committee on Commerce, Science & Transportation. *Hearing on NTSB Reauthorization*. June 25, 2002.
- U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs. Hearing. *Perspectives on America's Transit Needs*. October 8, 2002.
- Subcommittee on Housing and Transportation. Hearing. *Transit in the 21st Century: Successes and Challenges*. March 13, 2002.
- Hearing. *Transit in the 21st Century: Successes and Challenges*. April 25, 2002.
- Hearing. *TEA-21: A National Partnership*. June 13, 2002.
- Hearing. *TEA-21: Investing in Our Economy and Environment*. June 26, 2002.
- Hearing. *Transit: A Lifeline for America's Citizens*. July 17, 2002.
- U.S. Congress. Senate. Committee on Environment and Public Works. Hearing. *Transportation for the Next Generation*. August 20, 2002.
- Hearing. *Transportation and Air Quality*. July 30, 2002.
- Hearing. *Transportation Planning and Smart Growth*. May 15, 2002.
- Hearing. *Mobility, Congestion and Intermodalism*. March 19, 2002.
- Hearing. *Partners for America's Transportation Future*. January 24, 2002.
- Subcommittee on Transportation, Infrastructure, and Nuclear Safety. Hearing. *TEA-21: State of the Highway Infrastructure*. September 30, 2002.
- Subcommittee on Transportation, Infrastructure, and Nuclear Safety. Hearing. *FY2003 FHWA Budget*. February 11, 2002.
- , and U.S. Congress. Senate. Committee on Finance. *Joint Hearing on TEA-21 Reauthorization: Innovative Financing – Beyond the Highway Trust Fund*. September 25, 2002.
- , and U.S. Congress. Senate. Committee on Commerce, Science & Transportation. Subcommittee on Surface Transportation and Merchant Marine. *Joint Hearing on Intermodal Transportation*. September 9, 2002.

- U.S. Congress. House. Committee on Transportation and Infrastructure. Subcommittee on Highways and Transit. *Hearing on Federal Lands Highway Program*. October 9, 2002.
- - - - -. *Hearing on H.R. 5455: Expediting Project Delivery to Improve Transportation and the Environment Act.* October 8, 2002.
- . *Hearing on Status of the Nation's Highway and Transit Systems: Capital and Maintenance Needs*. September 26, 2002.
- - - - -. *Hearing on Stakeholder Proposals for the Reauthorization of Surface Transportation Programs*. September 19, 2002.
- . *Hearing on Intelligent Transportation Systems*. September 10, 2002.
- . *Hearing on Transportation Solutions in a Community Context: The Need for Better Transportation Systems for Everyone*. July 25, 2002.
- - - - -. *Hearing on Long-term Outlook on Highway Trust Fund: Are Fuel Taxes a Viable Measure?* July 16, 2002.
- . *Hearing on Trucking Safety*. July 9, 2002.
- - - - -. *Hearing on Various Approaches to Improving Highway Safety*. June 27, 2002.
- . *Hearing on Federal Transit Capital Grants Programs*. June 20, 2002.
- . *Hearing on Intermodalism: Moving America's People and Goods*. June 18, 2002.
- . *Hearing on Relieving Highway Congestion through Capacity Enhancements and Increased Efficiency*. May 21, 2002.
- . *Hearing on Major Project Management: Solutions for Major Success*. May 1, 2002.
- - - - -. *Hearing on How Transit Serves and Benefits U.S. Communities*. April 17, 2002.
- - - - -. *Hearing on Ensuring the Integrity of the Highway Trust Fund*. March 20, 2002.
- - - - -. *Hearing on Perspectives of Governors and Local Elected Officials on Reauthorization of TEA 21*. February 28, 2002.