

# CRS Report for Congress

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## Surface Transportation and Aviation Extension Legislation: A Historical Perspective

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### Summary

Congress is currently considering the issue of providing extension legislation to keep surface transportation and aviation programs operating beyond October 1, 2003. In the case of surface transportation, congressional authorizing and tax committees have been unable to reach final agreement on the details of a multi-year reauthorization bill. For aviation it is not clear that conference agreed upon legislation (H.R. 2115) will be brought before either the House or the Senate before October 1<sup>st</sup> and may be reconsidered at a later date. In order to keep certain federal transportation programs operating at least a short-term reauthorization is required. Extension legislation has been enacted in the past. As this report shows, extension legislation is not a regular feature of the surface transportation reauthorization cycle. In the last decade, however, it has become a common feature of the aviation reauthorization cycle. This report will not be updated.

This report identifies instances in which Congress has provided for short-term extension of surface transportation and aviation reauthorization legislation pending completion of multi-year bills.

### Surface Transportation Extensions

There have been four major reauthorizations of surface transportation programs since 1980. None of the major reauthorizations was enacted prior to the statutory expiration of the federal-aid highway, highway safety, and transit programs. As will be discussed below only one program extension became law (in 1997). An additional program extension beyond the original extension was considered in 1998, but was rejected in the House. In 1981, an Act (P.L. 97-134) was passed to modify the authorization levels for FY1982. This Act while not true extension legislation was viewed by some as a necessary event in the debate that led to passage of multi-year reauthorization in late

1982. Extensions may have been discussed during the other two reauthorization cycles, 1986/1987 and 1991, but CRS has not found any legislation that received significant congressional consideration during those periods.

The remainder of this section briefly discusses each of the four surface transportation reauthorization cycles since 1980 from the perspective of extension legislation. In viewing each of these cycles it needs to be remembered that some surface transportation funding did not require authorizing legislation. This was especially the case prior to the budget changes made in TEA21 (P.L. 105-178). Prior to TEA21, an appropriations act was sufficient to allow the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and other Department of Transportation (DOT) agencies to continue operating. These agencies were able to spend available discretionary funds and reimburse states for the use of previously obligated funds, but were not able to obligate new funds. In each reauthorization cycle, the most recent congressional action generally supercedes any previous action (the exception is if the act specifically provides otherwise). For example, the limitation on obligations set by the DOT appropriations act for FY1992 (October 1991) was superceded by the amount enumerated in the Intermodal Surface Transportation Efficiency Act (ISTEA)(December 1991).

#### **Transportation Equity Act for the 21<sup>st</sup> Century (TEA21)(P.L. 105-178).**

The most recent reauthorization was anticipated prior to the beginning of FY1998 on October 1, 1997. While legislation had been reported from the authorizing committees in the House and the Senate, neither had received floor consideration as of October 1<sup>st</sup>. Instead, the House on October 1<sup>st</sup> passed a six-month extension bill, H.R. 2516. The bill would have provided that approximately half of the funding expected in the full reauthorization bill then under consideration in the House (H.R. 2400) be provided for the first six-months of FY1998. The bill used the then existing reauthorization framework for distribution of the funds to the states.

Legislation introduced in the Senate on November 10, 1997 as S. 1519 and ultimately enacted as P.L. 105-130 also provided for extension of surface transportation programs, but did so in a different way. The Act provided some new contract authority, but primarily continued the highway programs by granting states access to unobligated carryover funds. Limits were placed on how much could be obligated and all obligations had to be made by May 1, 1998. Additional new funds were provided for safety and transit programs at a level comparable to six-months of their FY1998 appropriation.

An attempt to extend ISTEA was made in April 1998 by Rep. John Pratt who sought to provide a further two-month extension during House consideration of H.R. 2400 (H.Amdt. 550). This extension was defeated by recorded vote. No further extension legislation was offered prior to enactment of TEA21 on June 9, 1998.

**Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)(P.L. 102-240).** Final consideration of what became ISTEA was delayed by congressional consideration of the “a nickel for America” fuels tax increase proposal that was ultimately dropped for budgetary reasons. Congress did not enact extension legislation during consideration of ISTEA. It also does not appear that extension legislation received any consideration at that time. Except for those activities that could be continued as part of the appropriations process, the surface transportation programs lapsed on October 1, 1991. The lack of funding for the program, and the negative effect this was having on state

transportation construction programs, was one of the principal subjects of the congressional debate that led to the passage of the ISTEA conference report in the early morning hours of Thanksgiving eve.

Interestingly, the FY1992 Appropriations Act did not adopt the same program format as the one that ultimately evolved from ISTEA. The Senate version of the appropriations bill did have the same structure as the Senate reauthorization proposal, but this was stripped out in conference with the House. The Appropriations Act as passed, however, did contain sufficient funds to allow for the spending authorized in ISTEA and the Appropriations Committee did not take further action to modify the FY1992 Act.

**Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)(P.L. 100-17).** Of the reauthorization cycles under discussion here, STURAA was by far the most politically complicated. There was, however, very limited debate about program structure and few major programmatic changes were made by the Act. STURAA was considered against the backdrop of the debate about the federal deficit. Reauthorization was anticipated prior to October 1, 1996. Instead final passage did not occur until April 2, 1997, when Congress overrode President Reagan's veto of the legislation.

The Senate passed its version of reauthorization, H.R. 3129 (amended to include S. 2405 in the nature of a substitute) on September 24, 1986 and immediately appointed conferees. The House had completed its consideration of the bill on August 6, 1986. A conference was held on October 3, 1986, but the conferees were unable to reach agreement prior to adjournment of the 99<sup>th</sup> Congress. The lack of an agreement was specifically related to an inability by the Conference to agree on a funding level that was acceptable to the Reagan Administration and also to arguments about raising the speed limit that was then 55 miles per hour. There is no indication that extension legislation was considered prior to adjournment. Instead, it can be inferred from comments made at the time that highway industry interests preferred that the issue be taken up by a new Congress that they hoped might be more sympathetic to their appeal for additional funding.

The 100<sup>th</sup> Congress took up reauthorization almost immediately upon its arrival, beginning consideration of H.R. 2 in January of 1987. H.R. 2 was identical to the House bill sent to conference the previous year. Due to a change in party leadership in the Senate, the Senate bill introduced was not the bill passed by the Senate, but was instead identical to the bill as originally introduced the previous year. Consideration of these bills was somewhat contentious, but a Conference Report was agreed to on March 17, 1987. President Reagan immediately vetoed the bill. Congress overrode the veto in the Senate by a one vote margin. This was in spite of the fact that the President made an unusual visit to Hill just prior to the Senate vote to lobby against the veto override. During the whole period discussed above, no extension legislation was considered. Instead it appears that pressure from the states to effect passage of the legislation prior to the summer building season was an important aspect of consideration prior to passage.

**Surface Transportation Assistance Act of 1982 (STAA)(P.L. 97-424) and the Act “to amend the Surface Transportation Assistance Act of 1978, to establish obligation limitations for fiscal year 1982, and for related purposes” (P.L. 97-134).** Consideration of a multi-year reauthorization bill began in 1981 against the backdrop of a national recession and the new Reagan Administration’s calls for overall reductions in government spending. The then-in-force reauthorization act, the Surface Transportation Assistance Act of 1978 (P.L. 95-599)(November 6, 1978, had purposely included a reduction in spending for FY1982 in order to accommodate the budgetary concerns of the Carter Administration.

Congress began consideration of multi-year legislation in early 1981 after receiving two separate reauthorization proposals, one from the departing Carter Administration and one from the new Reagan Administration. The Reagan Administration called for some significant changes in the program, devolving certain activities to the states and reducing funding for other activities. During the remainder of the session the Senate considered multi-year reauthorization legislation (S. 1024), while the House only considered single year legislation for FY1982 (H.R. 3210). The House completed action on its bill in September. The Senate did not consider its bill until November 16, 1981 and then voted to delay future consideration of the bill. In December 1981, Congress reached agreement on what was referred to by most as “interim” legislation (P.L. 97-134). Although this action occurred after the beginning of FY1982, some funds for the year were available as detailed in the 1978 Act.

Consideration of what became the STAA began early in 1982 and continued throughout the year until final passage of the conference agreement by the Senate on December 23, 1982. The STAA is considered landmark legislation, because it raised the federal fuels tax by five cents and created the mass transit account of the highway trust fund. The Act contained numerous significant programmatic changes for both highways and transit, but most of the debate was about raising the fuels tax, which was originally opposed by the Reagan Administration, but later in the year supported as a user fee increase. The fuels tax increase was unpopular with some until the end. Only a cloture vote in the Senate, ending a filibuster against the fuels tax increase, allowed final passage of the conference report.

There is no indication that extension legislation was seriously considered after the October 1, 1982 expiration of the highway program (prior to the creation of the mass transit account by the STAA all transit funding was discretionary and subject to annual appropriations). As was the case in earlier reauthorization cycles discussed above, it seems that the pressure on Congress by the states to complete consideration of the reauthorization was viewed as a plus by those pushing for speedy congressional action.

## **Aviation Extensions**

This section briefly discusses the history of short term extensions of the Federal Aviation Administration’s (FAA) authorization within the context of the reauthorization acts of the 1990s. It discusses in more detail the authorization extensions that preceded the passage of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (AIR21; P.L. 106-181).

Reauthorization extensions have been more numerous over the last four aviation reauthorization cycles than has been the case for surface transportation programs. Prior to the enactment of AIR21 on April 5, 2000, there were four extension bills and two periods when the Airport Improvement Program (AIP) went into abeyance. The Federal Aviation Act of 1996 (P.L. 104-264) was enacted just nine days after the FAA's authorization expired and no extension was necessary for this brief period of program abeyance. The passage of the Federal Aviation Administration Authorization Act of 1994 (P.L. 103-305) was preceded by the Airport Improvement Program Temporary Extension Act of 1994 (P.L. 103-260) which provided a six month, mostly retroactive, extension of obligational authority for AIP. Finally, the Airport and Airway Safety and Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 (P.L. 102-581) authorized FAA programs for one year. In effect the Act was an interim authorization of all FAA programs, although some might view it as a full year extension.

During the nearly two year debate over the reauthorization of the Federal Aviation Administration (FAA) that eventually led to the passage of AIR21, Congress passed several short term authorizations for the AIP. The AIP provides grants for airport development and could be viewed as the construction portion of the FAA budget. At the time, other FAA budget categories (operations & maintenance, facilities & equipment, and research, engineering & development) could operate for a time under appropriations, but the failure to authorize the AIP would halt the funding of any new projects. A brief description of the series of short term AIP authorizations during FY1999 provides an example of the mechanics of authorization extension legislation. The existing authorization had ended on September 30, 1998.

The first extension of AIP's authorization was a six month extension that was inserted into the FY1999 Omnibus Appropriations Act (P.L. 105-277). This was done by basically changing the authorization dates to October 1, 1998 and March 31, 1999 and replacing the authorization amount to an amount prorated to six months in 49 U.S.C. 48103. The provision also extended the obligational authority language (49 U.S.C. 47104(c)) striking the ending date of September 30, 1998 and replacing it with March 31, 1999. By this later date, however, reauthorization legislation (AIR21) had still not emerged from conference.

The second extension, the Interim Federal Aviation Administration Authorization Act (P.L. 106-6), enacted on March 31, 1999, basically added two months to the authorization by increasing the authorization to an eight-month amount by striking the six-month amount and inserting "\$1,607,000,000 for the 8-month period beginning October 1, 1998." The obligational authority language merely changed the month from March to May.

The third extension, inserted in the FY1999 Emergency Supplemental Appropriations Act (P.L. 106-31), enacted May 21, 1999, struck the language inserted on March 31, 1999 and replaced it with "\$2,050,000,000 for the period beginning October 1, 1998 and ending August 6, 1999." The obligational authority language struck, "May 31, 1999," and inserted "August 6, 1999."

After August 6, 1999, the authorization was allowed to expire, perhaps to maintain pressure for action on the multi-year appropriations when Congress returned from its August recess. However, as the end of the 1999 fiscal year approached agreement was

still not in sight. Near the end of September 1999, Congress passed what was, in effect a retroactive authorization extension (P.L. 106-59). This extended the authorization to the end of the fiscal year and allowed the funds, not obligated during the period of abeyance, to be released.

P.L. 106-59 was the last extension. The AIP was held in abeyance from October 1, 1999 until AIR21 was finally enacted on April 5, 2000. Again, some observers believed that allowing the authorization to expire at the end of FY1999 and passing no extensions may have increased the pressure on the conferees to eventually report out a bill.

Prior to the passage of AIR21, components of the FAA, other than AIP, could operate on their appropriations. Title X of AIR21 appears to require that any authorization, including any extension, broadly reauthorize FAA programs and operations in order to facilitate the agency's continued operation.

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