

CRS Issue Brief for Congress

Received through the CRS Web

Transportation Issues in the 108th Congress

Updated December 22, 2003

David Randall Peterman, Coordinator
Resources, Science, and Industry Division

CONTENTS

SUMMARY

MOST RECENT DEVELOPMENTS

BACKGROUND AND ANALYSIS

Introduction

Department of Transportation Appropriations

Surface Transportation Reauthorization

 Highway and Transit Program Reauthorization Issues

 Congestion

 Transit Reauthorization

 Environmental Issues

 Safety Issues

Aviation Reauthorization

Transportation Security

 Surface Transportation Security

 Ports and Maritime Security

Amtrak Issues

Airline Industry Financial Turmoil

Environmental Issues

 Conformity

 Diesel Engines and Fuel

 Alternative Fuels and Vehicles

Transportation Issues in the 108th Congress

SUMMARY

This issue brief identifies key transportation issues facing the 108th Congress.

Transportation Budget. House and Senate conferees agreed on \$58.8 billion for the Department of Transportation for FY2004, \$4.5 billion more than the Administration requested. The House has approved the conference bill (now part of an omnibus appropriations bill); the Senate adjourned without acting on the bill, and is scheduled to reconvene on January 20, 2004. A continuing resolution provides FY2004 funding through January 31, 2004.

Surface Transportation Reauthorization. Authorizing legislation for the existing federal highway and transit programs expired at the end of FY2003. Congress passed a five-month extension of the authorizing legislation, expiring at the end of February 2004. The Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA, H.R. 2088/S. 1072), the Administration's reauthorization proposal, would authorize \$248 billion over 6 years, representing minimal increases in program spending over the next six years, and a decrease in year-over-year spending in FY2004. The House Transportation and Infrastructure Committee bill, The Transportation Equity Act: A Legacy for Users (TEA-LU, H.R. 3550), calls for \$375 billion. The Senate has introduced the highway portion of its reauthorization bill (also called SAFETEA, S. 1072); it calls for \$255 billion (compared to \$195 billion for highways in the Administration bill and \$299 billion for highways in the House bill). The transit portion of the Senate bill is not expected to be introduced until after the financing portion has been introduced. Both the House and Senate bills propose more funding than can be supported by current revenues to

the Highway Trust Account; the authorizing committees have proposed raising the federal gas tax to provide more revenue, but there is opposition to this in Congress and from the Administration.

Aviation Reauthorization. Congress approved H.R. 2115 (P.L. 108-176), reauthorizing key Federal Aviation Administration (FAA) functions. A key issue was protecting certain air traffic control functions from privatization. The conference agreement omitted controversial protection provisions, accepting an FAA commitment not to pursue privatizing these functions during FY2004.

Transportation Security. Security of transportation continues to be a key issue for Congress. The overarching concern is what security actions can reasonably be taken in each transportation mode without excessively impeding commerce and travel. Congress continues to consider legislative proposals to strengthen aviation and surface transportation security.

Amtrak Issues. For FY2004, conferees have agreed on \$1.225 billion for Amtrak: the Administration requested \$900 million, while Amtrak said it needed \$1.8 billion. Amtrak's authorization expired at the end of FY2002; reauthorization has been stalled by disagreement over the future shape of federal passenger rail policy.

Airline Industry Turmoil. The economy and world events have dramatically affected the airline industry. The airlines lost record amounts of money in 2002, which followed what had been the previous record loss experienced in 2001. Congress has provided some short-term relief for the ailing airline industry in 2003.

MOST RECENT DEVELOPMENTS

On December 8, 2003, the House passed the conference version of the FY2004 Department of Transportation appropriation as part of H.R. 2673, the FY2004 Consolidated Appropriations bill (Omnibus). The bill provides \$58.8 billion for transportation programs (less a 0.59% across-the-board rescission). The House had approved its version of the annual transportation appropriations bill on September 9, 2003; the Senate approved its version on October 23, 2003.

On November 21, 2003, Congress passed the fourth continuing resolution for FY2004 funding, including Department of Transportation programs, extending funding for the affected programs to January 31, 2004 (P.L. 108-135).

On November 21, 2003, Congress passed H.R. 2115, reauthorizing the Federal Aviation Administration.

On September 30, 2003, President Bush signed into law legislation extending funding authorization for surface transportation programs for five months, to February 2004. (P.L. 108-88).

BACKGROUND AND ANALYSIS

Introduction

This issue brief provides an overview of key issues on the transportation agenda of the 108th Congress. The issues are organized under the headings of budget; highway and transit reauthorization; aviation reauthorization; transportation security; Amtrak; airline industry financial turmoil; and environmental issues, with the author of each issue identified. Relevant Congressional Research Service (CRS) reports are cited in the text. Consult the CRS HomePage [<http://www.crs.gov/>] or the *Guide to CRS Products*, or call CRS on (202) 707-5700 to obtain the cited reports or identify materials in other subject areas.

Department of Transportation Appropriations

Appropriations for the Department of Transportation (DOT) (Function 400 in the federal budget) provide funding to a variety of programs that include regulatory, safety, research, and construction activities. Money for over half of DOT programs comes from highway fuel taxes, which are credited to the highway trust fund. In turn, the trust fund supports two accounts: the federal-aid highway account and the mass-transit account. Aviation programs are also supported in part by fuel taxes, but rely more heavily on other user fees such as the airline ticket tax. The DOT annual appropriations also include significant monies from Treasury general-fund revenues.

Table 1 shows funding for FY2003, as well as the FY2004 amounts proposed by the Bush Administration and Congressional action to date.

Table 1. Department of Transportation Appropriations*
(for selected agencies, in millions)

Agency	Enacted FY2003	Requested FY2004	House Passed	Senate Passed	Conference FY2004 ^a
Federal Highway Administration	32,409	30,225	34,873	34,768	34,692
Federal Aviation Administration	13,510	14,007	**10,600	13,971	13,930
Federal Transit Administration	7,179	7,226	7,231	7,305	7,309
Federal Railroad Administration	1,261	1,089	1,087	1,568	1,455
National Highway Traffic Safety Administration	434	665	435	301	451
Federal Motor Carrier Safety Administration	305	447	474	483	366
Maritime Administration	230	219	219	228	222
Office of the Secretary	173	177	159	172	166
Research and Special Programs Administration	105	118	111	110	113
Office of the Inspector General (OIG)	55	55	55	56	56
Surface Transportation Board (STB)	18	18	18	18	18
Budgetary Resources Net Total	55,674	54,266	55,171	59,142	58,794

Source: Figures in **Table 1** are drawn from the budget table provided by the House Committee on Appropriations. Due to differing treatments of offsets, rescissions, and the structure of appropriations bills, the figures will at times differ from those in the Administration's Budget Request. Some figures include offsetting collections. Enacted FY2003 figures reflect the 0.65% across-the-board rescission. Conference figures do not include the 0.59% across-the-board rescission.

*The United States Coast Guard and the Transportation Security Administration were included in DOT appropriations bills through FY2003; they were transferred to Department of Homeland Security during FY2003 (P.L. 107-296). Since they are no longer included in DOT's appropriation, their FY2003 numbers are omitted from this table.

**The grants-in-aid to airports program, for which the House Committee on Appropriations had recommended \$3.425 billion, was eliminated on a point of order during the House floor debate on H.R. 2989.

^a. The omnibus includes a 0.59% across-the-board rescission; these numbers do not reflect the rescission.

House-Senate conferees agreed on \$58.8 billion for transportation programs, 8% more than the Administration requested (\$54.3 billion) for DOT for FY2004 and 6% more than provided in FY2003.¹ The major difference between the Administration's request and the conference agreement was in highway funding; the Administration requested less funding than in FY2003, and the Congress provided more than in FY2003. The other major difference with the Administration request was over Amtrak funding; the Administration requested \$900 million, 14% below the FY2003 enacted level. The House agreed to this amount, the Senate proposed \$1.35 billion, and conferees agreed on \$1.225 billion. Aside from these issues, House and Senate generally agreed to the Administration's requested levels. The Transportation-Treasury appropriations bill was delayed in part due to disagreements over policy provisions in the non-transportation sections of the bill; although a conference agreement was reached on November 25th, the decision was made to include that bill in an Omnibus with 6 other appropriations bills. The House approved the Omnibus bill on December 8, 2003; the Senate adjourned for the year without considering the bill. A

¹ The FY2003 DOT appropriation included the Transportation Security Administration and the United States Coast Guard, which were transferred to the Department of Homeland Security during FY2003 and are not included in DOT's FY2004 appropriation request; the FY2003 request did not include the Maritime Administration, which is included in DOT's FY2004 appropriation request. The Administration's FY2004 request is 14% more than its original FY2003 request, due to the impact the Revenue-Aligned Budget Authority (RABA) provision had on FHWA's FY2003 authorized funding level. Congress set the FY2003 RABA adjustment to \$0, which effectively increased the amount of funding the Administration requested for FHWA.

continuing resolution is providing funding through January 31, 2004 at FY2003 levels. Since the continuing resolution does not include Congressional directions for discretionary program funds (i.e., earmarks), the Department of Transportation is not likely to make any funding available under discretionary programs until after Senate action on the Omnibus. For more information see CRS Report RL31808, *Appropriations for FY2004: Transportation, Treasury, Postal Service, Executive Office of the President, General Government, and Related Agencies*. (CRS contact: David Randall Peterman)

Surface Transportation Reauthorization

Highway and Transit Program Reauthorization Issues

The Transportation Equity Act for the 21st Century (TEA-21)(P.L. 105-178 & P.L. 105-206), the authorizing legislation for the existing federal highway, highway safety, and transit programs, was scheduled to expire at the end of FY2003; it was extended by five months to give Congress more time to consider reauthorization of these programs. TEA-21 provided for a dramatic increase in funding for federal surface transportation programs: the total TEA-21 authorization was about 40% more than the amount that had been authorized in the previous 6-year program authorization. Further, a mechanism created by TEA-21, Revenue-Aligned Budget Authority (RABA), provided the program with an additional \$9.1 billion over TEA-21's 6-year life.

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 is taking 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 TEA-21, there appears to be an expectation in some quarters that the reauthorization under discussion should also provide for a large increase in funding. Much of the lobbying involving reauthorization is predicated on the belief that some significant source of additional revenue can be identified. Given the existing state of the economy and concerns about the costs associated with the war on terrorism, the war with Iraq, and the cost of Iraq's reconstruction, such a conclusion is far from foregone. The Administration went on record against major spending increases with its FY2004 budget submission and in its proposed reauthorization legislation: the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA).²

The money question aside, there appears to be 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, adding some new stand-alone programs, or consolidating several traffic safety programs into a single program. Among the issues being considered are: allowing states greater flexibility in how they use their transportation funds; retention of the existing highway trust fund funding framework established by TEA-21; financial assistance for physical infrastructure security; streamlining of environmental evaluations required by the

² [http://www.fhwa.dot.gov/reauthorization/safetea_bill.htm]

project approval process; a new categorical grant program for highway safety; and an increased focus on reducing drunk driving and increasing seat belt use.

In May 2003, the Bush Administration released its reauthorization proposal, SAFETEA, introduced by request as H.R. 2088 and S. 1072. The proposal, as noted above, calls for minimal increases in program spending over the next six years. The bill makes some programmatic changes, for example, by creating a consolidated highway-safety grant program and by establishing a new program for ready-to-go highway and transit projects, but otherwise adopts the existing TEA-21 structure. The Administration's proposed six-year spending level of \$247 billion is well below the stated goals of both the leadership of the House Transportation and Infrastructure Committee, \$375 billion, and the leadership of the Senate Environment and Public Works Committee, \$311 billion. As a result, it is unlikely that the Administration's bill will receive serious congressional consideration, but elements of the proposal will probably be incorporated into the respective House and Senate bills.

The Senate Committee on Environment and Public Works took a first cut at marking up its portion of the of the reauthorization bill in mid-November 2003. The Committee bill is similar in structure to the Administration bill and has the same name. The bill provides for additional funding and adds several new programs. The bill is, however, incomplete, with several sections of the bill, including its minimum guarantee provisions, left for markup early in the 2nd Session. The Senate Committee on Commerce, Science, and Transportation Committee also has marked up its portion of the bill (S. 1978), which deals primarily with safety programs and activities.

The leadership of the House Committee on Transportation and Infrastructure released a copy of what will be its mark-up document, Transportation Equity Act: A Legacy for Users (TEA-LU) on November 19, 2003. The House bill creates a number of new programs and has a somewhat different funding emphasis than the Senate and Administration bills, but chiefly authorizes significantly higher funding for all highway, highway safety, and transit programs. Like the Senate bill, the bill as released has a considerable number of gaps that will need to be addressed during markup in the 2nd Session.

While Congress continues to consider reauthorization proposals, all existing programs continue to operate on the basis of a five-month extension (P.L. 108-88) that terminates on February 29, 2004. This should, according to authorizing committee sources, give Congress time to complete action on a reauthorization bill early in the second session. For more information, see CRS Report RL31665, *Highway and Transit Program Reauthorization* and RS21621, *Surface Transportation and Aviation Extension Legislation: A Historical Perspective*. (CRS contact: John Fischer)

Congestion. There are few individuals living near major urbanized areas who could honestly claim to be unaffected by congestion-caused delays. In the last several decades there have been numerous attempts to reduce traffic congestion, primarily at the state, local, and regional levels. DOT has often provided funding for specific projects, and has offered the expertise of its employees in the battle against congestion. The crux of federal transportation spending, however, has been and continues to be aimed at overall infrastructure improvement, while air quality improvement, congestion improvement, and other issues essentially have been secondary goals. There is a sense that there is no one good solution to congestion problems and that successful congestion reduction strategies require

multiple remedies. New infrastructure alone, at the level currently being constructed, has not been able to stay ahead of the congestion problem. Efforts aimed at alleviating congestion by changing individual travel behaviors have also been largely unsuccessful. During the 108th Congress' reauthorization discussion, congestion issues are playing a major role. (**CRS contact: John Fischer**)

Transit Reauthorization. Federal transit programs are authorized as part of the periodic authorization of surface transportation programs. The last authorization expired on September 30, 2003; currently, these programs are operating under a 5-month extension which expires at the end of February 2004. The Administration and the House of Representatives have introduced transit reauthorization proposals; the Senate transit authorizing committee (the Committee on Banking, Housing, and Urban Affairs) has said it would release its transit reauthorization bill after the Senate Committee on Finance releases its proposal for financing surface transportation reauthorization, which may appear sometime early in 2004. The major area of disagreement over transit reauthorization, similar to highway reauthorization, is over money: the Administration has proposed to extend the current \$7 billion annual transit funding level for the 6-year authorization period, while both the House and the Senate would like to see increases in transit funding.

The Administration's reauthorization proposal, SAFETEA, would authorize \$42 billion over 6 years for transit programs. It also proposes at least three significant changes to the federal transit program. First, it would realign FTA programs into three groups: Formula Grants, Major Capital Investments, and State-Administered Programs. The stated purpose is to provide transit agencies more flexibility with their federal funding (in part through the redistribution to formula programs of the Bus and Bus Facilities Program's \$607 million in funding, which was completely earmarked in FY2003). Second, it would lower the maximum federal share of costs for New Starts projects from the current 80% to 50%; this would allow FTA to provide grants from the available New Starts funding to more projects (FTA has testified that the average federal share for all current New Starts projects is around 50%). Third, the portion of FTA's authorized funding that comes from general-fund appropriations—about 18% under SAFETEA—would no longer be guaranteed as it was under TEA-21. This could lead to less funding for FTA than authorized, as well as introducing uncertainty into the financial planning of transit-funding recipients; as, prior to the TEA-21 funding guarantee, annual transit appropriations were often less than the amount authorized.

The House Committee on Transportation and Infrastructure released its reauthorization bill on November 20, 2003. It would authorize \$69 billion for transit over 6 years. The bill generally maintains the transit program structure of TEA-21, but does propose a few changes. It would create three new programs: Small Starts, to fund new transit projects, such as bus rapid transit and commuter rail, requiring relatively small-scale capital investment (\$25-\$75 million); a New Freedom Initiative program to improve mobility for the disabled population (authorized at \$100 million in the first year, rising to \$175 million annually); and a Transit Intensive program for those urbanized areas under 200,000 in population that provide above-average levels of transit service (authorized at \$35 million in the first year, rising to \$50 million annually). The bill would also convert the Job Access and Reverse Commute program, currently a discretionary program that is heavily earmarked, to a formula program, and would increase the proportion of formula funding dedicated to rural areas from 6.5% to 8%.

The Senate has not yet released a proposal for transit reauthorization. Congress has not reached agreement on reauthorization of the surface transportation programs, including transit; the major issue is disagreement over the level of funding to be provided. Congress extended TEA-21's authorization period by five months, to February 29, 2004, to allow time for negotiation. For more information, see CRS Report RL31854, *Transit Program Reauthorization in the 108th Congress*. **(CRS contact: D. Randy Peterman)**

Environmental Issues. The use of federal highway funds to mitigate the environmental impacts of surface transportation is among the topics of discussion in the reauthorization of federal surface transportation programs. The most recent authorization, TEA-21, provided a total of \$9 billion over six years for reducing air pollution from highway travel. Of this amount, about \$8 billion was authorized for the Congestion Mitigation and Air Quality Improvement program (CMAQ) to assist states in complying with federal air quality standards, and \$1 billion was authorized for clean fuel buses. In addition to addressing air quality needs, TEA-21 expanded eligibility under the Surface Transportation Program to allow the use of federal highway funds for mitigating water pollution from highway runoff. The law also authorized funding for environmental research and the development of advanced vehicle technologies that offer environmental benefits. Of these activities, reauthorization of the CMAQ program has received the most attention due to concerns that have been raised about its effectiveness in helping states comply with federal air quality standards.

The Administration's reauthorization bill, the Senate markup of S. 1072, and H.R. 3550 would retain the basic structure of the CMAQ program and continue its focus on reducing emissions from highway travel. However, there are substantial differences in funding among these bills. The Administration's bill would authorize nearly \$8.9 billion from FY2004 through FY2009 for CMAQ projects, about \$740 million above the previous authorization. The Senate markup would authorize nearly \$13.0 billion, and H.R. 3550 would authorize \$11.0 billion. Each bill also would expand eligibility for CMAQ projects, although in differing ways. The Administration's bill and the Senate markup would revise the program's funding formula to ensure that states with areas that do not meet stricter federal air quality standards receive greater funding, and would require further study of the program's effectiveness to identify which types of projects offer the greatest potential for reducing emissions. H.R. 3550 does not include these provisions. Whether to extend the time frame for states to demonstrate that their transportation plans conform to their air quality plans is also among the key environmental issues. The Administration's bill and the Senate markup would generally extend this time frame to five and four years, respectively, whereas H.R. 3550 would not alter the current time frame of two years. For further discussion, refer to CRS Report RL32057, *Highway and Transit Program Reauthorization: Environmental Protection Issues and Legislation*. **(CRS contact: David Bearden)**

Another issue expected to be addressed during reauthorization regards efforts to streamline the environmental review process, required for certain highway and transit projects, under the National Environmental Policy Act (NEPA, 42 U.S.C. 4321). Congress included "Environmental Streamlining" provisions in TEA-21 that required DOT to develop and implement a "coordinated environmental review process" for projects having a significant impact on the environment. SAFETEA builds upon the streamlining provisions of TEA-21. For example, SAFETEA would allow project sponsors to decide whether to implement the coordinated environmental review process. Also, SAFETEA would delegate

authority to states to determine if certain projects could be categorically excluded from the NEPA process. SAFETEA would also amend current statutory requirements to potentially allow for the use of certain public lands and historic sites for transportation projects. The proposed Senate bill includes provisions similar to the administration version, however, it would not change current law regarding public lands and historic sites. The House bill is expected to include its own provisions intended to expedite the environmental review process. For further discussion, refer to CRS Report RL32032, *Streamlining Environmental Reviews of Highway and Transit Projects: Analysis of SAFETEA and Recent Legislative Activities* and RL32024 *Background on NEPA Implementation for Highway Projects: Streamlining the Process*. (CRS contact: Linda Luther)

Safety Issues. Key bills that would authorize major safety programs include: the Senate Environment and Public Works (EPW) Committee bill (S. 1072, as amended), the Senate Commerce Committee bill (S. 1978), and the House Transportation and Infrastructure (T&I) Committee bill (H.R. 3550). These bills propose various changes in federal grants that directly affect the amount of and conditions under which funds from the Federal Highway Trust Fund are provided to the states. Key challenges will be finding additional funds to increase federal support for safety-oriented activities, and evaluating the costs and benefits of changes in federal policy. Debate is also proceeding on the reauthorization of federal railroad safety law, including funding for the safety programs of the Federal Railroad Administration (FRA). Issue areas can be grouped into five categories:

Infrastructure. Billions of dollars derived from federal-highway categorical grants are used each year by state and local governments to improve the design, throughput, and overall performance and safety of the highway infrastructure. At issue are the authorization levels for various federal-highway categorical grants, the amount (if any) of set-asides for safety, and whether a separate categorical grant for safety is needed. S. 1072 creates a new grant program called the Highway Safety Improvement Program, which would include funds for hazards elimination and grade crossing improvements. H.R. 3550 authorizes a Highway Safety Infrastructure Improvement Program also focusing on these areas, but also creates a new High Risk Rural Road Safety Improvement Program.

Traffic Safety and Associated Grants. At issue are how much funding for the National Highway Traffic Safety Administration (NHTSA) driver/passenger (behavioral) program, and whether funding emphasis and priority setting regarding these activities should be changed. 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 traffic-safety grants to administer effectively. Not surprisingly, the states seek a unified grant approach with financial rewards for a state's performance. Congress is debating how to structure such a unified traffic-safety incentive program, perhaps combining the existing Section 402 (state and community grants) and alcohol countermeasures and occupant protection enhancement grants. S. 1978 authorizes substantially revised new grant programs to combat alcohol-impaired driving and to encourage the states to adopt and enforce primary safety belt laws and to increase safety-belt use rates. The Senate bill also authorizes specific funds to aid states in conducting coordinated emergency medical services and 911 programs. H.R. 3550 keeps much of the structure of the current Section 405 (occupant protection incentive grant) and adds new performance-based incentives to encourage states to achieve a seat belt use rate of 85%. H.R. 3550 proposes several new eligibility criteria for a state to

receive section 410 (alcohol-impaired driving countermeasures grant) including a new performance-based incentive to reduce traffic fatalities involving alcohol.

Truck and Bus Safety. Key concerns include determining funding levels for: various motor carrier safety enforcement and regulatory activities conducted by the Federal Motor Carrier Safety Administration (FMCSA); Motor Carrier Safety Assistance Program (MCSAP) and the Commercial Driver Licensing (CDL) programs conducted by the states. S. 1978 and H.R. 3550 are similar with respect to many provisions pertaining to motor carrier safety. These bills seek to strengthen the compliance powers of the FMCSA, authorize a new grant program to improve state CDL efforts, establish a Medical Review Board to provide medical advice on driver physical standards, and continue funding for various state and federal information systems and communication networks (called CVISN) that support safety and regulation of the industry. The Senate Commerce bill seeks to expedite FMCSA's responses to past federal statutes and congressional directives, establishes a working group to improve the national CDL program, and freezes current length limits of commercial motor vehicles operating on federal-aid highways. Compared to the Senate Commerce bill, the House T&I bill provides for substantially more funds for FMCSA's administrative operations for FY 2004- 2009 and for a program intended to help motorists "share the road" safely with commercial drivers. Both bills would authorize roughly the same amount of funds for various state safety grants over the 6-year authorization period.

Intelligent Transportation Systems (ITS). ITS crash avoidance technologies offer much promise, but substantial costs and lead times are generally involved before widespread deployment. H.R. 3550 continues funding for the national ITS research and testing program at an increased funding level. In addition, this bill creates a new ITS deployment program that will be apportioned to the states and a new 511 traveler information program. The bill requires that a minimum of \$3,000,000,000 of the total amounts authorized to be appropriated from specified federal aid highway programs for FY2004 through 2009 are utilized to expand deployment of ITS. S. 1072 authorizes continued funding for a revised research and development process and allows states to deploy ITS using qualified categorical funds. (CRS contact: Paul Rothberg)

Federal Rail Safety Program Reauthorization. The Senate has passed S. 1402, The Federal Railroad Safety Improvement Act, which would reauthorize federal rail safety activities for FY2004-2008. The bill seeks to improve the information contained in the national highway-rail grade crossing inventory, direct the FRA to develop a plan for a joint initiative with the states to reduce the number of public and private highway-rail grade crossings by 1 percent per year in each of the succeeding 10 years, create a working group to consider how to improve fatigue management for railroad employees subject to the hours of service law (title 49, chapter 211); and require the Department of Transportation (DOT) and the Department of Homeland Security (DHS) to execute a memorandum of understanding regarding railroad security matters. (CRS contact: Paul Rothberg)

Aviation Reauthorization

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (FAIR21 or AIR21; P.L. 106-181) provides authorization for key functions of the Federal

Aviation Administration (FAA) through FY2003. Congress passed 'Vision 100--Century of Aviation Reauthorization Act' (P.L. 108-176) on November 21, 2003. The bill reauthorizes the FAA through 2007 and provides \$59.2 billion over 4 years for: airport improvements; airway facilities and equipment; FAA operations and maintenance (O&M); and aviation research, engineering, and development (R, E, & D).

Controversy over protecting certain air traffic control functions from privatization was a focal issue during debate over FAA reauthorization. A provision included in the original conference agreement would have protected most air traffic control functions from privatization through fiscal year 2007, but would have permitted FAA to keep its existing contract tower program and move forward with a plan to expand this program. In the final version agreed to by Congress, all language pertaining to protection against privatizing air traffic control functions was stricken, and the bill does not provide any protection against outsourcing of air traffic controller, air traffic systems specialist, or flight service station specialist jobs. This arrangement was agreed to after Congress received a commitment from the FAA to a one-year moratorium on outsourcing air traffic functions. Given that FAA's commitment extends for only one year, air traffic control privatization may be a significant issue during the second session of the 108th Congress.

For a more in-depth discussion of issues related to FAA reauthorization, see CRS Issue Brief IB10121, *Reauthorization of the Federal Aviation Administration*. **(CRS Contacts: Bart Elias, John Fischer, and Robert Kirk).**

Transportation Security

Since September 11, 2001, transportation security has emerged as a key policy issue for Congress. The 108th Congress faces assessing a number of proposed security measures to determine if the proposals increase security without excessively impeding commerce and travel. On November 19, 2001, President Bush signed the Aviation and Transportation Security Act (ATSA, P.L. 107-071). The Act established a new Transportation Security Administration (TSA) that is responsible for the security of all modes of transportation, passenger and cargo. On November 25, 2002, President Bush signed the Homeland Security Act of 2002 (P.L. 107-296). The Act creates a new cabinet-level Department of Homeland Security (DHS) to consolidate the antiterrorist activities of 22 federal agencies and transfer the TSA and the Coast Guard from the DOT to the new department. (See CRS Report RL31549, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*).

ATSA established a timetable for the federalization of security functions at airports with commercial-passenger air service. These functions include screening of passengers, carry-on and checked baggage, cargo, mail, and other articles carried aboard passenger aircraft. Other airport security enhancements under ATSA involve improved airport-perimeter security and improved secured-area access control. ATSA greatly expanded the Federal Air Marshal Service (FAMS) and mandated deployment of federal air marshals on every flight judged to present a high security risk. ATSA also required strengthening of cockpit doors, further limited access to the cockpit, and provided for security training for flight and cabin crew. Over 55,000 federal screeners were hired by TSA to screen passengers and baggage at about 432 commercial airports across the United States, but recent downsizing and

realignments has brought the total number of screeners to under 50,000. Appropriations language (see P.L. 108-90) limits the total number of federal screeners to 45,000 full-time equivalents. Under ATSA, airports may elect to return to a system utilizing private security screeners on November 19, 2004. Currently, 5 airports are participating in a contract screener pilot program.

The Homeland Security Act of 2002 contained provisions for training and deputizing volunteer pilots of commercial passenger aircraft as federal flight deck officers, allowing them to carry firearms and use force, including lethal force, to protect the flight deck. The initial class was trained in April 2003, and 44 pilots were deputized as federal flight deck officers. TSA was appropriated \$8 million for the program in FY 2003 and began training about 50 pilots per week starting in late July, 2003. TSA received \$25 million to continue the program in FY 2004. While the program is currently limited to pilots of passenger aircraft, the FAA reauthorization bill (H.R. 2115) contains a provision to allow cargo pilots and flight engineers to participate in the program. Further provisions under the Homeland Security Act of 2002 allow the TSA to implement interim, alternative baggage-screening methods at airports unable to meet a December 31, 2002, deadline for deployment of explosive detection systems and to establish a plan for compliance with requirements to screen all checked baggage with explosive detection systems no later than December 31, 2003.

Key aviation security issues include the comparative effectiveness of the federal aviation security workforce and the effectiveness and efficiency of baggage screening. Additionally, implementation of in-flight security measures, especially the Federal Flight Deck Officer program and the Federal Air Marshal program, may be the subject of continued congressional scrutiny. The Federal Air Marshal program was recently taken out of the TSA and realigned with the Bureau of Immigration and Customs Enforcement. Under this realignment, DHS plans to cross-train border patrol and immigration officers to function as air marshals, thus expanding the pool of available air marshals. Oversight of this implementation may assess whether border protection and in-flight security mandates are being adequately met by this arrangement.

Legislation to expand aviation security, such as the screening and inspection of cargo transported on passenger aircraft as well as all-cargo aircraft, security measures at air cargo shipping facilities, air cargo operations areas, and air cargo acceptance areas, has been passed by the Senate (S. 165) and similar legislation has been introduced in the House (H.R. 1103). Other legislation (H.R. 2455) seeks to require the screening of all cargo placed on passenger aircraft. Appropriations for air cargo security designate funds for expanding the known shipper program and continued research and development of technologies to improve air cargo security (see P.L. 108-90; H.Rept. 108-280).

Another topic under consideration is improving the verification and validation of passenger and employee identification as called for in ATSA. Homeland Security appropriations language (P.L. 108-90, H.Rept. 108-280) requires that a review be conducted assessing the impacts of the controversial next-generation Computer Aided Passenger Pre-screening (CAPPS II) program on passenger privacy and civil rights and assessing the efficiency and security of the system being developed before that system can be fully deployed. The TSA is also continuing to examine means for implementing a trusted or registered traveler program to streamline frequent fliers who voluntarily submit background

information through security checkpoints. TSA is also exploring the use of biometrics and other identification technologies for credentialing transport workers including airport workers with secured area access.

Congress is also examining the need for and impact of temporary flight restrictions at security sensitive airports and for airspace over areas and events that pose a security risk. A provision in FY2003 consolidated appropriations (P.L. 108-7) extends restrictions on stadium overflights during major events for a period of one year and places tighter controls on the issuance of waivers to this restriction. The FAA reauthorization bill would require the DHS to implement a security plan permitting general aviation flights to resume and Washington Reagan National Airport

Legislation (H.R. 580; S. 311) has also been introduced that seeks to protect U.S. airliners from terrorist missiles by installing missile countermeasure systems on aircraft, and in the interim, deploying National Guard and Coast Guard units to patrol areas near airports. Homeland Security appropriations (P.L. 108-90, H.Rept. 108-280) provides \$60 million to develop and evaluate an anti-missile device for commercial aviation. The DHS Office of Science and Technology expects that the total program cost over two years will be about \$100 million and will result in the development of one or more certified prototype systems based on existing military technology that can be installed on commercial aircraft. (See CRS Report RL31969, *Aviation Security: Issues Before Congress Since September 11, 2001*; CRS Report RL31151, *Aviation Security Technology and Procedures: Screening Passengers and Baggage*; CRS Report RL31150, *Selected Aviation Security Legislation in the Aftermath of the September 11 Attack*; CRS Report RL31741, *Homeland Security: Protecting Airliners from Terrorist Missiles*; and CRS Report RL32022, *Air Cargo Security*) **(CRS contact: Bart Elias, Aviation; Dan Morgan, Security Technology)**

Surface Transportation Security

World wide, roughly one-third of terrorist attacks target transportation systems; the most common transportation mode attacked is public transit. The effectiveness of transit depends on ease of access. As a result, security measures applied in aviation cannot be easily applied to transit. Likewise, the many miles of rail, highway, and pipeline networks are impossible to guard thoroughly. Of particular concern are the daily shipments by rail and truck of hazardous materials (especially flammable and poisonous gases). The overland crossings with Canada and Mexico are also a concern.

The FY2003 Consolidated Appropriations Resolution (P.L. 108-7) provides \$244.8 million to the Transportation Security Administration for maritime and land security activities, including \$25 million for trucking industry security grants and \$10 million for intercity-bus security grants. Among the major concerns regarding rail security are the rail tunnels leading to the train stations in New York City, Washington, DC, and Baltimore. The Over-the-Road Bus Security and Safety Act of 2003 (H.R. 875/S. 929) would authorize the Secretary of Transportation to make grants to private bus operators for extraordinary security and safety improvements; S. 929 has been passed by the Senate. **(CRS contacts: D. Randy Peterman, Transit and Passenger Rail; John Frittelli, Freight Railroads; Paul Rothberg, Highways and Pipelines)**

Ports and Maritime Security

Government leaders and security experts are concerned that the maritime transportation system could be used by terrorists to smuggle a weapon of mass destruction into the United States. Experts have found ports to be vulnerable to terrorist attack because of their size, easy accessibility by water and land, proximity to urban areas, and the tremendous amount of cargo that is typically transferred through them. On November 14, 2002, Congress passed the Maritime Transportation Security Act of 2002 (MTSA, P.L. 107-295). The Act creates a U.S. maritime security system and requires federal agencies, ports, and vessel owners to take numerous steps to upgrade security. In the 108th Congress, there is growing debate about whether current efforts to improve port security are proceeding at sufficient pace and whether the nation is devoting enough resources for this purpose. The issue of maritime security can be divided into three components: the security of U.S. ports, the security of ships on the high seas, and the security of U.S.-bound cargo at its overseas point of origin.

With regard to improving the physical security of U.S. ports, the issue is not so much what needs to be done to improve security, but who should pay for it. Because of the relatively low level of security at most U.S. ports before September 11, 2001, the immediate response to the attack was to increase security to acceptable levels. The Coast Guard estimates that the cost of implementing MTSA will be \$1.51 billion the first year and \$7.4 billion over the succeeding decade (see 68 *Fed. Reg.* 39271). Congress has provided over \$500 million through FY2004 in direct federal grants to ports to improve their physical and operational security. This is in addition to the budgets of the Coast Guard, Bureau of Customs and Border Protection, TSA, and other federal agencies involved in port security. At issue is whether the taxpayer should pay for port security through general revenues or if the maritime industry or its customers should pay through user fees.

Most ships calling at U.S. ports are foreign owned and foreign crewed. There is no single sovereign power that regulates international shipping. The lack of transparency in ship registration has been a long-standing concern. Unscrupulous ship owners are known to mask their identity by re-registering their vessels under fictitious corporate names and renaming and repainting their ships. Ship owners can register their ships in “flags of convenience” countries which may have lax regulations and require little information from the applicants. Congress may examine the effectiveness of new international standards for raising the security level of ship operators. Skeptics contend that the new regulations mostly offer the illusion of increased security. They contend that “flag of convenience” countries lack the resolve to enforce these standards and that the compliance documentation is too easy to manipulate in order to appear as legitimate operators.

A third area of concern is ensuring the integrity of cargo as it begins its transit to the United States from its overseas origin. Point of origin security is necessary because inspecting cargo on the high seas is practically impossible and inspecting cargo upon its arrival at a U.S. port could be too late to prevent a terrorist event. This issue is particularly relevant to containerized cargo because the containers are stuffed at the exporter’s factory or at a warehouse consolidation facility. At the port of loading, a container ship will typically be loaded with containers that come from hundreds of different locations and from hundreds of different firms. Ensuring that the container was not filled with illegitimate cargo, that the loaded container was not tampered with while en route to the port, and that

the cargo information reported to Customs agents at the port of loading is not fraudulent are all critical challenges in supply chain security. (CRS contact: John Frittelli)

Amtrak Issues

Conferees on the Transportation-Treasury appropriations bill, now part of the FY2004 Omnibus appropriations bill (H.R. 2673), agreed on \$1.225 billion for Amtrak for FY2004.

The Administration had requested \$900 million; Amtrak requested \$1.8 billion in federal capital and operating subsidies for FY2004, with \$1.04 billion in support for capital needs and \$768 million for operations. According to the Administration, its requested amount (which the DOT Inspector General testified would not enable Amtrak to survive FY2004) was intended to send a message that Amtrak must be reformed. The House of Representatives approved \$900 million for Amtrak for FY2004 (H.R. 2989), while the Senate approved \$1.346 billion.

The FY2004 Amtrak appropriation continues the changes made in Amtrak's FY2003 appropriation (in P.L. 108-7): Amtrak funding no longer goes directly to Amtrak, but is allocated to the Secretary of Transportation, who will make quarterly grants to Amtrak; Amtrak is required to submit grant applications for each route, justifying federal investment in that route; and Amtrak is required to submit capital and operating plans to Congress and the Secretary, may not spend money on projects not in the plans, and must submit changes to the plans to Congress. In addition, the FY2004 appropriation directs the Secretary of Transportation to develop and implement a procedure for fair competitive bidding between Amtrak and other operators for state-supported routes. This procedure is to include a provision for states to provide non-Amtrak operators with the use of Amtrak equipment and facilities; if states and Amtrak cannot reach a negotiated agreement on this, the Secretary shall direct Amtrak to make the equipment and facilities available on terms and conditions set by the Secretary. The Secretary is authorized to use \$2.5 million of Amtrak's FY2004 funding to develop and implement this procedure.

Like virtually all passenger rail operations around the world, Amtrak does not earn enough revenue to cover its costs. Amtrak's revenues are around \$2 billion a year, but it spends nearly \$3 billion a year. In addition, it has nearly \$5 billion in debt and capital lease obligations, and an estimated \$6 billion in backlogged capital maintenance needs. Amtrak submitted a 5-year Strategic Plan to Congress on April 25, 2003. The plan would both maintain current network operations and begin to address Amtrak's estimated \$6 billion backlog of maintenance; it calls for an average of \$1.6 billion annually in federal assistance over FY2004-FY2008. The Amtrak Reform Council and the DOT Inspector General's Office have both estimated that Amtrak, as currently structured, requires around \$1.5 billion in operating and capital support annually, a considerably higher level of funding than Amtrak has ever consistently received.

Amtrak's authorization expired at the end of FY2002. Reauthorization legislation introduced in the 108th Congress includes legislation that would authorize funding for Amtrak as it currently exists and legislation that would restructure Amtrak. In the first category are S. 104/H.R. 2726, which would authorize around \$2.8 billion annually for Amtrak, with detailed allocations of that funding, and \$1.55 billion annually to the DOT for high-speed rail planning and implementation grants to states; H.R. 2572, which would

authorize \$2 billion annually for Amtrak for FY2004-FY2006; and S. 1978, the Surface Transportation Safety Reauthorization Act of 2003, which includes a section that would authorize \$2 billion annually for Amtrak over FY2004-FY2009. H.R. 2572 and S. 1978 have passed out of committee. In the second category are three bills. S. 1501/H.R. 3211, the Administration's proposal for restructuring Amtrak and passenger rail services, would largely transfer responsibility for planning, managing and funding passenger rail service to the states, phasing out federal operating support (though federal matching grants for capital improvements would be available); it contains no authorization figures. S. 1505 would authorize \$2 billion annually for Amtrak operations, divide Amtrak's infrastructure from its operations, create a federal passenger rail office with responsibility for the passenger rail system, and create a non-profit agency to issue \$48 billion in tax-credit bonds to finance capital improvements to increase the speed of passenger rail trains throughout the nation. S. 1961 would authorize \$2 billion annually for Amtrak, would not make changes to Amtrak's corporate structure, and would create a non-profit agency to issue \$30 billion in tax-credit bonds to finance the development of rail infrastructure. For more information, see CRS Report RL31743, *Amtrak Issues in the 108th Congress*. (CRS contact: D. Randy Peterman)

Airline Industry Financial Turmoil

The March/April War in Iraq, the outbreak of a virus known as Severe Acute Respiratory Syndrome (SARS) (now in apparent remission), and concerns about the reconstruction of Iraq, have dramatically affected the airline industry. Air travel in the spring of 2003 dropped significantly according to the Air Transport Association (ATA). Now there are some hopeful signs that traffic is returning, but no one in the industry is expecting a full traffic recovery in 2003. All of these events are in the context of the events of September 11th, which continues to have a huge negative impact on the industry. The airlines lost record amounts of money in 2002, which followed what had been the previous record loss experienced in 2001.

Among major airlines, only Southwest was profitable in 2002, and Southwest is the only major carrier believed to have a shot at profitability in 2003. The industry's second largest airline, United, is operating in receivership; and the possibility exists that other large carriers could find themselves in this position in the future. There is, therefore, considerable concern that the airline industry as we have known it over the last few years is likely to go through a period of major structural change, which has yet to fully play out. Throughout this period the airline industry has come to Congress seeking assistance, by way of tax relief or other means, in order to keep flying.

After September 11th, Congress and the Bush Administration moved swiftly to provide the airline industry with \$15 billion in federal financial support (Air Transportation Safety and System Stabilization Act (Stabilization Act)(P.L. 107-42). The first \$5 billion provided direct aid to pay for industry losses associated with the results of the September 11th attacks. The vast majority of these funds have been distributed to the airlines [<http://www.dot.gov/affairs/carrierpayments.htm>]. A second source of funding, access to \$10 billion in government-backed loans, required approval by the newly created Air Transportation Stabilization Board (ATSB). Thirteen airlines applied for the loan program. The majority received some form of assistance; but the largest single applicant, United, was

denied a loan. Of the \$10 billion authorized by this program, less than \$2.0 billion has actually been committed.

In the FY2003 Emergency Wartime Supplemental (P.L. 108-11)(April 12, 2003), Congress again provided the industry with short term relief. Specifically, the Act provided \$2.3 billion in immediate assistance to reimburse air carriers for security expenses (Transportation Security Administration (TSA) press release: TSA 03-26, May 15, 2003). It also provided the air carriers with an additional \$100 million to reimburse them for expenses involved in hardening cockpit doors (TSA press release, September 24, 2003), and gave the industry a four-month tax holiday (June-September 2003) during which time passenger and airline security fees were not collected. Notwithstanding this assistance, there are many observers who believe that this aid will be insufficient to keep all U.S. airlines solvent. Rather it is the hope that this assistance will buy the industry time and that an economic recovery in the year ahead will restore the industry to some semblance of health. **(CRS contact: John Fischer)**

Environmental Issues

Conformity

Under the Clean Air Act, areas that have not attained one or more of the six National Ambient Air Quality Standards established by EPA must develop State Implementation Plans (SIPs) demonstrating how they will reach attainment. As of December 2002, 107 areas with a combined population of 97.8 million people were subject to the SIP requirements. Section 176 of the Clean Air Act prohibits federal agencies from funding projects in these areas unless they “conform” to the SIPs. Specifically, projects must not “cause or contribute to any new violation of any standard”; “increase the frequency or severity of any existing violation”; or “delay timely attainment of any standard.” Because new highways generally lead to an increase in emissions, a nonattainment area’s Transportation Improvement Program (TIP) must provide a new demonstration of conformity no less frequently than every two years. Highway and transit projects in these areas cannot receive federal funds unless they are part of a conforming TIP.

As a result of growth of emissions from SUVs and other light trucks, greater than expected increases in vehicle- miles traveled, recent court decisions that tightened conformity rules, and the scheduled implementation of more stringent air quality standards in 2004, the impact of conformity requirements is expected to grow in the next several years. Numerous metropolitan areas could face a temporary suspension of highway and transit funds unless they impose sharp reductions in vehicle, industrial, or other emissions. The Clean Air Act provides no authority for waivers or grace periods; and, during a conformity lapse, only a limited set of exempt projects (mostly safety-related or replacement and repair of existing transit facilities) can be funded. The rules do not allow funding of new projects that might reduce emissions, such as new transit lines. These factors, as well as the need for better coordination between the SIP, TIP, and long range transportation planning cycles, may be raised by those seeking to amend the conformity provisions. Modifying conformity would be controversial, however, since it provides one of the most effective tools for ensuring that transportation and air quality planning are coordinated. Conformity provisions have been

introduced in the Administration's highway and transit legislation (H.R. 2088 / S. 1072); Section 6001 of the bill would require conformity demonstrations every five years instead of every two, and would shorten the planning horizon over which conformity must be demonstrated to 10 years in most cases, instead of the current 20 years. **(CRS Contact: Jim McCarthy)**

Diesel Engines and Fuel

New emission standards for highway diesel engines took effect October 1, 2002, but six of the seven engine manufacturers that serve the U.S. market were unable to certify a compliant engine by the October deadline. All seven have now certified at least one compliant engine, according to EPA, but until they obtain certification for all of their engines, manufacturers are subject to non-conformance penalties that vary depending on the size of the engine and the amount by which its emissions exceed the standard. Far more stringent standards will take effect in the 2007 model year, and the manufacturers generally argue that they will be unable to meet these standards as well. Diesel fuel will be subject to new standards beginning in 2006; these may pose difficulty for some refiners, and could add to the cost of diesel fuel. EPA and a Federal Advisory Committee Act panel have both reviewed the engine and fuel standards and concluded that they are achievable; but given the importance of diesel engines and fuel to the nation's economy, Congress may conduct its own oversight of diesel-related issues. **(CRS Contacts: Jim McCarthy and Brent Yacobucci)**

Alternative Fuels and Vehicles

Several federal laws, including TEA-21, have requirements and/or provide incentives for the use of alternative fuels and vehicles. Within TEA-21, the Congestion Mitigation and Air Quality (CMAQ) Improvement Program provides funding for state and local initiatives to reduce air pollution. Eligible initiatives include the purchase of alternative fuels and vehicles, as well as the development of alternative fuel infrastructure. TEA-21 allows for other incentives, including permitting states to exempt alternative fuel vehicles from HOV restrictions. Outside of TEA-21 reauthorization, the Bush Administration has made research and development of fuel cell vehicles and hydrogen fuel a priority. In January 2003, the Administration announced the President's Hydrogen Fuel Initiative, which increases research funding for hydrogen and fuel cells. Alternative fuels—especially ethanol—play a key role in the debate over a comprehensive energy policy. On November 17, 2003, the Conference Committee on the energy bill (H.R. 6) released its report (H.Rept. 108-375). Among other provisions, the bill mandates the use of renewable fuel in gasoline and provides funding for hydrogen research, grants for advanced buses, and tax incentives for alternative fuel and advanced technology vehicles. The House agreed to the conference report on November 18; in the Senate, on November 21 a cloture motion on the bill failed. The Senate will likely resume discussion on H.R. 6 in the second session. For additional discussion, see CRS Report RL30484, *Alternative Transportation Fuels and Vehicles*. **(CRS Contact: Brent Yacobucci)**