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Highway and Transit Program Reauthorization Legislation in the 2nd Session, 108th Congress

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Summary

This report discusses significant legislative provisions in the two principal bills that were the subject of congressional discussion to reauthorize federal highway, highway safety, and transit programs in the 108th Congress. These are the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA)(S. 1072)(“Senate bill”) passed by the Senate on February 12, 2004, and the Transportation Equity Act: A Legacy for Users (TEA-LU)(H.R. 3550)(“House bill”) passed by the House on April 2, 2004.

Throughout the year, the congressional reauthorization debate focused largely on money issues. There was an expectation within the highway community that new reauthorization legislation should contain significantly higher funding levels than existing legislation. No large source of new revenue for these trust fund financed programs became available, however. The American Jobs Creation Act of 2004 (October 22, 2004, P.L. 108-357), however, provided for modest increases in revenue, primarily as a result of changes in gasoline taxation.

Other than funding, the provision of these bills that seems to engender the most controversy is the long-standing donor-donee state problem. Both bills tried to resolve the tension between so-called donor and donee states, by seeking to increase funding now, or in the future, and creating mechanisms to guarantee each state a higher rate of return on their proportional contribution to the highway trust fund (95% in both bills versus 90.5% in current law). The House bill, however, would have accomplished this by requiring a reopening of the reauthorization funding debate before the end of FY2006, in order to insure that additional funding is found for donor states without taking future funds away from donee states, a politically unpopular alternative that may have complicated final action on this legislation.

As proposed, neither bill makes major structural changes to the core highway programs. Both bills, however, add new highway programs. This is especially the case in the House bill which creates, among other things, a multi-billion dollar program to construct projects of national/regional significance.

A Conference Committee was unable to reach agreement on a final bill prior to the end of the 2nd Session. In the interim all federal programs authorized by this bill continue to operate until May 31, 2005 on the basis of extension legislation (P.L. 108- 310). Further work on the reauthorization issue now becomes the purview of the 109th Congress.

This report has been updated to reflect actions taken in the waning days of the 108th Congress. Some sections of the report were not subject to end of session update, but all are nonetheless current as of the last congressional consideration of the specific subject under discussion. This report will not be subject to further updates. This report does not contain extensive background information about the operation of federal surface transportation programs. Those seeking this information should consult CRS Report RL31665, *Highway and Transit Program Reauthorization*.

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

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Highway and Transit Program Reauthorization Legislation in the 2nd Session, 108th Congress

Introduction

This report discusses significant legislative provisions in the two principal bills that were the subject of congressional discussion to reauthorize federal highway, highway safety, and transit programs in the 108th Congress. These are the Senate bill S. 1072 (the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, or SAFETEA) passed by the Senate on February 12, 2004¹, and the House bill H.R. 3550 (the Transportation Equity Act: A Legacy for Users, or TEA-LU), passed by the House on April 2, 2004. Although reauthorization is more than a year overdue all highway, highway safety, and transit programs continue to operate as a result of extension legislation. A Conference Committee was unable to complete its work prior to the end of the 2nd Session.

From the public's perspective the ongoing surface transportation reauthorization debate is taking place against the backdrop of growing concern about congestion and sprawl in urbanized areas, and increased concern about maintaining access to markets and the rest of the national transportation system in rural areas. The congressional debate focuses primarily on money. Given the large increase in funding made available by the last reauthorization bill, the Transportation Equity Act for the 21st Century,² better known as 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. At the time TEA-21 was passed, a confluence of circumstances provided for a considerable boost to highway trust fund revenues. Unfortunately, for those seeking extensive new funding, no similar confluence of events appears likely any time in the near future.

As a result, much of the discussion turns on whether significant additional funds can be found for federal surface transportation programs, or whether funding for these programs will be limited to the modest growth forecast for the highway trust fund over the next six years. If new funds can be found, many of the provisions put forth in House and Senate legislation may be adopted in some form during the reauthorization process. Without significant new funding sources, however, a

¹ On May 19, 2004 the Senate adopted H.R. 3550 and inserted the language of S. 1072 into the bill to facilitate conference consideration. For the purposes of this report the Senate bill continues to be referred to as S. 1072.

² P.L.105-178 and P.L. 105-206. Federal highway law is codified in 23 U.S.C. Other transportation provisions included in TEA-21, such as transit, are codified in 49 U.S.C.

competition for the existing pot of funds will almost surely ensue amongst the various state, regional, and programmatic stakeholders. So far this competition has stifled the reauthorization debate and led to further extension of the TEA-21 framework.

This report begins with a brief overview of the House and Senate bills followed by an examination of how the two bills deal with the problem of constrained budgetary resources and donor-donee state issues. It then examines the proposed programmatic changes for the Federal-Aid Highway programs. Environmental and Safety provisions and issues are then discussed. Finally, the bills' mass transit and intermodal provisions are examined.

Overview of Legislative Proposals

This report focuses on the two pieces of legislation under consideration in the House and the Senate that were the principal vehicles for the reauthorization debate in the 108th Congress, SAFETEA and TEA-LU. The Senate completed action on its bill, S. 1072, on February 12, 2004. The House has also completed action its bill, H.R. 3550, doing so on April 2, 2004. The bill as approved by the House, however, provided funding at a level well below what the Committee originally intended at introduction. To emphasize this point the Committee at its March 25, 2004 markup also passed a similar bill, H.R. 3994, with higher funding levels, but did not report it.

Prior to House and Senate consideration, the Bush Administration submitted a bill of its own indicating the Administration's reauthorization views and priorities. This bill was introduced by request in both the House and the Senate as S. 1072 and H.R. 2088, respectively, which are hereafter referred to as the Administration bill. It should be noted that the Senate bill carries the title Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA) originally proposed by the Administration bill. The Senate Committee on Environment and Public Works further chose to use S. 1072 as their markup vehicle and amended the bill by including their own provisions in the nature of a substitute. S. 1072 in its Senate passed form, however, is the Senate bill, and although it contains provisions proposed by the Administration, the bill itself is dramatically different from the introduced version of the bill.

In both the House and the Senate, multiple committees have a role in reauthorization. In the House, most of the bill, as discussed above, is under the control of the Committee on Transportation and Infrastructure. The House Committee on Science contributes to the research title of the bill (H.R. 3551) and the House Committee on Ways and Means has jurisdiction over the revenue title (H.R. 3971). All three Committees reported legislation that became part of H.R. 3550 during Floor action on April 2, 2004.

In the Senate, the Senate Committee on Commerce, Science, and Transportation had previously marked up a bill, S. 1978 (S.Rept. 108-215), authorizing the Motor Carrier Safety Administration and National Highway Traffic Safety Administration

(NHTSA) programs under its jurisdiction. This bill, with a manager's amendment, became part of S. 1072 during floor consideration. The Senate Committee on Banking, Housing, and Urban Affairs, which has jurisdiction over Federal Transit Administration (FTA) programs, marked up its portion of the reauthorization bill, which was also attached to S.1072 as an amendment. Finally, the Senate Committee on Finance has jurisdiction over the revenue title of the bill. The Finance Committee title, the Highway Reauthorization and Excise Tax Simplification Act of 2004 was marked up in committee on February 2, 2004. This title was also added by amendment to the now Senate passed version of S. 1072.

Much of the discussion about the reauthorization bills has centered on the total spending envisioned in each proposal. The Senate bill is believed to contain \$318 billion in total spending authority for the period FY2004 - FY2009. The House bill as passed by the House now contains \$275 billion, which is dramatically below the \$375 billion figure found in the introduced version of the bill. Either bill is above the Administration's stated position that total spending be set at \$256 billion over the next six years.³ A break-out of expected program authorizations by major activity is shown in **Table 1**. Neither the House nor the Senate proposal can be funded by current revenues projected from the programs' existing funding sources. As will be discussed later in this report, the Administration bill could, perhaps, be financed from current revenue sources.

The Bush Administration has gone on record against the level of spending proposed by S. 1072 and has indicated its intent to veto any bill of such size that Congress might generate.⁴ A letter signed by the Secretary of the Treasury and the Secretary of Transportation on February 11, 2004, indicated that they would recommend a presidential veto of any bill that included new taxes, bonding, or unrelated provisions dealing with issues like Amtrak (which is included in the Senate bill). The Senate passed its bill by a vote of 76-21. Senate bill managers, therefore, believe that barring changing the Administration's mind on this issue, they could override a veto.⁵

The Administration, in a March 30, 2004 Statement of Administration Policy, is also threatening a veto of the House passed version of H.R. 3550 at its \$275 billion spending level. This veto threat came as a surprise to many House Members. The bill passed the House with a possibly veto proof margin of 357-65. It is, therefore, unclear whether the President would be able to sustain a veto of this legislation.

For procedural reasons the Senate brought H.R. 3550 to the floor on May 19, 2004 and adopted it with the text of S. 1072 inserted in the nature of a substitute.

³ The Administration bill as introduced allowed for \$247 billion in total funding. The President's budget submission for FY2005 adjusts this figure upward to the \$256 billion amount.

⁴ The full text of the Administration's letter, indicating its objections to the bill, can be found at [<http://www.whitehouse.gov/omb/legislative/sap/108-2/s1072sap-s.pdf>]

⁵ Rothman, Heather M. Senate Reducing Extension as House Works to Scale Back Transportation Bill. *Daily Report for Executives*. BNA Inc. Washington. February 25, 2004. p. A-34

This action facilitates a conference and allows the Senate to meet the constitutional requirement that tax bills originate in the House.

Table 1. Authorizations for Surface Transportation Programs in Selected Reauthorization Legislation FY2004-FY2009

| (\$ billions) | | | |
|---------------------|---------------------|------------|------------------------|
| Bill Title | Administration Bill | House Bill | Senate Bill (estimate) |
| Highways | 206.4 | 217.5 | 255.0 |
| Safety | 6.0 | 6.0 | 6.0 |
| Transit | 43.6 | 51.5 | 56.5 |
| Total Authorization | 256.0* | 275.0* | 318.0* |

Source: *Washington Letter on Transportation*. T&I Committee Approves Six-Year \$275 Billion Reauthorization Bill. March 29, 2004. p.1.

* There are several ways a table such as this can be constructed. This table shows the totals most commonly associated with each bill. There are, for example, known issues with the totals for the House and Senate bills, which in both cases might be different than those shown here. By one analysis⁶ the House bill contains total authorizations of \$283.8 billion.

Extension Legislation

As mentioned earlier, all existing highway, highway safety, and transit programs continue to operate on the basis of legislation that extends the program structure of TEA-21. Congress is now on its sixth program extension (P.L. 108-310). This extension continues the highway program until May 31, 2005. The existing authorization had been extended previously to February 29, 2004 (P.L. 108-88), to April 30, 2004 (P.L. 108-202), to June 30, 2004 (P.L. 108-224), to July 31, 2004 (P.L. 108-263) and to September 30 (P.L. 108-280).⁷ It was hoped at the time that the first extension was passed that this would give Congress sufficient time to complete action on a reauthorization bill early in the second session. This was not the case, and it is now clear that the reauthorization discussion will be taken up again in the 109th Congress.

By choosing a May 31, 2005 termination date for the existing programs Congress has given itself some leeway to find a solution to the funding debate that has so far stifled long-term reauthorization legislation. It was the hope of many on the authorizing committees that a new Congress and a newly reelected President will be more sympathetic to the idea that transportation needs require significant additional funding. It was also the hope of the authorizers that additional sources of funding for these programs would be identified before May 31, 2005. To some extent this has already been the case as a result of the changes in gasohol taxation

⁶ *Transportation Weekly*. V5. March 29, 2004. p. 1- 22.

⁷ For more information on extension legislation, see CRS Report RS21621, *Surface Transportation and Aviation Extension Legislation: A Historical Perspective*. by John Fischer and Robert Kirk.

afforded by the enactment of the American Jobs Creation Act. It should be pointed out that the potential \$24 billion in new revenues that these change might raise over the next six years are still far below the amount needed to fund the program at the levels under discussion during conference.

Conference Issues

There are numerous and significant differences between S. 1072 and H.R. 3550. All these were to have been resolved in conference. Deciding on the total authorization level is the most obvious and perhaps most difficult policy issue that needed to be resolved. As mentioned above, a veto threat looms over either of the total funding amounts contained in the two bills, and the Bush Administration threshold is well below the amount required to fund either of the bills in their current form.

The donor-donor issue will be one of the Conference's most difficult issues. Both the House and Senate solutions to this problem require more funding now, and in the case of the House even more in the future, before either can provide states with the 95% return on contributions to the trust fund that many desire instead of the existing 90.5%. Also in play is the scope of the program to be covered by the minimum guarantee or equity bonus.⁸ Leaving programs, such as the House passed high priority project program in, or out of, the scope can dramatically effect a state's expected annual funding.

There are several large new allocated (discretionary) programs in the House bill that require significant new funding. As written, funding decisions for these programs will be made by FHWA, although many expect these funds to be earmarked if the programs are included in the conference report. At least initially, these new programs reduce the proportion of the funds provided by the bill that are available for core apportioned (formula) programs. Many state's prefer apportioned funds that are under their control as opposed to dedicated discretionary funds. Hence it is likely that the Conference will be required to determine the final ratio of programs under state versus earmark or FHWA control.

Although environmental issues were not an important part of the floor debate in either the House or the Senate, some environmental interests remain concerned about certain provisions in the bills dealing with streamlining and conformity. For example, the House bill includes a statute of limitations on legal claims and specific deadlines for project milestones during project environmental review. Also, there is a major difference between House and Senate bills on the Section 4(f) publically owned lands and historic sites provisions. How significant these issues will really be remains to be seen.

The issue of earmarking will be a major part of the Conference. The House passed version of H.R. 3550 contains 2,884 specifically enumerated high priority

⁸ "Scope" has become the term most used to describe what programs within the total federal-aid highway program will be included in the rate-of -return on trust fund contributions calculation.

projects under the highway program and numerous additional earmarks for transit projects. The Senate bill, however, is bereft of earmarks. It is widely believed, however, that the Senate will insist on a significant share of any earmarking that might emerge in the conference bill.

For transit the major issue is also money, with project designation (earmarking), especially of new rail starts, a not to distant second. The principal issue to be resolved in the traffic safety (NHTSA) portion of the bill is the criteria to be used to determine which states qualify for funding under the Section 405 (occupant protection) and Section 410 (alcohol countermeasures) programs. All of the items discussed above are discussed in more detail later in this report.

Conference Actions

The Conference Committee met on several occasions beginning in June 2004. On three occasions the conferees adopted a relatively small number of legislative provisions that had been agreed upon during staff meetings. Larger and more important decisions were put off pending a decision by Members on total program size and on how to solve the donor-donee issue.

During June and July 2004, House and Senate conferees exchanged a series of informal overall funding proposals. The first House proposal would have provided for \$298 billion in total spending with guaranteed obligations of \$288 billion (getting to these numbers required a \$10 billion rescission of existing unspent contract authority). The Senate countered with an offer of \$303 billion in total spending, of which \$290 billion would be guaranteed (this offer requires a \$13 billion rescission).

Just prior to the beginning of the summer district work period (July 22nd) the conferees met once more and each made newly adjusted offers. The House offer was for \$299 billion in total authority, with \$284 billion guaranteed (\$15 billion rescission). It was alleged, but not confirmed, that the Bush Administration would accept these numbers and sign a bill that included them. The Senate offer was \$301 billion in total spending, of which \$289 billion was guaranteed (\$12 billion rescission). At this meeting it was decided that further efforts to reach a compromise on the final bill would have to wait until September. Staff was directed to work with FHWA to determine how either of the offers would effect state distribution of funds and how the donor-donee framework would be adjusted by these competing offers.

When Congress returned it continued to investigate a number of funding alternatives. None, however, proved satisfactory to all parties. Although several public statements were made by Conferees about the desirability of completing work on a bill during the 108th Congress, no real progress appears to have been made. Instead, Congress passed the aforementioned extension legislation delaying the need for long term reauthorization until early in the 1st Session of the 109th Congress.

Highway and Transit Finance

Highway Trust Fund Background

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.⁹ In almost every instance, Congress has chosen to expand the scope of the federal highway program.

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

The highway trust fund is financed from a number of sources including sales taxes on tires, trucks, buses, and trailers, as well as truck usage taxes, but approximately 90% of trust fund revenue comes from excise taxes on motor fuels.¹⁰ The majority of the motor fuel revenue dedicated to the trust fund is derived from an 18.4 cents per gallon tax on gasoline (24.4 cents on diesel). The highway account receives an allocation equivalent to 15.44 cents of the tax and the transit account receives the revenue generated by 2.86 cents of the tax. The remaining 0.1 cents goes into the leaking underground storage tank (LUST) trust fund.

Trust Fund Budgetary Treatment

TEA-21 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 setting the limitation on obligations for each fiscal year from FY1999 to FY2003 in authorizing rather than appropriations legislation. In addition, TEA-21 provided a mechanism, Revenue Aligned Budget Authority (RABA), to adjust these amounts in the highway

⁹ For a more detailed history of the trust fund see CRS Report RL30304, *The Federal Excise Tax on Gasoline and the Highway Trust Fund: A Short History*, by Louis Alan Talley.

¹⁰ For a discussion of federal transportation fuel taxes see CRS Report RS20281, *Transportation Fuel Taxes and Legislative Issues*, by Bernard A. Gelb.

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 in the next section of this report. It should be pointed out, all of the above notwithstanding, that annual revenues and expenditures affecting the balances in the trust fund accounts remain part of the overall annual federal deficit calculation.

The net effect of the changes was to set a predetermined level of funding for core highway and transit programs, referred to in TEA-21 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 TEA-21 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 did not occur except in FY2003.

Coming into the reauthorization debate there were reports that some Members would like to revisit the special budget status of the trust fund. At the time of this writing, however, no specific objections to continuation of the current system have arisen. Both S. 1072 and H.R. 3550 would maintain the existing system. The only change in the bills is in the RABA computation.

Reforming Revenue Aligned Budget Authority (RABA).¹¹ When RABA was created it was done with the understanding that highway funds would be increased if revenues to the trust fund increased above expectations and reduced if the opposite occurred. In 1998 it was viewed as unlikely that revenue would decrease, since growth in trust fund revenues had increased continuously during the almost all of the 40-plus year life of the trust fund.

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. (The previous year’s total had been dramatically increased by a positive RABA adjustment.)

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. In fact, Congress eventually provided a full adjustment of spending by adding sufficient funds from the unexpended balance in the trust fund to fund the program at its authorized level.

The events of FY2003 created interest in amending the RABA mechanism during reauthorization to reduce the chance of very large annual swings in RABA adjustments. Both the House and Senate bills try to eliminate these swings. In both

¹¹ For more information see CRS Report RS21164, *Highway Finance: RABA’s Double-edged Sword*, by John W. Fischer.

instances this is done by changing the way RABA is computed by the Office of Management and Budget. This is done by eliminating what has been a required “look ahead” computation that tried to predict the direction of the national economy. In addition the Senate bill suspends a RABA adjustment until FY2006. This is likely due to concerns about the level of unexpended balances in the trust fund, among other technical considerations. In addition, S. 1072 requires that no reduction under RABA be allowed so long as the cash balance in the highway account of the trust fund exceeds \$6 billion. This again could be viewed as a way to mitigate against a possible repeat of what happened in FY2003.

Revenue Raising Proposals

Much of the debate about the need for new revenues focuses on the concept of unmet highway and transit system needs as detailed in a report authored by the FHWA and Federal Transit Administration (FTA).¹² The report indicates that the costs required to improve the surface 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 TEA-21 (which was 40% plus larger than its predecessor, ISTEA, P.L. 102-240). 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. The Bush Administration has made it clear for well over a year that it will oppose any increase in federal fuels taxes. A number of Members of Congress, including much of the House Republican leadership, is also on record against fuel tax increases. As a result, the transportation community has been seeking alternative sources of new revenues for the highway and transit program.

The discussion below addresses many of the proposed revenue sources that have been under discussion during the 108th Congress. The Senate Committee on Finance agreed to a proposal identifying several sources of additional funding for reauthorization purposes that was made part of S. 1072 during floor debate.¹³ Supporting documents provided during Finance Committee markup on February 2,

¹² There is general acceptance of the idea that there are significant unmet surface transportation capital infrastructure needs. There are, however, numerous questions about their 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 the DOT website, [<http://www.fhwa.dot.gov/pressroom/test020926.htm>] and at the AASHTO website, [<http://www.transportation.org/bottomline/>]

¹³ As discussed in U.S. Congress. Joint Committee on Taxation, *Description of the “Highway Reauthorization and Excise Tax Simplification Act of 2004”* (JCX-5-04), January 29, 2004.

2004, indicate that an additional \$35 billion in revenues could be identified during the reauthorization period if committee provisions were to be adopted. As a result of amendments during floor debate several of the provisions in the markup version were changed. No further discussion as to how these changes effect revenue estimates has been provided. In the discussion that follows, reference is made to the amounts estimated during committee markup. As of this writing, there has been no outside examination as to the accuracy of the revenue estimates assumed in the committee's documents. Also, several of the revenue sources identified do not provide "new" money to the Treasury and are instead redistributions between Treasury general funds and the trust funds. In the Senate proposal each of these redistributions is offset by other changes in tax law that are primarily not transportation related and are beyond the scope of this report.

The House Committee on Ways and Means has acted on a substantial portion of its Title of the reauthorization bill by passing H.R. 3971, the Highway Reauthorization Tax Act of 2004. This bill provides \$17.7 billion in additional revenue for the highway trust fund over the next six-years. The bill's provisions are similar to those found in the Senate bill insofar as changes in ethanol fuel taxation and reduction of fraud and abuse activities are concerned. All of the provisions of H.R. 3971 were attached to H.R. 3550 during floor consideration.

Prior to the end of the 2nd Session Congress passed the American Jobs Creation Act of 2004 (P.L. 108-357). This legislation was primarily directed at solving an international trade problem. It also addressed a wide range of other revenue issues. In the case of transportation the act addressed many of the revenue provisions discussed in this section. The authors of the bill hope that the provisions enacted will raise \$24 billion over six years in additional revenue for the highway trust fund.

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 (5.2 cents). As part of federal policy to promote the use of ethanol as a substitute for gasoline, fuel that is up to 10% ethanol (gasohol) has been exempt from a portion of the federal fuels tax, usually 5.2 cents per gallon. In addition, 2.5 cents of the tax levied on gasohol based fuels has been deposited into the U.S. Treasury's general funds. From the perspective of the transportation interest community, these factors are depriving the trust fund of income that it deserves. Gasohol users 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 currently deposited in the general fund to the trust fund would net the fund more than \$700 million per year. Crediting the trust fund with the equivalent of the 5.2 cent exemption, not currently collected in any form, would result in more than \$1.5 billion per year.¹⁴ This \$2.2 billion plus per year would obviously make a significant potential contribution to the highway program. In both instances, it should be pointed out that while there is a

¹⁴ Rothman, 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.

significant net increase to the trust fund there is a concomitant opposite effect on Treasury general funds.

The problem for those supporting changes in gasohol taxation is the unified 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 5.2 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.

The ethanol issue was a part of the 1st Session's as of yet unresolved debate about federal energy policy.¹⁵ A part of that debate concerned the proposed "volumetric ethanol excise tax credit" (VEETC), which essentially would have taxed ethanol at the full transportation fuels tax rate and deposited these funds in the highway trust fund. Ethanol producers would be offered a tax credit equivalent to the increase in taxation from the general funds. The Senate Finance Committee adopted this provision in its February 2, 2004 markup, estimating that it would provide \$14 billion for the trust fund during the six-year reauthorization period. H.R. 3550 now contains a similar provision, estimating that these changes will raise \$15.1 billion over the same period.

Ethanol provisions addressing both the 2.5 cent and 5.2 cent issues are included in the American Jobs Creation Act. The authors of the act believe that these provisions will raise a combined \$18 billion for the trust fund during the life of the bill. An additional \$900 million is also provided to the trust fund by making the 2.5 cent change retroactive to FY2004.

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 TEA-21 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 continued to grow, albeit at a much slower rate, during most of the TEA-21 reauthorization period. Interest payments could be source of additional funds for the trust fund. According to Congressional Budget Office (CBO) testimony in May 2002, interest payments to the fund for FY2004 alone have been expected to amount to \$550 million (this assumes that the gasohol taxes

¹⁵ For detailed information, see CRS Report RL30369, *Fuel Ethanol: Background and Public Policy Issues*, by Brent D. Yacobucci and Jasper Womach.

described above have been redirected as discussed).¹⁶ While interest rates would remain positive in the near term, it is doubtful that they would approach the predictions of 2002. An intervening drop in the trust fund's unexpended balance, combined with historically low interest rates on treasury bonds has lowered the expectations of those expecting large annual returns from this revenue raising proposal.

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.

The Senate has adopted a provision that will allow for payment of interest on highway trust fund balances. This provision is expected to provide \$2 billion over six years. It should be pointed out that most of these interest payments are expected to accrue in the early years of this period as balances in the trust fund are expected to decline if S. 1072's increased spending provisions are enacted. The House bill is devoid of a similar provision.

Spending Down Trust Fund Balances. Related to the interest issue is the fact that both the highway account and the mass transit account continue to carry positive unexpended balances. Spending down these balances has been an issue in the past and was an important part of the TEA-21 debate. It should be pointed out, however, that the unexpended balance is not a "surplus," as it is frequently and incorrectly referred to by some in the transportation community. Rather, a considerable portion of these funds are reserved to cover the fund's existing obligations.

The House, Senate, and Administration proposals all rely on spending down the unexpended balance in the trust fund. The Senate proposal expects to spend down the balance to an amount no lower than \$6.5 billion in any year during the next reauthorization period. There is, however, a limit to how low the balance in the trust fund can go. The trust fund has a fiduciary protection measure known as the Byrd rule (for former Senator Harry Byrd of Virginia) that has been a feature of the highway finance system for most of the last four decades. In simple terms the Byrd rule prevents the further obligation of federal highway funds if the current and expected balances in the trust fund fall below a certain level. The Senate bill, in a potentially controversial move, changes the Byrd rule to allow the spending proposed in S. 1072 to occur at a rate that otherwise could have triggered the rule's spending restrictions.

¹⁶ U.S. Congressional Budget Office. *Status of the Highway Trust Fund*. CBO Testimony, by Kim P. Cawley. May 9, 2002.

Tax Fraud and Abuse. An issue of long standing is the concern that all fuel tax revenues are not being collected as required. Alternately there is a concern that illegal tax avoidance activities are reducing total revenue collections. A discussion about tax compliance has been a feature of each of the last several reauthorization bills, including ISTEA and TEA-21. The resultant provisions in ISTEA and TEA-21 focus on improving revenue collection activities and on identifying additional problems with revenue collections. Funding has been provided in the past to FHWA and Internal Revenue Service (IRS) efforts to improve collections and reduce fraud.

Hearings held in the 107th Congress by the Senate Committee on Finance identified continuing collection issues. As a result the Committee has concluded that improved collections could raise an additional \$4 billion over the six-year life of the authorization and has included related provisions aimed at raising this amount of additional revenues.

During its markup, the Senate Committee on Finance added a provision that redirects over \$2.1 billion from the airport and airway trust fund to the highway trust fund. Of this amount 89% is directed into the highway account and the remaining 11% is directed into the mass transit account. According to the Committee, this is an amount that they believe corresponds to the use of aviation fuel, which is taxed at a lower rate, in surface transportation vehicles. This, in the Committee view, is an instance of tax avoidance and/or abuse that needs correction. During the amendment process this provision was modified. Instead of a fixed annual amount, the Secretary of the Treasury is tasked with identifying and estimating the amount of aviation fuel being used in surface transportation vehicles and crediting the highway and transit accounts appropriately. No estimate of the amount of revenues this will provide has been made at this time. The House bill contains similar provisions. The House bill estimates that fraud and abuse enforcement activities should provide the trust fund with slightly more than \$2 billion in additional revenues during the reauthorization period. A provision addressing this issue is included in the American Jobs Creation Act. The authors of the act believe this provision will provide the trust fund with an additional \$5.1 billion over the next five years.

Ending Fuel Tax Exemptions. An issue not discussed in detail during the last year is the concept of ending fuel tax exemptions for a wide range of fuel users, such as; local governments, certain agricultural interests, and school bus operators. The Senate Finance Committee markup estimates that it will be able to increase trust fund revenues by \$8 billion over the next six years by changing the manner in which exemptions have been collected or funded and by changing a number of other tax provisions. A major change proposed at markup appears to require all fuel users to either pay the federal fuels tax and seek a refund or to immediately document their exemption from payment. Under the provision, these groups remain exempt from taxation, but reporting as to what would have been paid in the form of fuel taxes is required where it was not before. All of the funds identified here are not new money. Rather, they are transfers from Treasury general funds that are offset elsewhere in the bill by new revenue sources. There is no similar provision in the House bill.

Additional Senate Finance Markup Provisions. During markup, the Senate Finance Committee considered a wide range of tax provisions. Some of these provisions have a relationship to transportation, e.g. redirecting the proceeds for the

gas guzzler tax from Treasury general funds to the trust funds. The majority of the provisions in this portion of the Senate revenue title, however, especially those treated as offsets to increased highway spending, change federal excise tax laws in ways that are well outside the scope of this report. The House, similarly, added non-transportation tax provisions to its bill as part of the rule for floor consideration.

Revenue and Other Forms of Bonding. After a year of somewhat public discussion the Senate Committee on Finance has decided not to include any bonding provisions in the revenue section of the bill. The American Association of State Highway and Transportation Officials (AASHTO) began consideration of a bonding mechanism by proposing the creation of a new \$59.5 billion bond program as an alternative vehicle for financing surface transportation projects. Its plan would have created a organization to be know as the Transportation Finance Corporation (TFC) that would be established by Congress to issue bonds. The TFC would issue tax credit bonds for sale in the open market.

Senate Finance actively considered a proposal that would have created a bonding mechanism for transit funding during the 1st Session of the 108th Congress.¹⁷ Under the proposal the 2.86 cents dedicated to the mass transit account would have been redirected to the highway account and tax credit or other bonds would have been issued to fund the transit program. This proposal was met with considerable criticism from the transit community. It was also met with a veto threat from the Bush Administration which viewed the issue of bonds as a “grave threat to the general fund and the government’s ability to control spending.”¹⁸ Although Senate Finance dropped its proposal, the use of bonds continues to be discussed in the context of reauthorization and, as will be discussed later in this report, bonding provisions were added to S. 1072 during the floor amendment process.

The House Ways and Means Committee also considered bonds as part of its revenue proposal. An earlier bill considered by the Committee, H.R. 3967, contained the same ethanol, and fraud and abuse provisions as H.R. 3971. Also included was a provision that allowed for private activity bonds for the funding of transportation infrastructure. Ultimately, however, the Committee dropped its bond proposal and reported H.R. 3971 without a bond provision.

Increasing and/or Indexing the Federal Fuels Tax. The American Road and Transportation Builders Association (ARTBA) took the lead in actively promoting an increase in the federal fuels tax.¹⁹ Its “two cents makes sense” proposal 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.

¹⁷ Details of Senate Highway/Transit Revenue Plan Emerge. *Transportation Weekly*. Vol. 4, issue 26. May 13, 2003, p. 1.

¹⁸ Bush Administration Announces Veto Threat of TEA-21 Successor. *Daily Report for Executives*. BNA Inc. No. 144. July 28, 2003. p. G-6.

¹⁹ [http://www.artba.org/government/tea-21/tea_21.htm]

Depending on the source of the estimate, a one cent increase in the fuel tax will add between \$1.5 billion and \$1.8 billion to the trust fund on an annual basis. It has been argued that if Congress and the President are unwilling to raise the fuels tax they should at least consider indexing it in the future. 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 activity 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 concomitant increase in revenues. This mechanism, however, may provide the greatest benefit during periods of high inflation, which has not been the case in recent years.

Although not specifically endorsing the ARTBA proposal, Chairman Don Young of the House Committee on Transportation and Infrastructure, as well as other Members of the Committee leadership, have endorsed an increase in the federal fuels tax.²⁰ This has mostly been proposed in the context of indexing. At first, discussion of this idea centered on retroactively indexing the fuels tax back to the last time it was raised in 1993. More recently the indexing under consideration has been prospective for the next six-year authorization period. In either case, it was hoped that the fuel tax increase would amount to about 8 cents. No fuel tax increase, however, is proposed in either the House or the Senate bills.

Long Term Viability of the Trust Fund System. Many observers are concerned that the funding uncertainties created by the FY2003 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. 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. Both H.R. 3550 and S. 1072 contain provisions that would create a commission, or in the case of S. 1072 commissions, to study this issue so that its recommendations might be acted upon during the next reauthorization cycle.

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, homeland security, and the costs of sustaining our effort in Iraq, such a conclusion, however, is far from foregone.

If none of the revenue raising proposals discussed above are ultimately 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 six-year reauthorization could be between \$10 billion and \$17.6 billion. This increase, however, is modest by comparison with the program growth experience during TEA-21. In addition, this

²⁰ Wolfe, Kathryn A. *Young May Drop Bid to Hike Gas Tax to Get Highway Authorization Moving*. CQ Today. November 6, 2003.

increase is subject to revision and is closely related to the fate of the national economy during the expected six-year reauthorization period.²¹ This 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.

Neither S. 1072 nor H.R. 3550 can survive in their current form without significant new funding. Among pending bills, only the Administration bill, or some derivative thereof, could be enacted and stay within the no new revenue test. The most significant potential problem that could result 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 vs. transit, etc. 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)**

Donor-Donee State Remedies

How closely a state's annual return, in the form of federal-aid highway funds, should match a state's highway user tax payments is a long-standing and on-going controversy, as are attempts to guarantee a minimum "return" on these payments.²² Often referred to as the "donor-donee" state debate, the controversy pits "donor" states (states that receive less than a dollar in highway funds for each dollar the state's highway users pay to the highway account of the highway trust fund (HTF)) against the "donee" states (states that receive more than a dollar for each dollar their highway users pay to the highway account). TEA-21 guaranteed a minimum 90.5% return from the highway account of the HTF on each state's estimated payments to the highway account (based on the latest fiscal year for which data are available, generally two fiscal years earlier). Both the House Transportation and Infrastructure Committee (T & I) and the Senate Environment and Public Works Committee (EPW) leadership have pledged to work toward a guaranteed 95% return. The House T & I bill, as introduced, included language detailing how and under what conditions the minimum guarantee will be increased to 95%. The much smaller version of TEA-LU passed by the House did not include the language of the introduced version that would have phased in a guaranteed 95% share return by FY2009, effectively leaving

²¹ [<http://www.transportation.org/publications/HTMLJournal.nsf/ViewItems/>]

Based on a August 2004 Department of Treasury estimate it now appears that actual collections to the trust fund over the next few years could be lower than the estimates described in this paragraph.

²² This section only examines the existing minimum guarantee program in brief, focusing on the donor-donee and minimum guarantee debate within the context of the House bill and the Senate bill. For a background and issue discussion of the donor-donee/minimum guarantee debate see CRS Report RL31735, *Federal-Aid Highway Program: "Donor-Donee" State Issues*, by Robert S. Kirk and CRS Report RL32409, *Highway Program Equity Guarantee Issues*.

the guarantee at 90.5%. The Senate bill would use an “equity bonus” mechanism to bring all states up to 95% by the last year of the authorization.²³

The main difficulty faced in both the House and Senate is that a bill that simply reduces the shares of donee states to increase the shares of donor states may have difficulty overcoming a filibuster by donee states in the Senate. To construct an MG mechanism that can overcome this obstacle, ISTEA and TEA-21 both had provisions that could be seen as “hold harmless” provisions that maintained certain base shares for all states. This meant that part of the process of bringing donor state shares up to the MG percentage required increasing the overall federal highway program size (since donee state funding could not be reduced). This process has been very expensive. The MG program under TEA-21 became the largest Federal-Aid Highway program in the final years of the TEA-21 authorization cycle. To raise the guaranteed rate of return significantly, the TEA-21 MG framework will have to be altered unless significant new revenue sources can be found to support the HTF.

The TEA-21 Minimum Guarantee Program

The TEA-21 minimum guarantee had three components:

Guaranteed Base Share. TEA-21 guaranteed each state a percentage share of the total program, defined as all the apportioned (formula) programs: Interstate Maintenance Program (IM), National Highway System Program (NHS), Surface Transportation Program (STP), Highway Bridge Replacement and Rehabilitation Program (HBRRP), 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. These programs constitute the “scope” of the program. The State base percentages are in a table set forth in title 23 U.S.C. 105 (b).

Minimum State Payment. Each state was guaranteed that as part of the minimum guarantee it would receive at least \$1 million in Minimum Guarantee funds.

Guarantee of a 90.5% Return on Tax Payments. Each state was guaranteed at least a 90.5% share return on its share of tax contributions to the highway account of the HTF (based on the most recent year for which the data are available — generally from two fiscal years before). If the guaranteed base share was less than a 90.5% return to a state, then the share was adjusted upward until the 90.5% share was reached. Other states’ base shares (but not their apportioned dollars) were squeezed down to make room for these share increases and to prevent the national share total from exceeding 100%. At this point each state had a new adjusted percentage share and no share was lower than 90.5%.

As mentioned earlier, to accomplish states’ adjusted base shares, without taking money away from any of the states, required increasing the entire national MG program size to the point it was large enough to drop the share of the state that

²³ See *Congressional Record*, v. 150, Feb 3, 2004: S508-509.

needed the largest national MG program to achieve its adjusted base share (under TEA-21 the District of Columbia determined the national program size). This increase in the program size in turn determined the distribution amount of the MG funds needed to fulfill all aspects of the MG including the 90.5% minimum. This adjustment process required a great deal of money. As mentioned earlier, during the last years of TEA-21 the MG program was the largest Federal-Aid Highway program.

Minimum Guarantee Distribution. Each year, the first \$2.8 billion of Minimum Guarantee funds were administered as Surface Transportation Program (STP) funds, except that set-asides for Transportation Enhancements, Safety Construction, and certain population-based sub-state allocations did not benefit from this distribution. Any Minimum Guarantee funds above \$2.8 million were distributed to the five core programs: STP, IM; HBRRP; NHS; CMAQ. The distributions to the states were based on the ratio of each core program's apportionment to the total apportionment of all five programs for each state.²⁴

The House Minimum Guarantee Proposal

As introduced, TEA-LU would have amended the existing MG program (23 U.S.C. 105), rather than replace it. The bill provisions would have made changes in the guaranteed return, the list of programs under the MG program umbrella, and the distribution of MG funds. The House-passed versions of TEA-LU would leave the rate of return at the TEA-21 level of 90.5% but retain the changes in the programmatic "scope" of the bill as introduced.

Guaranteed Specified Return. TEA-LU, as introduced, would have achieved a guaranteed 95% state return on payments to the HTF by guaranteeing 90.5% for FY2004, 91% for FY2005, 92% for FY2006, 93% for FY2007, 94% for FY2008, and 95% for FY2009. As was true under TEA-21, the estimated state highway user tax payments to the HTF (other than the Mass Transit Account) are based on statistics from the latest fiscal year for which data are available (usually two fiscal years prior).

The phasing in of the 95% return over the life of the authorization would have had advantages during the current authorization cycle but could have posed problems for authorizers when they faced the next reauthorization cycle. The big advantage of phasing in the increase is that it saves money while fulfilling the promise to raise the guaranteed return to 95%. On the other hand, it shifts the heaviest burden on the trust fund to the last year of the authorization, possibly constraining future authorization increases in FY2010 and beyond.

As introduced, TEA-LU included a budgetary escape valve on the ramp-up to 95%, which would have suspended the provision if the annual obligation limitations listed in the bill were not fully funded. Should this have happened in any fiscal year of the authorization, the guaranteed return would have defaulted back to 90.5%.

²⁴ 23 U.S.C. 105(c)(1).

TEA-LU, as Reported, and as Passed by the House. The version of TEA-LU, reported out of the Transportation and Infrastructure Committee and eventually passed by the House, cut over \$70 billion in contract authority for highway programs from the funding level in the original bill. Within this financial context, the guaranteed specified return was held at the TEA-21 level of 90.5%. The language in TEA-LU, as introduced, that ramped up the rate of return to 95%, was dropped. On the other hand, as is discussed below, the House-passed bill retained the “scope” of the guarantee set forth in TEA-LU as introduced. The bill, however, as is discussed later in this report, includes a “re-opener” provision that would cut off funding of all non-safety apportioned programs on September 30, 2005, if Congress has failed by then to enact legislation that would ramp up states’ guaranteed rate of return to 95% by FY2009.

The “Scope” of the Guarantee: the Highway Programs Under the MG Umbrella. TEA-LU maintains the base share guarantee that the apportioned funds for the listed highway funds be allocated among the states in a way to guarantee each state percentage of the total apportionment for the listed programs be equal to the percentages set forth in section 23 U.S.C. 105(b). In the past, state shares have been adjusted during the authorization debate for a variety of reasons, including garnering support for the bill.

TEA-LU, however, does make changes in the TEA-21 list of programs that are included under the MG umbrella (changing what is commonly referred to as the scope of the MG).²⁵ First, it adds a number of new and modified existing programs to the MG program group: the Coordinated Border Infrastructure; Infrastructure, Freight Intermodal Connectors; Safe Routes to School; Highway Safety Improvement; and High Risk Rural Road Safety Improvement. Second, the bill moves the High Priority Projects Program (HPP) out from under the MG umbrella. Third, it placed a number of new or greatly expanded programs outside the MG program group: including Projects of National and Regional Significance; Dedicated Truck Lanes; Highways for Life; Pedestrian and Cyclist Equity; 511 Traveler Information; Hydrogen Infrastructure Deployment, as well as the expanded National Corridor Infrastructure Improvement Program.

TEA-LU’s changes in the scope of the MG are controversial and is believed by some observers to create problems for the functioning of the MG. By placing a significant number of new and expanded programs outside the MG umbrella, the House bill, as reported and eventually passed by the House, would restrict the impact of the MG calculation of guaranteed apportionment shares to roughly 84% of the total program.²⁶ Donor states are concerned that this situation would mean that they will have to successfully compete for earmarks in the allocated (non-MG programs) to achieve even the lowered 90.5% rate of return level relative to the all the highway programs. This arrangement has the advantage of keeping down the overall program costs. It also means, however, that when donor states eventually compare their dollar

²⁵ “Scope” usually refers to the percentage of contract authority in a reauthorization bill that is subject to the MG. Less often it refers to the programs covered by the MG umbrella.

²⁶ Under TEA-LU, as introduced, the scope would have been roughly 80%.

returns on dollar contributions to the HTF, many will still fall below the specified share return.

Another issue concerns earmarking. Because the MG sets the overall amount of funds that states get for the programs under the MG umbrella, earmarking within this group of programs does not generally bring any new money to the state.²⁷ These earmarks merely allow Members of Congress to set project priorities. The core formula program totals for each state adjust through changes in the MG distribution for the impact of the designation. An earmark outside the MG group of programs will actually increase the amount of money going to the state. This makes shifting the HPP out of the MG group especially controversial because the \$11.1 billion authorized would, through earmarking, significantly impact the state shares when eventually calculated on a dollar for dollar basis. The \$6.6 billion Projects of National/Regional Significance Program could also impact state shares.²⁸ With roughly \$37 billion of the \$225 billion (contract authority) provided for Federal-Aid Highway programs outside the MG program, most donor states did not favor TEA-LU's MG proposal when the bill was brought to the floor. Some donor states, however, did well enough in obtaining HPP earmarks that, according to some analysis, they might be better off if the HPP were kept outside the scope of the MG.²⁹

Both the issues of scope and the impact of earmarking on the MG program surfaced during debate on the floor of the House in the form of an amendment (H.Amdt. 514) offered by Representative Johnny Isakson of Georgia. The amendment would have brought both the HPP and the Projects of National and Regional Significance within the scope of the MG. The amendment also would have increased funding to the core highway formula programs. However, the wealth of earmarks and perhaps the hesitance of some donor state Representatives to break with the Transportation and Infrastructure Committee leadership, softened the cohesiveness of the donor state coalition and the amendment was defeated.

Minimum Guarantee Distribution. TEA-LU, as passed, keeps the basic TEA-21 distribution paradigm, with one major exception: the bill raises the portion of the MG funds reserved for STP, under the "remaining distribution" provision, from \$2.8 billion under TEA-21 to \$2.87 billion for FY2004, \$2.94 billion for FY2005, \$3.02 billion for FY2006, \$3.09 billion for FY2007, \$3.17 billion for FY2008, and \$3.25 billion for FY2009. STP is the highway program with the broadest eligibility criteria. Its formula also is least dependent on total lane miles and most dependent on estimated tax payments to the highway account of the HTF. This also squeezes down the relative MG amounts going to the other core formula programs (IM, NHS, CMAQ, HBRR).

²⁷ For HPP earmarking within the scope of the MG to bring increased money to a state its dollar total would need to exceed the state's MG payment (minus the \$6 million minimum MG payment received over the life of the authorization).

²⁸ The HPP was reduced by nearly \$4 billion and Projects of National/Regional Significance were reduced by \$11 billion in TEA-LU, as reported.

²⁹ See *Transportation Weekly*, v. 5, March 29, 2004. P. 7-8,14. CRS has not verified the accuracy of this analysis.

The Senate's Proposed Equity Bonus (EB) Program

The Senate has taken a different approach from the House. The Senate bill would replace the entire MG program with an "Equity Bonus" program (EB).³⁰ As is true with the House bill, the Senate bill would achieve a 95 % return on payments to the highway account of the HTF by FY2009, the final year of the authorization. It would eliminate the base state share percentage table used in TEA-21 and in the House bill. Basically, the individual program formulas would determine the initial apportionment and the equity bonus would be added to these levels.

The Equity Bonus. The Senate bill directs the Secretary of Transportation to allocate to the states for each of the fiscal years 2004 through 2009 sufficient funds to ensure that each state receives at least a 95% return (to EB specified programs) on its estimated payments to the highway account of the HTF (subject to a number of rules and limitations discussed below). The Senate bill would keep nearly all the programs subject to MG under TEA-21 (IM, NHS, STP, CMAQ, HBRR, Recreational Trails, Appalachian Development Highway System, and metropolitan planning) subject to the equity provision. In addition the Senate bill, as passed, also includes the new Highway Safety Improvement Program, the infrastructure performance and maintenance program, the safe routes to schools program, the rail-highway grade crossing program, as well as the EB program itself, under the EB program umbrella. As of Senate passage, the HPP program has not been included among the EB programs.³¹ The estimated scope of the EB program is roughly 93%, slightly lower than TEA-21 but significantly higher than TEA-LU's 84%.

The bill protects some states that would lose percent share under the EB's 95% share. States with a population density of less than 20 people per square mile, a population under one million, or a median household income under \$35,000 would get either the 95% share or their average share of allocations under TEA-21.

Equity Bonus Special Rules and Limitations. The EB is also subject to certain rules and limitations which taken together can be seen as placing a floor and a number of ceilings on the program.

Special Rules.

- All states are to be allocated enough funds to ensure that each state gets at least 110% of its TEA-21 annual average.
- No negative adjustment may be made to any state's apportionment during the EB allocation.

³⁰ The Equity Bonus provision was introduced as a modification to the EPW committee amendment in the nature of a substitute during initial floor consideration on February 3, 2004. See *Congressional Record*, Feb. 3, 2004: S506-09. See also *Transportation Weekly*, v. 5, Jan. 27, 2004: 1, 5-10, and *Washington Letter on Transportation*, v. 23, Jan. 26, 2004: 3-4.

³¹ Historically, EPW has held its HPP list of projects out of its reported bill only to add it during conference negotiations.

- Notwithstanding the limitations (see “Limitation on Adjustments” below) the amendment requires that no state in any year may drop below 90.5%.

Limitation on Adjustments. EB allocations are not to be given to states under certain conditions. If a state’s total apportionments of all the designated EB programs exceeds the state’s average TEA-21 apportionments by the following percentages the state gets no bonus.

- FY2004 ceiling: 120% of state’s TEA-21 average
- FY2005 ceiling: 130% of state’s TEA-21 average
- FY2006 ceiling: 134% of state’s TEA-21 average
- FY2007 ceiling: 137% of state’s TEA-21 average
- FY2008 ceiling: 145% of state’s TEA-21 average
- FY2009 ceiling: 250% of state’s TEA-21 average

This is the main mechanism that phases in the 95% share goal by the final year of the authorization. It also holds down the cost of the EB program.

Equity Bonus Distribution. The distribution of the EB is to the core formula programs (IM, NHS, STP, CMAQ, HBRR, the Highway Safety Improvement Program and Metropolitan Planning). The bonus would be distributed to each program based on the relative share each state received for each program based on the program formulas. Metropolitan Planning, however, would receive no bonus. The initial \$2.8 billion that under TEA-21 went to STP is not in the EB proposal.

EPW committee staff produced a table that projected the state percentage share return on payments over the life of the bill.³² The process of ramping the donor states up to 95% return appears to have a variable impact on states. For example, Michigan and Indiana achieve a 95% return in FY2004 while California and Texas remain at 90.5% until FY2009. As mentioned earlier some sparsely populated, low population, and low income states receive some protection under the proposal. However some donee states, New York and Pennsylvania, for example, face significant share reductions.

Donor - Donee Conference Issues

Conferees face reconciling the House and Senate bill equity guarantee provisions that differ in approach, scope, and rate of return. The House bill retains the basic TEA-21 minimum guarantee structure. Perhaps its main advantage is that it is a known program with a six year track record. On the other hand, the way the MG is calculated and implemented is complex and has been shown to at times to have unexpected outcomes. The Senate Equity Bonus (EB) program is a new approach which in concept is much simpler than the MG. Some of this simplicity, however, is lost with the protections, special rules and limitation adjustments

³² This table was reproduced in modified form in *Transportation Weekly*, v. 5, Jan. 27, 2004: 10.

imposed on the bonus. Even so, it probably a simpler equity paradigm than the TEA-21 model, although there is no track record to judge it by.

Scope is a major issue for conferees. There are really two scope issues that will need to be dealt with. First, is the breadth of the scope as a percentage of total funding. The scope of the House bill is roughly 84%. The scope of the Senate's EB proposal is roughly 93%. This percentage could change depending on the treatment of the HPP project list in conference. Applying each bill's guaranteed rate of return against the scope of the two bill means that, in effect, the rate of return in the House bill it is 90.5% of 84% of the total bill (prior to the September 30, 2005 "re-opener" requirement) while in the Senate it builds to become 95% of roughly 93% of the total bill in the last year of the authorization. Second, is the issue of the choice of programs within the scope of the eventually decided equity provision. The House bill has significantly more new or reconfigured programs than the Senate bill. Part of the scope decision making process will have to be which programs are kept in the final bill and which are dropped or altered. In the past, donor states almost always argued for the broadest scope possible. The experience in the House with the Isakson amendment, however, may indicate that donor state support for the broadest scope possible may not be as predictable as in the past.

The core of the equity debate is the proper level of the MG rate of return on state payments to the HTF. Providing for a substantial increase in the guaranteed minimum guarantee percentage is an expensive proposition. As mentioned earlier, the MG became the largest highway program under TEA-21. Even the House bill as introduced, which had roughly \$70 billion more in contract authority than the House-passed version, could only achieve a 95% guaranteed return by phasing in the increase over the life of the bill. The much smaller bill passed by the House retains the TEA-21 guarantee of 90.5% coupled with the re-opener provision. The case can be made that the re-opener provision in effect makes the House bill an 18 month reauthorization bill. The Senate's EB gets to the 95% guarantee, but only by delaying the bonus for some of the large donor states until the last year of the authorization. Despite the dissatisfaction over the delayed nature of their 95% guarantee by Senators from major donor states, the Senate bill may have an advantage in conference in that, it does get all the donor states to the 95% goal, even if it is only in the last year of the authorization. Once that level has been achieved it could set a precedent that could be difficult for future authorizers to ignore. On the other hand, debate on the House floor brought up concerns that too broad a scope aligned with a percentage guarantee as high as 95% could constrain Congress from dealing with all federal transportation needs, the spending for which could not always rationally be spread across all states.

Statistical Caveats

A number of statistical issues have an impact on MG and EB proposals. The use of non-current data (i.e., revenue estimates from two years prior) may skew the state donor-donee ratios and lead to conclusions about donor or donee status that are questionable. Also state-by-state data on payments to the highway account of the HTF are estimates based on extrapolations from state tax data and may not always be accurate or up to date. The economic cycle can have an impact on revenues and the budgetary process that can lead to years when revenues and spending levels differ

significantly from each other: this can have an impact on rate of return. Finally, the MG and EB proposals attempt to achieve a specified “share” return on two year old payments data. Distribution equity, however, is almost always judged by Table FE-221 in the annual FHWA *Highway Statistics Report*³³, which compares estimated dollars paid and apportionments and allocations received in the same year. This statistical disconnect means that even an effective MG or EB program will face criticism when the same year dollar for dollar return data are released. In addition, the impact of proposed revenue changes on states’ relative shares of payments to the HTF are hard to gage over the life of the reauthorization. These changes could change some donor states to donee states, or vice versa, over the next few years. It could also impact the calculation of program size under the MG. The difficulties with statistics are particularly acute during the reauthorization process. Because reauthorization deals with changing law and looking to the future there is an enormous amount of uncertainty in any statistical analysis. Many assumptions must be made which may or may not prove to be accurate as the future moves into the present. The share of payments data, which begins the MG calculation, change from year to year and not always in predictable ways. This alone can have a major impact in donor-donee outcomes and especially on the projection of total program size. The projection of state-by-state allocations over a six year authorization, although perhaps not as unpredictable as the revenue data, is also uncertain. **(CRS contact: Bob Kirk)**

House “Re-Opener” Provision

As mentioned earlier, the introduced version of H.R. 3550 was a \$375 billion bill. With that amount of money it was possible to ramp up the state share of programs under the MG structure on an annual basis, with all states receiving 95% by FY2009. The House Committee on Transportation and Infrastructure reluctantly bowed to House Leadership and reported a \$275 billion bill. As rewritten to accommodate this lower funding level the MG level remains at the 90.5% level through the life of the bill.

The Committee remains very concerned that \$275 billion is insufficient funding for the federal transportation program and that this amount does not allow for any increase in the MG level. Seeking to force the issue of funding in the future, the reported bill contains a provision (Section 1124) that causes automatic termination of most federal-aid highway programs after September 30, 2005 unless certain conditions are met. This so-called “re-opener” or “trigger” provision is designed to insure that Congress must raise funding and addresses the donor-donee issue in a manner that raises each state’s share to 95% by FY2009.

The re-opener provision is straightforward. If Congress has failed to enact legislation that increases funding or otherwise allows the MG to rise to 92% in FY2006, with an additional one percent increase in each subsequent fiscal year, most federal highway program funding ends. At the same time a hold harmless provision in the section requires that no state receive less as a result of this provision and that each state receive an amount of additional assistance at least comparable to a Consumer Price Index (CPI) measured rate of inflation.

³³ [<http://www.fhwa.dot.gov/policy/ohpi/hss/index.htm>]

This is a controversial provision. Some will view its inclusion in the bill as evidence that H.R. 3550 is not actually a six-year bill, but really a two-year bill (18 months at this point). The Bush Administration objects to this provision because it requires additional funding that could ultimately raise the final cost of the bill to a level it finds unacceptable. It is unclear how the Senate might react to this provision in Conference.

Highway Program Structural Changes

Apportioned Programs

Funds for all of the programs discussed here are apportioned to the states on an annual basis using formulas found in TEA-21. As a result they are sometimes referred to as the “apportioned” programs. In some instances, apportioned programs are also referred to as formula programs.

Under TEA-21 most highway funding is reserved for five major programs, which are usually referred to as the core programs. They, along with the minimum guarantee, accounted 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. In addition to the “so-called” core programs there are a couple of additional and much smaller apportioned programs in TEA-21, e.g.: metropolitan planning and the recreational trails program.

Because the minimum guarantee program is so large it could also be thought of as a core program; it provides additional apportioned funds for each of the five core programs. By the last year of TEA-21, the minimum guarantee was, in fact, the largest highway program. In the FY2003 authorization, for example, it provided fully 20% of all funding.

New Apportioned Programs — House and Senate. Both the House and the Senate bills add one new program to the core, the Highway Safety Improvement Program (HSIP). Originally proposed by the Bush Administration, this program consolidates a number of existing safety programs into a new formula grant program. (HSIP is discussed in greater detail in the safety section of this report.) The Senate HSIP contains a new “safe routes to school” program. The House creates a much larger safe routes to school program as a separate formula program. (This program is discussed in greater detail in the pedestrian and bicycle mobility section of this report.)

As discussed earlier, the House bill continues the existing minimum guarantee program, leaving that aspect of the core program structure unchanged. The Senate bill adopts a new “equity bonus” program that apparently will only provide funds to those

states whose annual highway program funding falls below a certain level. (It also restricts funding above a certain level for all states).

The House creates additional apportioned programs that would not necessarily be considered core programs. Among these is a new freight intermodal connectors program, with \$1.37 billion in funding over the next six years. The Senate creates a similar program for freight transportation gateways, but does not fund it separately. Rather S. 1072 requires each state to use up to two percent of its NHS funding for intermodal freight terminals and other freight related activities. (These programs are discussed in more detail in the intermodal section of this report.)

New Apportioned Programs — Senate. As introduced the border planning, operations, technology, and capacity program in S. 1072 was an allocated program. As amended on the floor, however, it has become a formula program. This program is a successor to the TEA-21 created National Corridor Planning and Development Program (part of the CORBOR program), now limited to specific border states, but with broadened project eligibility.

New Apportioned Programs — House. The House breaks up the existing national corridor planning and development and coordinated border infrastructure program (CORBOR) program (which is currently an allocated program) and creates a new formula coordinated border infrastructure program. This program provides funding for new and improved infrastructure within 20 miles of the Mexican and Canadian borders. The program receives \$1.1 billion over the life of the legislation.

One other fairly large formula program is created in H.R. 3550, a high risk rural road safety improvement program, which receives \$675 million over six years. This program is focused on fixing problems on rural roads with higher-than-average fatal accident rates.

A significant new apportioned program in the House bill is not a separate program. H.R. 3550 creates a new congestion relief program, but funds it from existing core program obligations. States are required to reserve a computed portion of their total apportionments for specified congestion relief activities.

Allocated (Discretionary) Programs

All remaining highway programs are subject to allocations that are based on criteria established in highway authorization and appropriation law. They also may be, and usually are, subject to congressional earmarking. In TEA-21 all of the programs in this category were smaller than the core programs, although there were some programs with significant funding levels. The largest allocated program in TEA-21 was for congressionally mandated high priority projects (earmarks) that were specifically designated in the act. Other relatively large programs in the allocated category are the federal lands program, the aforementioned 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).

New Allocated Programs — Senate. The Senate bill creates one large new allocated program, the infrastructure performance and maintenance program (IPMP). The IPMP, which was also part of the Administration bill, is for so-called “ready to go projects.” Funding is limited to projects that improve operations and/or preserve or maintain existing highways or other infrastructure. The Secretary of Transportation is charged with developing an allocation program that provides for funding of projects that can be obligated within 180 days. The bill initially provided \$12 billion for this program over the six-year authorization period, with the money front-loaded, i.e., more funds are available in the first few years than in later years. As a result of floor amendments, however, IPMP is now funded at the \$2 billion level, and only for FY2004. During floor consideration a new, but unfunded, multistate international corridor development program was added to the bill. This provision is focused on the movement of freight from ports through and to the interior.

New Allocated Programs — House. The House bill contains several large new allocated programs. In fact, much of the new money in the House bill is for the allocated programs. The largest new program is for projects of national or regional significance. This program receives \$6.6 billion. These funds are reserved for very large projects costing over \$500 million or the equivalent of 75% of a state’s annual total program apportionment. The criteria for selection are to be determined by the Secretary of Transportation and the Secretary is empowered to provide selected recipients with formal “letters of intent” in the same manner that new-start transit projects are funded. Considerable latitude is provided in this program, which can, for example, be used to fund multi-state projects that are difficult to arrange under the existing highway program.

The other large new allocated program is for congressional high priority projects (earmarks). H.R. 3550 provides just over \$11.1 billion for these projects, which are widely distributed amongst Members. As reported the bill lists 2,884 separate projects. This is 1,034 more projects than were included in TEA-21. The Senate does not have a comparable provision in its bill. Senate earmarks have been added, however, to previous reauthorization bills, normally at the conference stage. (**CRS contacts: John Fischer and Bob Kirk**)

Highway Program Formula Changes

Under TEA-21, most of the funds distributed by the Federal-Aid Highway program were apportioned to the states based on apportionment formula factors set forth for the individual programs under Title 23 of the U.S. Code. The major existing formula programs are IM, NHS, STP, HBRR, CMAQ, Recreational Trails Program, and Metropolitan Planning.³⁴ Some program formulas include a combination of weighted factors such as lane miles, vehicle miles traveled, and estimated tax payments to the highway account of the HTF. Other programs are primarily based on a single factor such as the relative state share of total cost to repair

³⁴ The MG program and the proposed Equity Bonus program also apportion funds by formula. For a discussion of these programs see the “Donor-Donee Remedies” section.

or replace deficient bridges (HBRR) or weighted non-attainment and maintenance area population under the Clean Air Act (CMAQ).

Existing Formula Program Changes

Neither the House nor Senate bills make major changes in the existing program formulas. The bills do, however, make some adjustments that are of note. The Senate makes adjustments to the underlying calculation under CMAQ of weighted non-attainment and maintenance area population, in part to add the Clean Air Act's new particulate matter standard into the underlying calculation. The Senate bill would require each state to set-aside 2% of its NHS apportionment to carry out the proposed Freight Transportation Gateways/Freight Intermodal Connections program. S. 1072 also provides a number of formula program set-asides for the New Strategic Highway Research Program, including set-asides of \$15 million from IM, \$19 million from the NHS, \$13 million from the HBRR, \$20 million from STP, and \$5 million from CMAQ. The House bill (section 1205) includes a provision that requires that \$3 billion of amounts authorized under NHS, IM, STP, and CMAQ be utilized to expand deployment of intelligent transportation systems. The House bill also creates a \$20 million NHS set-aside for the construction of ferry boats and ferry terminal facilities in Alaska, New Jersey, and Washington.

New Programs' Formulas³⁵

House and Senate. The proposed Highway Safety Improvement Program (HSIP) formula distribution is weighted 25%, in the ratio of total federal lane miles in each state to the total lane miles of the federal-aid highways (FAHP) in all states; 40%, in the ratio of total FAHP vehicle miles traveled (VMT) in the state to total VMT on all FAHP highways; 35%, in the ratio of estimated tax payments from users in each state to the estimated tax payments by highway users in all states. The minimum payment is set at 0.5%.

Senate Bill. The Senate bill includes only one significant new formula program that does not appear in the House bill.

Border Planning, Operations, Technology, and Capacity Program. Funds are distributed on the basis of four factors, each of which receives equal weight. First is a ratio of the average annual weight of all cargo entering a border state (defined in the bill) from Canada or Mexico to the total of such cargo entering all border states. The second factor is a similarly computed ratio using the average trade value of cargo. The third factor is a ratio of the number of commercial vehicles entering a border state to the total number of such vehicles. And the final factor is the same computation using passenger vehicles.

House Bill. In addition to HSIP, discussed above, the House bill includes a number of new or changed programs whose funds are to be apportioned according to formula.

³⁵ TEA-LU, as reported and as passed, made no changes to the formulas discussed in this section. The formulas are the same as in TEA-LU, as introduced.

Coordinated Border Infrastructure Program. Under TEA-21, this was an allocated (discretionary) program. Under TEA-LU, the funds are to be apportioned under the following formula: 20% in the ratio of incoming commercial truck crossings in a state to the total incoming commercial truck crossings in all border states; 30% in the ratio that incoming personal vehicle and bus crossings into a state to the total of incoming personal vehicle and bus crossings in all border states; 25% in the ratio of total weight of incoming cargo in a state to the total weight of incoming cargo in all border states; and 25% of the ratio that the total number of ports-of-entry in a state bears to the total number of ports-of-entry of all border states.

Freight Intermodal Connectors. Sums are to be distributed as follows: 33.3% in the ratio of the freight intermodal connectors in a state to the number of freight intermodal connectors in all states; 33.3% in the ratio that a state's estimated payments by the state's highway users to the highway account of the HTF bears to the total of such payments by all states; and 33.4% in the ratios apportioned for the NHS.

Motor Vehicle Congestion Relief. The portion of a state's apportionments from core programs to be obligated for congestion relief activities is determined by multiplying the amount apportioned to the state under IM, NHS, STP, and CMAQ by 10% and then by the percentage of the state's population residing in urbanized areas of the state with a population of over 200,000 people.

High Risk Rural Road Safety Improvement. Funds are to be apportioned as follows: 1/3 in the ratio that each state's public road lane mileage for rural minor collectors and rural local roads bears to the total for all states; 1/3 in the ratio that the population of non-urbanized areas in a state bears to the non-urbanized area population for all states; 1/3 in the ratio of the total vehicle miles traveled on public roads in each state bears to the total vehicle miles traveled on public roads in all states.

Safe Routes to School. Funds are to be apportioned among the states in the ratio that the total student enrollment in primary and middle schools in each state bears to the total student enrollment in primary and middle schools in all the states. No state is to receive an apportionment of less than \$2 million. (CRS contact: Bob Kirk and John Fischer)

New Directed Spending

Motor Vehicle Congestion Relief. Section 1201 of the House bill directs that any state with an urbanized area of over 200,000 people must obligate, for congestion relief activities, from their IM, NHS, STP, and CMAQ apportionments an amount determined by multiplying these programs' totals by 10% and then by the percentage of the state's population residing in urbanized areas of over 200,000 people. The bill directs that 40% of the funds be spent on projects that cost less than \$1 million and can be completed within one year. Another 35% is to be spent on projects that have no cost limit but must be completed within three years. The final 25% be spent on either the within-one-year or within-three-years category projects, on transit capital projects, or on congestion relief activities such as telecommuting, ridesharing, alternative work hour programs and value pricing. The provision

appears to be designed to encourage states to act on relatively small, low cost projects that can be quickly completed. **(CRS contact: Bob Kirk and John Fischer)**

Highway Program Issues

Flexibility/Transferability

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., transit.³⁶ These conditions are also known as transferability provisions. Increased funding flexibility has been an important part of the last two highway reauthorizations, TEA-21 and ISTEA.

There are often 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.

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 that they view as having national importance.

Both the House and Senate bills contain provisions that enhance transferability. The Senate bill includes several such provisions, two of which are particularly notable. First is a provision that allows highway funds to be transferred to other Federal agencies and allows them to administer projects in certain instances. A second provision allows the Secretary of Transportation to approve transfers of funds between states for the funding of one or more specific projects and, in addition, to allow states to transfer funds to FHWA for the same purpose.

The House bill also contains multiple instances that allow for greater transferability of funds between programs and jurisdictions. For example, transportation systems management and operations activities are considered eligible uses for STP, NHS, and CMAQ funds. In another instance, recreational trails funds can be used to provide what is normally the state or local matching requirement. Finally, an important aspect of the new proposed program to fund projects of national/regional significance is the ability of multiple states, local governments, and in some cases private firms to enter into agreements to pool funds from multiple sources. **(CRS contact: John Fischer and Bob Kirk)**

³⁶ The highway programs have limitations on how funds can be transferred among programs. Further information on the TEA-21 structure can be found on the DOT website at [<http://www.fhwa.dot.gov/tea21/factsheets/index.htm>].

High Priority Projects (Earmarking)

In the view of some industry observers, the most controversial feature of TEA-21 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.

The growth in earmarking, 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 TEA-21 are now entirely earmarked in appropriations legislation.

Earmarks have some significant effects on policy questions that arise as part of the reauthorization debate. Earmarking in TEA-21 does affect the donor/donee computation. Within the context of a state’s total program spending, for example, if the state receives a significant number of earmarks, the state will see its discretion over total program spending somewhat reduced.

As mentioned earlier H.R. 3550 identifies 2,884 high priority projects (at an estimated cost of \$8.6 billion). Approximately \$11.1 billion is reserved for high priority projects in the bill. The project list was included as part of a manager’s amendment adopted during committee markup of the bill. The Senate bill does not reserve funding for earmarks. There are, however, two set-asides for specific bridge projects in the bill that might be construed by some as earmarks. During TEA-21 consideration the Senate bill was devoid of earmarks. Senate high priority projects were added in conference. **(CRS Contact: John Fischer and Bob Kirk)**

Innovative Financing Provisions

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); credit assistance available as a result of the Transportation Infrastructure Finance and Innovation Act (TIFIA); and state infrastructure banks (SIBs). Each of these mechanisms has specific strengths and weaknesses that have been studied and described by GAO, CBO, and FHWA.³⁷

³⁷ U.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. Available online from the GAO website at [<http://www.gao.gov/new.items/d021126t.pdf>]. See also the FHWA website at [<http://www.fhwa.dot.gov/innovativefinance/>] and U.S. CBO, *Innovative Financing of Highways: An Analysis of Proposals*, January 1998 online at the CBO website at (continued...)

The House and Senate bills make changes in two of the federal innovative finance programs: TIFIA and the SIB program. Most of the changes may be viewed as perfecting changes in the programs but other changes are more significant.

TIFIA. This program provides three types of federal financial assistance for major transportation projects: secured loans, loan guarantees, and standby lines of credit. Both the House and Senate bills reduce the minimum project size threshold from \$100 million to \$50 million. The House bill also lowers the minimum project threshold for intelligent transportation system projects from \$30 million to \$15 million. The Senate bill would provide \$130 million annually to support TIFIA's leveraging activities; the House bill, as reported, would provide \$130 million for FY2004 and then \$140 million annually for FY2005-FY2009.

SIBs. Under the SIB program, federal funds are used to help capitalize state infrastructure revolving funds. Under TEA-21, the program was limited to four states, Missouri, Rhode Island, California, and Florida. Both the House and Senate bills would allow any state to enter into an agreement with DOT to establish SIBs eligible to be capitalized with federal funds drawn from core highway program funds.

Public-Private Partnerships. It has long been contended that enhanced use of public-private partnerships in the creation of transportation infrastructure could result in reduced overall costs and more efficient project delivery. The concept has been discussed for some time and is already allowed in certain instances. S. 1072 contains a provision that tries to force the Secretary to broaden the use of these arrangements by creating a public-private partnerships pilot program. This program requires that the Secretary identify at least 10 public-private partnership projects as part of the already existing innovative finance program framework. To accomplish this, the bill provides funding of \$10 million per year for the six year reauthorization period. (CRS contacts: John Fischer and Bob Kirk)

Toll Projects.

S. 1072. SAFETEA contains two provisions dealing with toll projects. The first changes the eligibility provisions in the TEA-21 created interstate system reconstruction and rehabilitation pilot program. The TEA-21 provision required an analysis that found tolls to be the only practical way to pay for a reconstruction project. The SAFETEA substitute requires that the analysis show that using tolls would be "the most efficient, economical, or expeditious way to advance the project."

The second provision is the Senate's inclusion of the Fast and Sensible Toll (FAST) Lanes Program. Although it uses the same name, it varies significantly in detail from stand-alone legislation that had been introduced earlier in the 108th Congress.³⁸ The program would allow the use of tolls to create new high occupancy lanes on existing interstate highways in urbanized areas. These lanes, also known as HOT lanes (high occupancy toll), are viewed as a tool useful for potentially reducing

³⁷ (...continued)

[<ftp://ftp.cbo.gov/3xx/doc320/finhways.pdf>].

³⁸ H.R. 1767 and S. 1384.

urban congestion. The tolls collected could be used to pay for the debt service incurred by their construction and for certain other purposes. S. 1072 provides \$11 million per year for this program.

H.R. 3550. TEA-LU includes two provisions that involve tolling. Section 1208 (HOV Facilities) includes a provision that would allow state departments of transportation to allow vehicles not otherwise eligible for HOV use, to pay a toll charged by the agency to use the HOV lanes. The provision requires that the tolls be collected automatically, that toll amounts be varied to manage demand, that violations be enforced, and that low-income individuals be permitted to pay reduced tolls.

During debate, an amendment (H.Amdt. 513) by Representative Mark Kennedy of Minnesota eliminated three existing toll provisions from the bill and introduced a new proposal for “Fast Fees” in Section 1603. The amendment repeals the Congestion Pricing Pilot Program, begun under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA; P.L.102-240), which allowed the Secretary of Transportation to enter into agreements with state and local governments to carry out up to 25 congestion pricing pilot projects. The amendment also struck Section 1603, the Interstate System Reconstruction and Rehabilitation Toll Pilot Program, which would have reestablished the TEA-21 pilot program that allowed a state to collect tolls on an Interstate System highway, bridge, or tunnel for the purpose of reconstructing and rehabilitating the facility. In addition, the amendment struck Section 1604, the Interstate System Construction Toll Pilot Program, would have allowed a state or compact of states to collect tolls on a highway, bridge, or tunnel on the Interstate System for the purpose of constructing Interstate highways.

The Fast Fees provision is a modified version of the Freeing alternatives for Speedy Transportation (FAST) ACT (H.R. 1767; S. 1384). The provision would direct the Secretary of Transportation to establish an Interstate System FAST Lanes program under which a state or public or private entity designated by a state, could collect tolls for the purpose of reducing traffic congestion by constructing one or more additional lanes on the Interstate System. The FAST Lanes program requires that all tolls be collected electronically and that revenues are only to be used for: debt service on investment, a reasonable return on investment of any private investor, costs for improvement and proper operation and maintenance of FAST Lanes and existing lanes if these improvements are necessary to integrate the existing lanes with the FAST Lanes or for the construction of an interchange from the FAST Lane to existing lanes, or for the establishment by the state of a reserve account to be used for the long term maintenance and operation of the FAST Lanes. Fees may only be collected on and for the use of FAST Lanes. The use of FAST Lanes must be voluntary. Revenues may not be used for any other project. Once the debt, return on investment, related improvements are paid for and the reserve account is funded, the tolls would be lifted.

Although the amendment passed, opponents made a number of arguments against the provision. First, some argued that states should have more flexibility on the use of the toll revenue. They also argued that it would prevent the tolling of existing Interstate System lanes. The other opposition came from trucking interests that expressed concern that states would be allowed to add toll lanes to any Interstate

System highway that added new lanes. Others objected to the tolls as essentially being a tax.³⁹

Bonding Proposals

The Senate bill, as passed, includes two bonding provisions. One amends the Internal Revenue Code of 1986 to allow the issuing of tax-exempt private activity bonds to finance highway projects and rail-truck transfer facilities. Any surface transportation project that receives assistance under any Title 23 program would qualify, as would any international tunnel or bridge that likewise receives federal assistance under Title 23. Any truck-train transfer facility project would also qualify. A \$15 billion limit is placed on the aggregate face amount of the bonds that can be issued. The bill includes spending offsets for federal revenue losses under the provision. The second bonding provision would establish a Build America corporation that would be able to issue Build America bonds to support eligible highway, mass transit, or congestion relief projects. Funding, however, is not provided and there are no provisions amending the U.S. Tax Code to provide for any special tax treatment of Build America bonds. **(CRS contacts: John Fischer and Bob Kirk)**

Transportation Enhancements (TE) Program

Under the House and Senate bills, the Transportation Enhancements program would be similar to the program under TEA-21. Currently, 10% of the funds apportioned under the Surface Transportation Program (STP) must be allocated to transportation enhancement activities, e.g. bike paths, landscaping and scenic beautification, and historic preservation. Because STP funding is set to rise under both bills, the 10% set-aside for TE activities ensures that additional funding will become available for enhancement projects.

The Senate bill contains one revision to the definition of TE activities. Under acquisition of scenic easements and scenic or historic sites, historic battlefields would be included. The House bill does not propose a revision of TE activities. Neither bill contains any other modifications to the TE program.

Table 2. Proposed Funding: Transportation Enhancements Program, FY2004-2009
(millions)

| | FY2004 | FY2005 | FY2006 | FY2007 | FY2008 | FY2009 | Total FY2004-09 |
|-----------|--------|--------|--------|--------|--------|--------|--------------------|
| H.R. 3550 | 605 | 620 | 636 | 652 | 668 | 685 | 3,866 |
| S. 1072 | 688 | 812 | 842 | 844 | 886 | 899 | 4,971 |

Note: Figures for both the House and Senate bills were generated by assuming that the existing 10% set-aside for transportation enhancements will be continued.

³⁹ *Transportation Weekly*. V.5, April 7, 2004. P. 9. See also *Congressional Record*. V. 5, April 2, 2004. P. H2066-H2070.

Transportation and Community and System Preservation (TCSP) Program

The TCSP program, established under TEA-21, was designed to assist in planning, developing, and implementing strategies to integrate transportation and community and system preservation plans and practices. TCSP funding was authorized for projects that aimed to improve the efficiency of the transportation system; reduce environmental impacts of transportation; reduce the need for costly future public infrastructure investments; ensure efficient access to jobs, services and centers of trade; and examine development patterns and identify strategies to encourage compatible private sector development patterns.

Under TEA-21, TCSP spending was authorized at \$20 million for FY1999 and \$25 million per year for FY2000 through FY2003. As envisioned in TEA-21, state and local governments, metropolitan planning organizations (MPOs), and tribal governments would be eligible to apply for competitive TCSP grants. Competitive grants were awarded in FY1999. For FY2000 to FY2003, TCSP projects were earmarked in the annual transportation appropriations bills. TCSP funding amounted to \$13.5 million in FY1999, \$31.1 million in FY2000, \$46.9 million in FY2001, \$273 million in FY2002, and \$89.5 million in FY2003.

Sec. 1115 of H.R. 3550 would provide a six-year total funding authorization of \$195 million for the TCSP program. The House bill proposes no other changes to the program.

Sec. 1814 of S. 1072 would provide \$50 million per year, or a six-year funding authorization of \$300 million for the program. The Senate bill would codify the TCSP program in 23 U.S.C. S. 1072 also amends 23 U.S.C. 133(b) by allowing states to obligate funds apportioned under the STP for TCSP activities.

Table 3. Proposed Funding: Transportation and Community and System Preservation (TCSP) Program, FY2004-2009
(millions)

| | FY2004 | FY2005 | FY2006 | FY2007 | FY2008 | FY2009 |
|-----------|--------|--------|--------|--------|--------|--------|
| H.R. 3550 | 25 | 30 | 35 | 35 | 35 | 35 |
| S. 1072 | 50 | 50 | 50 | 50 | 50 | 50 |

Pedestrian and Bicycle Mobility

The House and Senate bills continue to provide a significant level of funding for bicycle and pedestrian programs that encourage a greater number of non-motorized trips, and pedestrian and cyclist safety, health, and education.

The major federal program that has supported pedestrian and bicycle mobility since the passage of ISTEA is the Transportation Enhancements (TE) program (23 USC §133(b)(8)), which is unchanged with respect to provisions for bicyclists and pedestrians in both the House and Senate bills. That program permits states to

allocate TE funds for (1) provision of facilities for pedestrians and bicycles, (2) provision of safety and educational activities for pedestrians and bicyclists, and (3) preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).⁴⁰ Between FY1992 and FY2002, 54% of TE funds were programmed for these three activities. Provision of pedestrian and bicycle facilities accounted for 44.6% of programmed TE activities through FY2002.⁴¹ A number of other programs within TEA-21 also provide for the construction of bicycle and pedestrian facilities associated with road and transit projects.

Safe Routes to School Program. Both the House and Senate versions of the surface transportation bills contain a Safe Routes to School Program (H.R. 3550, Sec. 1120(a), and S. 1072, Sec. 1405), which would require the Secretary of Transportation to establish and carry out a program to enable and encourage children to walk and bicycle to school; to make bicycling and walking a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and to facilitate the planning, development, and implementation of projects and activities.

In H.R. 3550, the stand alone Safe Routes to School Program would be funded at \$120 million for FY2004, \$150 million for FY2005, \$175 million for Fiscal Years 2006, 2007, and 2008, and \$200 million for FY2009. Funding for each state would be based on the ratio of total student enrollment in primary and middle schools in each state relative to the total student enrollment in primary and middle schools in all the states. Each state would receive a minimum apportionment of no less than \$2 million per fiscal year and the Secretary is directed to set aside not more than 2% for the administrative expenses of the Secretary in carrying out the program. Each State's apportionment would be administered by the State's department of transportation. In H.R. 3550, the federal share of the cost of projects and activities under the Safe Routes to School Program is 100%. The Senate bill provides a federal share of 90%. In both bills, funds would remain available until expended. In H.R. 3550, funds would not be transferable.

S. 1072 provides \$70 million per fiscal year for the program, with funding apportioned to the states in accordance with the formula provided in Sec.104(b)(5).⁴² That formula is identical to the current formula for apportioning Surface Transportation Program funds (23 U.S.C. §104(b)(3)). Each state would receive a minimum apportionment of one-half of 1% of the program funds.

In H.R. 3550, agencies eligible for funding under this program include state, local, and regional agencies, including nonprofit agencies, that demonstrate an ability to meet the requirements of the program. S. 1072 is similar, but does not specifically

⁴⁰ There are 12 enhancement activities in all.

⁴¹ National Transportation Enhancements Clearinghouse. *Transportation Enhancements: Summary of Nationwide Spending as of FY2002*. May 2003. p. 18.

⁴² Subsection 1401(b) of S. 1072 amends Section 104(b) of Title 23 to include a new paragraph 5, which contains the formula for apportioning Highway Safety Improvement Program Funds.

mention nonprofit agencies. Funds apportioned under the program may be used for planning, design, and construction of infrastructure-related projects that will substantially improve the ability of students to walk and bike to school. In H.R. 3550, projects include sidewalk improvements, traffic calming and speed reduction improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities, and traffic diversion improvements in the vicinity of schools.⁴³ Additionally, S. 1072 includes pedestrian and bicycle crossing improvements, secure bicycle parking facilities, traffic signal improvements, and pedestrian-railroad grade crossing improvements. However, it does not include traffic diversion improvements in the vicinity of schools.

Funds allocated to states under this program may also be used for noninfrastructure-related (or behavioral) activities to encourage walking and bicycling to school. In H.R. 3550, activities include public awareness campaigns and outreach to press and community leaders, traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety, health, and environment, and funding for training, volunteers, and coordinators of safe routes to school programs. S. 1072 does not include funding for training, volunteers, and coordinators for safe routes to school programs. In the House version, noninfrastructure-related spending would amount to not less than 10% and not more than 30% of the amount apportioned to a state for the program. S. 1072 provides that not less than 10% shall be used for behavioral activities. In the House bill, each state receiving an apportionment under this program would be required to use a sufficient amount of the apportionment to fund a full-time position of coordinator of the state's safe route to school program. The Senate bill has no similar provision.

In H.R. 3550, but *not* in S. 1072, the Secretary is required to make grants to a national nonprofit organization engaged in promoting safe routes to schools to operate a national safe routes to school clearinghouse; to develop information and educational programs on safe routes to school; and to provide technical assistance and disseminate techniques and strategies used for successful safe routes to school programs. Funding for the clearinghouse would come from the Secretary's 2% administrative expenses set aside. Section 1120(a)(8) of H.R. 3550 also establishes a task force to study and develop a strategy for advancing safe routes to school programs nationwide. The results of the study are to be transmitted to Congress not later than March 30, 2005.

Table 4. Proposed Funding for the Safe Routes to School Program, FY2004-2009
(millions)

| | FY2004 | FY2005 | FY2006 | FY2007 | FY2008 | FY2009 | Total FY2004-09 |
|-----------|--------|--------|--------|--------|--------|--------|--------------------|
| H.R. 3550 | 125 | 150 | 175 | 175 | 175 | 200 | 1,000 |
| S. 1072 | 70 | 70 | 70 | 70 | 70 | 70 | 420 |

⁴³ The definition of "in the vicinity of schools" means the area within bicycling or walking distance of the school (approximately 2 miles) (Section 1118(b)(10)(b)(A)).

Non-motorized Transportation Pilot Program. In addition to the Safe Routes to School Program, Sec. 1120(b) of H.R. 3550 establishes the Nonmotorized Transportation Pilot Program. This program, which will be implemented in four communities selected by the Secretary, will construct a network of non-motorized transportation infrastructure facilities, including sidewalks, bicycle lanes, and pedestrian and bicycle trails, that connect directly with transit stations, schools, residences, businesses, recreation areas, and other community activity centers. The purpose of the program is to demonstrate the extent to which bicycling and walking can carry a significant part of the transportation load and represent a major portion of the transportation solution within selected communities. Funding sources are unspecified for this program. (CRS contact: Glennon Harrison)

Appalachian Development Highway Program (ADHP)

The ADHP is a road building program intended to break Appalachia's regional isolation and encourage Appalachian economic development. It is not considered part of the federal-aid highway program per se, but receives its funding from the highway trust fund. The program is administered under the auspices of the Appalachian Regional Commission. Funds are apportioned by the Department of Transportation to the member states based on their "cost to complete" estimates. In terms of road miles the system is 79% complete (as of 2002). The ADHS 2002 Cost to Complete Report estimated the additional federal funds needed (FY2004 onward) to complete the system at \$4.47 billion. Under TEA-21 the ADHP received \$450 million in contract authority annually. The program also received significant additional funding through the appropriations process during the TEA-21 years. S. 1072 would provide \$590 million annually through FY2009. H.R. 3550 as introduced would have provided \$600 million annually, however this was reduced in mark-up, and the bill as passed by the House would provide \$460 million for FY2004 and \$470 million annually for FY2005 through FY2009. ADHS funds are available until expended and require an 80% federal share. Section 1805 of H.R. 3550 would designate twelve more counties as part of the Appalachian Region under title 40 U.S.C. 14102 (a) (1) (c).

Recreational Trails Program (RTP)

TEA-21 authorized and expanded the RTP as a state-administered, federal-aid grant program to help states develop and maintain recreational trails for motorized and non-motorized trail uses. The RTP replaced the National Recreational Trails Funding Program (also known as the Symms Act), which was first authorized in ISTEA and amended by the National Highway System Designation Act of 1995.

The RTP provides funds for all types of recreational trail use, including hiking, running, bicycling, equestrian use, wheelchair use, snowmobiling, four wheel driving, off-road motorcycling, all-terrain riding, and other off-road vehicle use. RTP funds may not be used for property condemnation, constructing new trails for motorized use on National Forest or Bureau of Land Management lands unless the project is consistent with resource management plans, or facilitating motorized access on otherwise non-motorized trails.

Funding/Formula. In §1101(a)(7), TEA-21 authorized \$270 million in contract authority for the RTP for FY1998-2003. Funds are allocated to the states by legislative formula⁴⁴: 50% equally among all eligible states and 50% in proportion to the amount of off-road recreational fuel use. States are required to use 30% of their RTP funds for motorized trail uses, 30% for non-motorized trail uses, and 40% for diverse trail uses. Under current law, the RTP is subject to the same annual obligation limitation as other federal-aid highway programs. H.R. 3550, as passed, would eliminate the discretionary waiver authority of state trail advisory committees for motorized and nonmotorized projects. S. 1072, as passed, does not propose this change.

S. 1072, as passed, would fund the program at \$60 million per year through FY2009 (\$360 million total for six years). Originally, H.R. 3550 proposed funding for the RTP at \$700 million total for FY2004-FY2009. As passed by the House, H.R. 3550 would fund the RTP at \$53 million for FY2004, \$70 million for FY2005, \$80 million for FY2006, \$90 million for FY2007, \$100 million for FY2008, and \$110 million for FY2009.

Currently, the federal share through the RTP for trail projects and trail related educational programs is limited to 80%. The “sliding scale” provision in 23 U.S.C. §120(b) provides for additional federal share under the federal-aid highway program in states with large amounts of federal lands. This provision does *not* apply to RTP projects. Both H.R. 3550 and S. 1072, as passed, would amend the program to change the federal share for RTP projects from a strict 80% to the sliding scale share used in some other federal-aid highway programs.

S. 1072, as passed, would amend current law to *require* states to spend at least 10% of RTP funds for grants, cooperative agreements, or contracts with qualified youth conservation or service corps to perform recreational trail activities. H.R. 3550, as passed, would *encourage* the use of youth conservation or service corps in the construction and maintenance of recreational trails.

Eligibility. S. 1072, as passed, would amend the existing category of permissible uses⁴⁵ for RTP funding to expand use of educational funds for non-law enforcement trail safety, trail use patrols, and trail-related training. H.R. 3550, as passed, would omit the use of trail crews, trail mentoring and training. Both S. 1072 and H.R. 3550, as passed, would amend current law to permit trail assessment for accessibility and maintenance.

Exemption. Typically, states require RTP sponsors to complete environmental compliance documentation before applying for RTP funds. Under current law, the costs incurred to obtain documentation are not eligible for credit. Both S. 1072 and H.R. 3550, as passed, would permit pre-approval planning and environmental compliance costs to be credited toward the non-federal share for RTP projects, limited to costs incurred less than 18 months prior to project approval.

⁴⁴ 23 U.S.C. §104(h).

⁴⁵ 23 U.S.C. §206(d)(2)

S. 1072, as passed, would exempt RTP projects from several requirements more appropriate for large highway projects; however, the RTP would not be exempt from 23 U.S.C. §113.⁴⁶ H.R. 3550, as passed, would permit no exemptions from highway program requirements. (CRS Contact: Sandra L. Johnson)

Congestion Mitigation and Air Quality Improvement Program

The primary purpose of the Congestion Mitigation and Air Quality Improvement Program (CMAQ) is to reduce emissions from highway travel, as a means to assist states in complying with the National Ambient Air Quality Standards (NAAQS) for carbon monoxide, ozone, and particulate matter. The 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 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 each receive 0.5% of the total annual CMAQ apportionment. Categories of project eligibility include (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) conversion of vehicles to burn alternative fuels. According to the Federal Highway Administration (FHWA), more funding has been obligated for conventional mass transit projects than for any other activity, approximately 44% of total CMAQ funds since FY1992.

After more than a decade of implementation, the difficulty in quantifying the overall emissions benefits of CMAQ projects has caused some to question whether the program has improved air quality significantly enough to help states comply with the NAAQS. Due to the uncertainty of the program's benefits, some advocate that its focus should be shifted away from air quality to reducing traffic congestion in general. Others argue that areas on the verge of attainment may benefit from the continued use of CMAQ funds for air quality projects, even if the emission reductions are relatively small. They also argue that more areas will be in need of emission reductions in order to comply with stricter federal standards for ozone and fine particulates, scheduled for implementation in 2004, and that air quality benefits from CMAQ projects, no matter how small, would be helpful.

As passed, neither H.R. 3550 nor S. 1072 would shift the CMAQ program's main focus away from reducing emissions from motor vehicles. Rather, both bills would retain the program's basic structure and increase its funding overall. However, the House bill would require each state to redirect a relatively small portion of its CMAQ funds to general congestion relief activities that would not require an evaluation of air quality benefits as a condition of approval. The bill also would require each state to redirect a portion of its funds for the National Highway

⁴⁶ 23 U.S.C. §113 (*Prevailing Rate of Wage*).

System, Surface Transportation Program, and Interstate Maintenance to general congestion relief activities.

As mentioned earlier in this report, the amount that would be redirected from each of these four programs would be determined by a statutory formula based on 10% of a state's apportionment for each program, multiplied by the percentage of a state's population residing in urbanized areas with a population in excess of 200,000. The total amount of funding redirected from each program would likely be less than 10%, as a state's entire population would have to reside in urbanized areas of this size in order for the full 10% to be diverted.

Environmental organizations have expressed concern about the House proposal, arguing that a portion of CMAQ funds could be diverted away from states with serious air quality needs to those that have relatively good air quality. Proponents of the House proposal counter that the questionable impact of CMAQ projects on improving overall air quality warrants freeing up some of these funds for reducing traffic congestion based on transportation needs, rather than air quality considerations.

Prior to the redirection of funds, the House bill would authorize a total of \$9.4 billion in guaranteed funding for CMAQ projects from FY2004 through FY2009. The Senate bill would authorize about \$13.4 billion over this same time frame and would not divert any CMAQ funds to general congestion relief activities. Both amounts are higher than the Administration's proposal of \$8.9 billion and the previous authorization of \$8.1 billion. However, assessing the adequacy of the proposed funding levels is difficult because of the lack of quantitative data on the overall emissions benefits of CMAQ projects and the current uncertainty of the extent to which states will need to reduce emissions from various sources in order to attain the stricter federal air quality standards for ozone and fine particulates.

In addition to authorizing funding, each bill would expand project eligibility, although in differing ways. The House bill would clarify CMAQ eligibility for certain types of projects that would improve traffic flow as a means to reduce congestion and thereby lower emissions. Specifically, the House bill would allow the use of CMAQ funds for projects that "improve transportation systems management and operations." There has been some confusion over the availability of CMAQ funds for these types of projects, and the House bill would specify their eligibility in federal statute. The bill also would require states to dedicate a portion of their CMAQ funds to support the deployment of intelligent transportation systems (ITS). While such projects are already eligible for funding, states are not required to set aside funding for them under current law.

The House bill also would add another category of eligibility to the CMAQ program for "advanced truck stop electrification systems." These systems could help to reduce emissions from heavy-duty transport vehicles that are frequently left idling overnight or for extended periods, in order to provide electrical power for heating, air conditioning, electronic, and communications equipment onboard the vehicle. Systems that would provide electricity to these vehicles and eliminate the need for engines to idle for several hours would reduce emissions that would be otherwise be generated by that vehicle. However, these emission reductions might be partially

offset from power plant emissions resulting from the generation of electricity to power these systems.

Unlike the House bill, the Senate bill would expand eligibility to allow the use of CMAQ funds for the purchase of alternative fuels, as defined in the Energy Policy Act of 1992, as well as the purchase of biodiesel. Similar proposals have been introduced in stand-alone legislation in the 108th, 107th, and 106th Congresses. Proponents of the Senate proposal argue that making CMAQ funds available for the purchase of alternative fuels would provide additional incentive for the use of cleaner burning fuels and thereby help to improve air quality. Others counter that the proposed change in eligibility would, in effect, be a subsidy for the alternative fuel industry and that the air quality advantages of these fuels will likely diminish as stricter diesel fuel standards are phased-in beginning in 2006.

The Senate bill also would make CMAQ funds available for two other new purposes, one related to highway construction in general and one specific to the purchase of certain types of equipment. First, states would be allowed to use CMAQ funds in order to ensure the deployment of strategies that would reduce emissions from fleets of vehicles that are used in highway construction projects in nonattainment and maintenance areas. The bill would require states to ensure that such strategies are in place and that they are consistent with applicable guidance. The purpose of these strategies would be to help control emissions that occur during the construction phase, primarily from the operation of heavy-duty vehicles, whereas the current focus has been on controlling emissions resulting from highway travel after the road is built. Second, the Senate bill also would expand eligibility to include projects or programs that involve “the purchase of integrated, interoperable emergency communications equipment.” However, it is unclear how CMAQ funds could be approved for these types of projects, as the approval of funding is contingent upon whether a project has the potential to reduce emissions and thereby assist a state in attaining or maintaining a federal air quality standard.

Unlike the House bill, the Senate bill also would amend the statutory funding formula for determining how CMAQ funds are distributed among the states. The formula would be revised to include factors for new nonattainment areas that do not meet the stricter federal air quality standards for ozone and fine particulates. The structure of the current formula is based on classifications of nonattainment under the previous ozone standard, and does not include any funding factors for either fine or coarse particulates. Because the classification system for the designation of new ozone nonattainment areas is different from that for the previous ozone standard, and because there currently is not a funding factor for particulate matter nonattainment areas, states with new nonattainment areas designated under the stricter standards for these pollutants would not receive a greater share of CMAQ funds without the proposed revisions to the statutory formula.

In response to continuing questions about the air quality benefits of CMAQ projects, the Senate bill would require further study of the program’s effectiveness. The Secretary of Transportation would be required to consult with the Administrator of the Environmental Protection Agency to evaluate a representative sample of CMAQ projects, and determine their impact on emissions and congestion levels. The purpose of the study would be to assist states and metropolitan planning

organizations in selecting the most effective types of projects in the future. The House bill does not include similar provisions.⁴⁷ (CRS Contact: Linda Luther)

Environmental Streamlining

Before final design, property acquisition, or construction on a highway or transit project can proceed, the FHWA must comply with certain environmental review requirements, including those of the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.). NEPA requires all federal agencies to consider the environmental impacts of proposed federal actions. To ensure that environmental impacts are considered before final decisions are made, NEPA requires FHWA to prepare an environmental impact statement (EIS) for any federally funded action that *significantly* affects the quality of the human environment. Projects for which it is not initially clear whether impacts will be significant require the preparation of an environmental assessment (EA). If, it is determined, at any time during the assessment, that a project's impacts will be significant, an EIS must be prepared. Projects that do not individually or cumulatively have a significant social, economic, or environmental effect, and which FHWA has determined from past experience have no significant impact, are processed as categorical exclusions.

In addition to meeting NEPA requirements, any given transportation project may require compliance with a wide variety of legal requirements, enforceable by multiple agencies. For example, impacts of a highway project may trigger requirements under the Endangered Species Act of 1973 (16 U.S.C. 1536), the National Historic Preservation Act (16 U.S.C. 470), or the Clean Water Act (33 U.S.C. 1251). FHWA regulations require that compliance with all applicable environmental laws, executive orders, and other legal requirements be documented within the appropriate NEPA documentation (a concept referred to as the “NEPA umbrella”). (For more detailed information about the NEPA process, see CRS Report RL32024, *Background on NEPA Implementation for Highway Projects: Streamlining the Process*.)

Some Members of Congress have expressed concerns that the environmental review process for large, complex FHWA projects can be inefficient, leading to delays in completion of those projects. To address this concern, “Environmental Streamlining” provisions were included in TEA-21. Some Members of Congress have expressed the need for further legislation to expedite the environmental review process required of highway construction and transit projects. In response to that need, both the Senate and House bills would repeal TEA-21's streamlining provisions and develop new procedures intended to expedite the environmental review process.

The Senate bill would establish a new “transportation project development process” that could be implemented at the request of the project sponsor. The process, applicable to highway and transit projects, includes the following:

⁴⁷ For additional information see CRS Report RL32057, *Highway and Transit Program Reauthorization: Environmental Protection Issues and Legislation*, by David Bearden.

- A statutory designation of DOT as the lead federal agency for the environmental review process.
- A statutory delineation of the roles and responsibilities of the lead agency and cooperating agencies.
- A requirement to establish a “coordination plan” to coordinate agency and public participation and to develop a schedule for completion of the environmental review process.
- Provisions for the collaborative development of the project’s statement of purpose and need and project alternatives as required under NEPA or any other applicable statute.
- A requirement to follow specified dispute resolution procedures in the event a cooperating agency identifies “major issues of concern” regarding the potential environmental or socioeconomic impacts of a project.

Further, the Senate bill would authorize states to assume responsibility for determining whether certain designated activities may be included within the class of actions currently identified in FHWA regulations as categorical exclusions. The criteria for making such a determination would be established by the Secretary and would apply only to projects designated by the Secretary. Such authority would be determined through a mutual agreement between the state and the Secretary and delineated in a memorandum of understanding. The Senate bill also proposes the establishment of a “surface transportation project delivery pilot program” that would delegate certain additional federal environmental review responsibilities to no more than five states, including Oklahoma. Responsibility could be assumed for environmental reviews required under NEPA, or any federal law, for one or more highway projects within the state. The program would be administered in accordance with a written agreement between the participating state and the Secretary. The Secretary is directed to promulgate regulations to implement the pilot program within 270 days of enacting the Senate bill.

Also included in the Senate bill are revisions to Section 4(f) of the Department of Transportation Act of 1966. “Section 4(f)” applies to the use of publicly owned parks and recreation areas, and wildlife and waterfowl refuges.⁴⁸ It also applies to public *or* privately owned historic sites of national, state, or local significance. Under current law, any use of such a resource for a transportation project is prohibited unless there is no prudent and feasible alternative to do otherwise, and the project includes all possible planning to minimize harm to the resource. The Senate bill would amend the current law to allow for the use of a Section 4(f) resources if it is determined that such use would result in “de minimus impacts.” Revisions to Section 4(f) requirements have been viewed as a high priority to some transportation construction stakeholders. Also related to section 4(f), the Senate bill would

⁴⁸ This provision was set forth at section 4(f) of the DOT Act at 49 U.S.C. 1653(f). In 1983, as part of a general codification of the DOT Act, 49 U.S.C., 1653(f), was formally repealed and recodified with slightly different language in 49 U.S.C. 303. Similar requirements, applicable only to the Federal-aid Highway program, is included in 23 U.S.C. 138. Given that over the years, the whole body of provisions, policies, and case law have been collectively referred to as “section 4(f)” matters, DOT has continued this reference.

specifically exempt the Interstate System from consideration as a historic site pursuant to section 4(f).

Unless otherwise specified, the Senate bill directs the Secretary to promulgate regulations to implement each of the provisions discussed above within one year of enacting the law.

The House bill includes provisions related to the environmental review process under Title VI regarding Transportation Planning and Project Delivery. Like the Senate bill, TEA-LU specifies certain provisions intended to reduce delays arising from the environmental review process. The House bill's project development procedures are applicable to all highway projects, public transportation capital projects, and multimodal projects that require an EIS and may be applied to other projects if appropriate. The project development procedures include the following:

- A statutory designation of DOT as the lead federal agency and the project sponsor (if a state or local government) as the joint lead agency for the environmental review process.
- A provision that the joint lead agency may prepare any supporting documents if the federal lead agency provides guidance and assistance and approves the documents.
- A requirement that the environmental review process be initiated by the project sponsor.
- A requirement that the project's statement of purpose and need be defined and the project alternatives be determined by the lead agency after participating agencies and the public have an opportunity for involvement.
- Establishes an extendable 60-day deadline on comments to a draft EIS and an extendable 30-day deadline on all other comment periods in the environmental review process.
- Establishes a dispute resolution process intended to identify and resolve issues of concern that could delay completion of the environmental review process.
- Requires a state participating in the environmental review process to require the participation of all appropriate state agencies.
- Allows project funds to be provided to affected state and federal agencies to support activities, related to the environmental review process, that would expedite project delivery.
- Establishes a 90-day statute of limitation on claims related to final agency actions.

The House bill would also amend provisions of Section 4(f). However, the amendment would apply only to historic sites. Provisions of TEA-LU would allow for the use of a historic site if the use is determined, in accordance with provisions of the National Historic Preservation Act (16 U.S.C. 470f), to have no "adverse effect" on the site. Like the Senate bill, the House bill also exempts the Interstate System from section 4(f).

Unlike the Senate bill, TEA-LU does not direct the Secretary to develop or promulgate regulations to implement the environmental review provisions of the bill.

(For more information, see CRS Report RL32032, *Streamlining Environmental Reviews of Highway and Transit Projects: Analysis of SAFETEA and Recent Legislative Activities.*) (CRS contact: Linda Luther)

Conformity of Transportation Plans and State Implementation Plans (SIPs)

Under the Clean Air Act, areas that have not attained one or more of the six National Ambient Air Quality Standards must develop State Implementation Plans (SIPs) demonstrating how they will reach attainment. As of April 2004, at least 124 areas with a combined population of 159 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 vehicle miles traveled and related emissions, both the statute and regulations require that an area’s Transportation Improvement Program (TIP), which identifies major highway and transit projects an area will undertake, demonstrate conformity each time it is revised (i.e., at least every two years). Highway and transit projects cannot receive federal funds unless they are part of a conforming TIP.

While conformity has been required for more than a decade, the impact of the conformity requirements is expected to grow in the next few years for several reasons. The growth of emissions from SUVs and other light trucks and greater than expected increases in vehicle miles traveled have both made it more difficult to demonstrate conformity; recent court decisions have tightened the conformity rules; and the scheduled implementation in 2004 of more stringent air quality standards (both for ozone and for fine particles such as those found in diesel exhaust) will mean that additional areas are subject to conformity. Thus, numerous metropolitan areas could face a temporary suspension of highway and transit funds unless they impose sharp reductions in vehicle, industrial, or other emissions. In a recent survey, the General Accounting Office (GAO) found that, over the past six years, only 5 metropolitan areas have had to change transportation plans in order to resolve a conformity lapse; but about one-third of local transportation planners surveyed expected to have difficulty demonstrating conformity in the future. (See U.S. GAO, *Environmental Protection: Federal Planning Requirements for Transportation and Air Quality Protection Could Potentially Be More Efficient and Better Linked*, April 2003.)

The Clean Air Act provides no authority for waivers of conformity, and the only grace period allowed is for one year following an area’s designation as nonattainment. Only a limited set of exempt projects (mostly safety-related or replacement and repair of existing transit facilities) can be funded in lapsed areas. The rules do not even allow funding of new projects that might reduce emissions, such as new transit lines. These limitations are among the issues of concern. In addition, many have raised concerns about a mismatch between the SIP, TIP, and long range transportation planning cycles, and have called for less frequent, but better

coordinated demonstrations of conformity. In its recent report, the GAO recommended that “relevant federal agencies ... consider extending the three-year time frame between required [long range] transportation plan updates and asking the Congress to amend the Clean Air Act to change the conformity rules to match” This recommendation appears to be generally supported by transportation planners and highway builders, but opposed by environmental groups and air quality planning officials.

As passed on February 12, S. 1072 would require less frequent conformity demonstrations (at least every four years instead of every 2), and would shorten the planning horizon over which conformity must be demonstrated to 10 years in most cases, instead of the current 20 years. The bill would allow replacement of Transportation Control Measures in SIPs without triggering new conformity determinations; would allow new nonattainment areas to use such tests as the Administrator may determine in demonstrating conformity until an emissions budget is determined to be adequate; and would grant areas two years following approval of a new motor vehicle emissions budget before they would need to demonstrate conformity with the new budget. The bill also provides additional resources to MPOs and State DOTs for planning purposes, increasing the resources available for conformity determinations. An Administration proposal to combine the TIP and long range transportation plan was not adopted, nor were any changes made to the SIP time frame.

As passed by the House, H.R. 3350 contains similar provisions, except that it would require that the local air pollution control agency agree if the planning horizon were to be shortened. The House bill also establishes a 12-month grace period following a failure to demonstrate conformity before a lapse would be declared. (For additional information, see CRS Report RL32106, *Transportation Conformity Under the Clean Air Act: In Need of Reform?*) (CRS contact: **Jim McCarthy**)

Highway and Commercial Vehicle Safety Programs

Existing surface transportation law defines the federal role in numerous aspects of highway safety. Title I of TEA-21 authorizes billions of dollars each year for federal-aid highway categorical grants to improve the design, throughput, and overall performance of the highway infrastructure. In particular, Title I authorizes the Surface Transportation Program (STP), which includes mandatory set asides to eliminate hazards (such as by installing barriers and guard rails) and to improve the infrastructure at highway/rail grade crossings (such as by installing signals and signs). Collectively, investments in the STP and other categorical programs are intended to improve safety and meet other transportation objectives. Title II of TEA-21 contains an authorization to conduct research and development related to traffic safety, as well as authorizations for state grants to increase occupant protection, reduce alcohol-impaired driving, improve the collection of 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., research to advance drug recognition techniques and train detection experts). Title II funds are used by the states to deploy

innovative highway safety programs (e.g., the Section 402 program), to encourage occupant protection (Section 405), and to reduce alcohol-impaired driving (Section 410). Also, 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 state motor carrier safety programs and for the operation of the Federal Motor Carrier Safety Administration (FMCSA). And Title V includes authorization for various research, technical assistance and deployment programs and for the Intelligent Transportation Systems (ITS) program (discussed subsequently), which supports activities intended to promote highway safety and mobility.

As part of the reauthorization process, funding levels for the safety-oriented grants and programs administered by the FHWA (Title I), NHTSA (Title II) and FMCSA (Title III) may likely be set. Debate over the purpose, structure, funding level, and eligibility for these activities is being conducted within the larger context of federal surface transportation reauthorization. Various interest groups and some Members of Congress seek additional funding to improve highway infrastructure and operations affecting safety, increase seat-belt use rates, reduce impaired driving, strengthen commercial driver licensing, and improve the federal/state partnership affecting commercial motor vehicle safety. Competition for funds is intense among various safety programs. Decisionmakers also face the difficult challenge of balancing funds used to achieve safety objectives against funds needed to meet other national objectives, such as reducing congestion.

Key bills that would authorize major highway and commercial motor vehicle safety programs and grants include the Senate-passed reauthorization bill (S. 1072), and the House-passed bill (H.R. 3550). These bills propose various changes in federal safety programs and grants that directly affect the eligibility criteria and amount of funds provided to the states from the Federal Highway Trust Fund. Each of these bills, to varying degrees, includes some provisions taken or modified from the Administration's SAFETEA proposal. In general, the House bill would authorize more funds for safety-oriented activities than would the Senate bills. Four major categories of interest are:

Infrastructure. As part of the reauthorization process, Congress may decide the authorization levels and eligibility criteria for obtaining and using various federal-aid highway categorical grants, and whether a separate categorical grant for safety is authorized. Based on the key bills under consideration, it appears likely that a new separate grant for safety may be authorized. Both the House and Senate bills would place particular emphasis on funds to enhance safety at grade crossings and reduce road hazards. The set aside for highway safety infrastructure projects now specified as part of the STP may be eliminated.

S. 1072 creates a new apportioned grant program called the Highway Safety Improvement Program (HSIP), which would include funds for a wide array of highway safety projects, including hazards elimination (e.g., pavement and shoulder widening, installation of certain rumble strips, and infrastructure improvements for pedestrians) and grade crossing improvements. For FY2004-FY2009 (the funding period covered in that bill), a total of about \$8.2 billion is authorized for this new program, but a state may flex up to 25%, in any fiscal year, of these infrastructure-oriented funds for other safety activities, (e.g., education and enforcement), that are

authorized under Title 23 of the U.S. Code. Furthermore, at least \$200 million per year must be spent by the states on the elimination of road hazards and the installation of protective devices at grade crossings. Some have questioned whether the amount of this set aside is justified given the relatively small number of deaths — typically 430 or less per year — that occur at such crossings.⁴⁹

In order to obligate HSIP funds, S. 1072 requires the states to have a program that implements a strategic highway safety plan that identifies and analyzes highway safety problems and opportunities and describes a program of projects or strategies to reduce identified safety problems.⁵⁰ Also a state's strategic plan must adopt performance-based goals that focus resources on areas of greatest need and establish and implement a schedule for conducting safety projects for hazards correction and prevention. Developed with input from many sources and coordinated with several other transportation planning mechanisms, the plan is intended to guide the expenditure of funds authorized under the HSIP.

Before apportioning funds to carry out the HSIP, the Secretary is to set aside \$70 million per year for the new Safe Routes to School program. These funds are to be used for the planning, design, and construction of projects to encourage children to bike and walk to school safely. S. 1072 specifies that a state must allocate for bicycle and pedestrian improvements a certain amount of funds that is related to the percentage of all fatal crashes in the states involving bicyclists and pedestrians. Also, S. 1072 specifies that \$25 million for each of the fiscal years FY2004 through 2009 shall be used for projects in all states to improve traffic signs and pavement markings, consistent with the recommendations in a FHWA publication, to accommodate older drivers and pedestrians. The bill also includes provisions intended to improve work zone safety. For example, the Secretary would be required to issue regulations requiring workers whose duties place them on, or in close proximity to, a federal-aid highway to wear high-visibility clothing and implement other safety measures as the Secretary deems appropriate.

S. 1072 also includes a sanction that would be used against any state that does not enact or is not enforcing an "open container law." Basically, such a law prohibits the possession of any open alcoholic beverage container or the consumption of any alcoholic beverage in the passenger area (including driver's area) of any motor vehicle located on a public highway or right-of-way of a public highway of a state. Starting in FY2008, a state could lose up to 2% of specified federal aid highway funds if it does not have or enforce such a law. If, during a four-year period starting on the date the apportionment for that state is reduced, the Secretary determines that the state is enacting and is enforcing such a provision, its apportionment would be increased by an amount equal to the amount of the reduction made during the four-year period.

⁴⁹ This same point can be made with respect to the new Highway Safety Infrastructure Improvement Program proposed in H.R. 3550.

⁵⁰ S. 1072 specifies that, if a state has not adopted a strategic safety plan two years after the date of enactment of the reauthorization statute, its HSIP funds are to be redistributed to other eligible states.

H.R. 3550 authorizes a new federal-aid highway program also to be called the Highway Safety Improvement Program. For FY2005-2009, H.R. 3550 would authorize a total of \$3.31 billion for infrastructure construction directed toward improving the safety of grade crossings (1/3 of the available funds) and eliminating highway hazards (2/3 of the available funds). However, if a state demonstrates to the satisfaction of the Secretary that it has met all its needs for installation of protective devices at railway-highway crossings, that state may use funds made available for other specified purposes. In addition, H.R. 3550 creates a new High Risk Rural Road Safety Improvement Program, which would authorize a total of \$675 million during the reauthorization period for construction and operational improvements to strengthen highway safety on specified rural roads. Like S. 1072, H.R. 3550 also authorizes a new Safe Routes to School program to encourage communities to adopt strategies and fund projects designed to allow children to bike and walk to primary and middle school safely. But the House bill authorizes a total of \$1 billion during the reauthorization period for this formula program. H.R. 3550 also authorizes a new program to help finance dedicated truck lanes to improve the efficient and safe movement of freight by separating truck traffic from non-commercial traffic in regular lanes. That program would be authorized at \$910 million total for FY2004-FY2002.

The policy issues that are likely to be debated in this area include the total amount that will be authorized for a separate categorical grant for safety-related infrastructure; how much funding to authorize for a new Safe Routes to School Program; the nature and purposes of a strategic plan that may be mandated to help guide safety investments; and whether to authorize the provision in S. 1072 which allows up to 25% of the funds from the proposed Highway Safety Improvement Program to be used to pay for activities authorized by other sections of Title 23, (e.g., traffic enforcement and public educational activities).

Federal Traffic Safety Program and Associated State Grants. As part of the reauthorization process, Congress is to set the overall authorization level and additional priorities for NHTSA's traffic safety program. Also the structure, funding level, and eligibility criteria for the various state safety grants that NHTSA administers may be specified in the reauthorization statute. In many respects, H.R. 3550 proposes reauthorized traffic safety grants that are similar to the TEA-21 grants and specify many of the same eligibility criteria. (H.R. 3550 does propose some changes as discussed below.) On the other hand, S. 1072 authorizes grant programs with considerably different structures and eligibility criteria from those in TEA-21 to encourage the states to adopt and enforce primary safety belt laws and to increase safety-belt use rates and programs to combat alcohol-impaired driving.⁵¹

S. 1072 authorizes a new grant program to replace the existing Section 405 program that is intended primarily to encourage states to adopt primary safety belt laws and secondarily to increase safety belt use rates.⁵² That program is similar to

⁵¹ A primary safety belt law allows police officers to stop a vehicle simply when a violation of a safety belt use law occurs; no other violation of law is required to initiate a traffic stop.

⁵² As specified in S. 1072, if a state does not have a primary belt use law, it can also qualify
(continued...)

that proposed by the Administration. Both proposals would initially reserve most of the grant funds to encourage states that did not have a primary law as of December 31, 2002, to adopt and enforce such a law, and both would authorize similar amounts of funding for FY2004 to FY2009 for state occupant protection grants starting in the \$120 million to \$125 million range in FY2004, with slight increases in subsequent years.

On the other hand, the House bill differs significantly from the Senate's and the Administration's initiatives. The House bill would keep the basic structure of the Section 405 occupant protection grant, but would now allow states with a safety belt use rate of 85% or greater to receive funds. H.R. 3550 would provide a total of \$635 million for occupant protection grants for FY2004-2009. That bill also would authorize \$10 million per year for FY2005-FY2009 to support national enforcement campaigns to improve occupant protection (as well as to reduce impaired driving) whereas, the Senate bill would provide \$24 million per year for FY2004-FY2009 for advertising and educational initiatives to support those campaigns.

With respect to grant funds intended to help states combat drunk driving, S. 1072, if enacted would result in many substantive changes to current law. The Senate bill would substantially revise the eligibility criteria used to determine which states receive funding under the Section 410 alcohol-impaired driving countermeasures program. In addition, S. 1072 would provide twice the financial incentive that a state would otherwise receive to each of the 10 states with the highest impaired driving-related fatality rate for the preceding fiscal year. H.R. 3550 proposes several new eligibility criteria for a state to receive Section 410 (alcohol-impaired driving countermeasures grant) and adds a new performance-based criterion to reduce traffic fatalities involving alcohol. For the Section 410 program, S. 1072 would authorize a total of \$633 million during FY2004-FY2009; and H.R. 3550 would authorize a total of \$628 million during this period.

The House bill also (1) requires the Secretary to develop and provide to the states a model statute pertaining to drug impaired driving that incorporates certain provisions, (2) specifies a research program related to drug impaired driving to be carried out by DOT, and (3) requires that \$1.2 million per fiscal year of the Section 403 funds be used to conduct drug impaired driving traffic safety programs. The Senate bill specifies a research program to be conducted in this area.

Both H.R. 3550 and S. 1072 authorize grants for states to improve their traffic safety information systems. The Senate bill also authorizes specific funds to aid states in conducting coordinated emergency medical services and 911 programs. H.R. 3550 does not include authority for such a new grant program.

With respect to the reauthorization of programs or grants administered by NHTSA, the issues that may be debated include the criteria used to determine which states qualify for the various types of traffic safety grants, the amount of funding

⁵² (...continued)

for funding if it has a belt use rate of 90% or more for the preceding year.

authorized for these grants, and whether a new grant program for emergency response will be authorized.

Truck and Bus Safety. Congress continues to debate the specifics of a reauthorization bill that may set the funding level and modify the scope and nature of the federal role in motor carrier safety. Key concerns include determining funding levels for various enforcement and regulatory activities conducted or administered by the FMCSA. With respect to many provisions pertaining to motor carrier safety, S. 1072 and H.R. 3550 are similar to each other and to the Administration's proposal. These bills seek to strengthen the enforcement powers of the FMCSA, authorize a new grant program to improve state commercial driver licensing (CDL) efforts, establish a Medical Review Board to provide advice on driver physical standards, and continue funding for various state and federal commercial vehicle information systems and networks (called CVISN) that support safety and regulation of the industry. S. 1072 seeks to expedite FMCSA's responses to a list of some 30 statutory provisions or congressional directives pertaining to motor carrier safety, establishes a working group to improve the national CDL program, and freeze current length limits of commercial motor vehicles operating on federal-aid highways. Compared to S. 1072, H.R. 3550 authorizes for FY2005-2009 slightly more funds for FMCSA's administrative operations, but less funds for MSCAP grants. H.R. 3550 also authorizes a substantially larger program intended to encourage motorists to share the road safely with commercial drivers and vice versa.

The issues that are likely to be debated in this area include the amount of funding for core FMCSA activities, the scope, nature, and funding amount for a "share the road" education and enforcement program, and whether to establish a working group to help guide the CDL program. **(CRS contact: Paul Rothberg)**

Intelligent Transportation Systems (ITS)

ITS, often consisting of communication systems, sensors or monitoring equipment, and computers, is used in highway or transit projects, facilities, or operations with the intention of improving their performance or safety. For example, ITS enables traffic management centers to receive real-time video and other measures or indicators of traffic flow, incidents, events, or crashes, as well as roadway and weather conditions. Such information can help operators redirect traffic, coordinate emergency response, or improve the operation and coordination of the surface transportation system.

TEA-21 specifies the current federal role regarding ITS research, development, testing and technical as well as deployment assistance. During the later years of TEA-21, the direct federal investment in ITS totaled about \$230 million per year, but slightly less was authorized in the early years of TEA-21. (That amount does not include federal aid highway funds allocated by the states to deploy ITS.) The reauthorization process provides an opportunity to consider ways to improve ITS-related federal policies and programs. The focus of this debate is not on whether there should be a federal role. Rather, attention is concentrated on deciding the

scope, direction, goals, and funding level for future federally-sponsored ITS activities.

House and Senate hearings on these programs reflect the view that 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 CVISN 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 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.

H.R. 3550 would authorize about \$3.96 billion during the FY2004-FY2009 reauthorization period for various ITS efforts, with roughly 3/4 of those funds used to expedite ITS deployment. More specifically, the bill requires that a minimum of \$500,000,000 must be expended each year to deploy ITS from the total amounts authorized for specified federal aid highway programs. Thus, this major change in law, if enacted, would require that at least a total of \$3 billion of specified federal aid funds be allocated by the states to deploy ITS projects during the reauthorization period. (Under TEA-21 about \$120 million of discretionary funds were earmarked annually by the Appropriations Committees for specified ITS projects.) With respect to the federal role in ITS research, development, standards and testing, H.R. 3550 would continue dedicated federal support for a program similar to that authorized in TEA-21, but with increased funds. During the reauthorization period, H.R. 3550 authorizes a total of \$132 million for deployment of CVISN and \$690 million for ITS research, development, testing, and standards work.

Various other sections of H.R. 3550, if enacted, would likely expedite the deployment of ITS. For example, H.R. 3550 sets aside \$6 million per year (FY2004-FY2009) for the deployment of 511 (telephone) traveler information systems. The bill also requires, in general, each state that has an urbanized area with a population of over 200,000 to obligate a portion of certain of its highway funds for congestion relief activities in urban areas. Some of the projects funded under this program would likely use ITS, especially those designed for "transportation systemwide operational improvements" targeted at increasing motor vehicle travel and improving traffic monitoring, surveillance, and traveler information. H.R. 3550 also directs the Secretary of Transportation to conduct a study of current policies and practices regarding ITS procurement and make recommendations for improvements. The bill directs the Secretary to establish a management information program to provide in all states the capability to monitor, in real-time, the traffic and travel conditions of the Nation's major highways. The acquired information would be shared to improve highway security, address congestion problems, support improved response to weather events and surface transportation incidents, and facilitate national and regional highway traveler information.

The amount of funding specified for ITS is less in S. 1072 than that proposed in the H.R. 3550. S. 1072 authorizes a total of \$150 million for CVISN and \$765 million for ITS research, operational tests, and development during the FY2004-2009 period. S. 1072 specifies a detailed list of objectives and goals that would likely influence the scope and direction of the federal role in advancing ITS. The Senate bill does not specify a specific amount of funding to support ITS deployment activities, but, the states would be allowed to use certain federal aid highway funds to finance ITS deployment activities. In addition, S. 1072 directs the Secretary to carry out a transportation systems management and operations program. That program would be intended to promote coordination and real-time information sharing at a regional and statewide level and help manage and operate the federal aid highway to preserve capacity and maximize performance of transit and highway facilities. Furthermore, the Secretary is to encourage the states to establish a system of real-time monitoring for the surface transportation system and to provide the means for sharing that information. S. 1072 authorizes the use of certain federal aid funds to provide assistance for regional operations collaboration and coordination activities that are associated with regional improvements.

The issues that may be debated in this area include the amount of funding for and purposes of the federally-supported ITS research, development and testing program and whether there should be a required ITS deployment program funded out of allocated federal aid highway funds. **(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 performance 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., 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. In the surface transportation arena, the federal role is primarily administered or overseen by the FHWA, Federal Transit Administration (FTA), NHTSA, and the Research and Special Programs Administration (RSPA). In terms of the transportation budget, two of the largest efforts of RD and TD pertain to ITS and FHWA's RD and TD program (discussed below). This section deals primarily with funds used to support FHWA-administered programs.

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 were 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. (As discussed

below, many of these same activities are expected to continue, with some changes and at an increased funding level, during the period covered by the next reauthorization cycle.) Research funds are used primarily to advance and deploy technologies intended to improve highway pavements, structures, roadway safety, and highway policies. Some 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 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 addressing how much money should be authorized for the core RD and TD activities conducted or supported by the FHWA, and which objectives should receive emphasis or dedicated funding. Also, the reauthorization statute may include a specific funding amount for the Local Technical Assistance Program, the National Highway Institute, and the University Transportation Research (or Centers) Program (which is administered by RSPA). In addition, various bills propose 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 RD and TD process, ways to foster more effective accounting for and use of federal expenditures in these activities, and methods to improve the strategic planning and coordination of a diverse RD and TD activities implemented by decentralized and diverse participants. Also, many groups are concerned over the extent of earmarking that historically occurs using federal funds allocated for this activity.

For each of the years FY2005-FY2009, H.R. 3550 authorizes the following amounts for transportation research and education: roughly \$240 million for surface transportation research, development, and deployment, \$33.5 million for training and education, \$33 million for the Bureau of Transportation Statistics, and \$71 million for the University Transportation Research Program. (H.R. 3550 also authorizes research, development, and testing funds for transit and motor carrier activities as well as for a variety of other technological objectives. These provisions, however, are not discussed in this report.) Compared to the House bill, S. 1072 authorizes slightly smaller amounts for each of the years covered in the reauthorization cycle: about \$238 million for surface transportation research and development and a cooperative transportation-environmental research program, about \$30 million for training and education, \$28 million for the Bureau of Transportation Statistics, and about \$43 million for the University Transportation Research Program.

Both bills (H.R. 3550 and S. 1072), in general, seek improvements in the strategic planning, design, management, stakeholder input, selection of participants, and implementation of the RD and TD process (including peer review.). The issues that are likely to be debated include the amount of funding for the various types of research, development, training, and deployment activities; the scope and nature of non-federal oversight and review over these activities; the selection of additional University Transportation Centers and the amounts they would receive; and the mechanism used to fund the proposed new Strategic Highway Research Program,

which would likely be managed by the Transportation Research Board. (CRS contact: Paul Rothberg)

Transit Reauthorization Proposals

The various reauthorization bills propose relatively minor changes to the existing transit program structure; the major change proposed (in the case of the House and Senate bills) is a significant increase in transit funding. The Administration has proposed \$45 billion for transit over the six-year reauthorization period, of which \$38 billion would be guaranteed. The Senate bill provides \$56.5 billion for transit, all of which would be guaranteed. The House bill provides \$51.5 billion for transit, guaranteed.

From the funding perspective, the Administration, House, and Senate bills can be summarized thus: the Administration bill provides virtually no increase in transit funding over the six-year authorization period, and with inflation and the possibility that transit would receive no more than the guaranteed level of funding (as happened under TEA-21), transit funding could actually decline in real terms from its FY2003 level; the House bill would provide a slight increase in transit funding (considering inflation); and the Senate bill provides the level of federal transit capital funding the Federal Transit Administration (FTA) estimates⁵³ is needed to maintain the status quo level of transit service.

Formula (Apportioned) Transit Programs

Funds for the programs discussed here are apportioned to the states annually using formulas; most of the formulas are specified in authorization legislation. They are collectively referred to as “apportioned” or “formula” programs. These programs account for roughly two-thirds of the FY2003 authorized transit spending. The largest of these programs under TEA-21 is the Urbanized Area Formula Program; it provided 47% of total federal transit funding in FY2004. Other formula programs include the Fixed Guideway Modernization Program, the Elderly and Persons with Disabilities Formula Program, the Non-Urbanized Area Formula Program, and the metropolitan and state planning programs.

New Formula Programs — House and Senate.

High Intensity Small-Urbanized Area Formula Grant. In the Urbanized Area Formula Program, the formula used to apportion funds to areas with populations between 50,000 and 200,000 uses only population and population density. As a result, it does not give additional consideration to those areas that provide a higher than average level of transit service. Both the House (Section 3041)

⁵³ In the transit sections of the DOT’s 2002 *Status of the Nation’s Highways, Bridges, and Transit: Conditions and Performance Report* [<http://www.fhwa.dot.gov/policy/2002cpr/>]. The House bill as introduced provided the level of federal transit capital spending FTA estimates is needed to improve transit service levels in the face of projected demand (\$69 billion).

and Senate (Section 3035(11)) bills create a new category within the Urbanized Area Formula program for small cities that provide relatively high levels of transit service. Small urbanized areas (50,000 to 200,000 in population) that meet or exceed the average measure for larger areas (population 200,000 to 1 million) in one or more performance categories based on passenger miles and vehicle revenue miles would receive funding through this program. This funding would go directly to the transit agency or other government entity in the small city, not to the state (unlike Urbanized Area Formula Program funding for cities with populations of 50,000 to 200,000, which goes to the governor of each state for redistribution).

New Formula Programs — House.

Job Access and Reverse Commute Program. This program is currently a discretionary program, which in recent years has been completely earmarked in the annual appropriations process. The House bill (like the Administration bill) would convert this program to a formula basis (Section 3017). The House bill would authorize the program at \$1.05 billion, an average of \$175 million annually. The division of the funds would remain the same as in the current statute: 60% of the funds to urbanized areas over 200,000 in population, 20% to urbanized areas between 50,000 and 200,000 in population, and 20% to non-urbanized areas. The recipients would be local agencies (for the largest population tier) or states (for the second and third tiers). Within those allocation tiers, funding would be apportioned according to each urbanized or non-urbanized area's share of all low-income individuals and welfare recipients in that tier of communities. States would have the flexibility to transfer funds from the second and third tiers to the first tier, to their Non-Urbanized Area Formula program, or to other formula programs, but the funding would have to be used for projects that meet the Job Access and Reverse Commute program eligibility requirements.

New Formula Programs — Senate. The Senate bill creates two new apportionment categories; although they are not designated as programs, they receive a separate authorization and have new formulas, so they are described as programs here. As their labels indicate, these two programs would provide additional funds to those states with rapidly growing populations and to those with high levels of population density.

Growing States. The Senate bill (Section 3038(a)) creates a funding set-aside and a separate formula to provide additional assistance to growing states. The formula is based on state population forecasts for the year that is 15 years after the most recent decennial census (i.e. the year 2015). Each state's population forecast is divided by the total of all states' population forecasts; the resulting ratio for each state is that state's share of the apportioned funds. Within each state, the funds are to be divided between urbanized areas and non-urbanized areas according to the forecast of their shares of the state's forecast population. This program would be authorized for \$1.1 billion for FY2005-2009.

High Density States. The Senate bill (Section 3038(a)) also creates a funding set-aside and formula to provide additional assistance to states with a

population density greater than 370 persons per square mile.⁵⁴ For each eligible state, the urbanized land area in the state is totaled and multiplied by 370; the result is then subtracted from the total population of that state. This figure is then divided by the total population of all eligible states, then multiplied by the available funding to produce the share for each state. Within the recipient states, the money would be divided between urbanized and non-urbanized areas according to their share of the total state population. This program would be authorized for \$1.1 billion for FY2005-2009.

Changes to Existing Formula Programs — House and Senate. The House receded to the Senate’s proposed changes to the Elderly and Persons with Disabilities Formula Program (49 USC 5310; Sec. 3012 in the Senate bill and Sec. 3011 in the House bill). This would result in a renaming of the program to “New Freedom for Elderly Persons and Persons with Disabilities”, give priority to transportation assistance for access to health care, require that recipients provide services to persons with disabilities that exceed the requirements of the Americans with Disabilities Act, provide a federal share of greater than 80% for capital project costs in states that have large areas of public lands, and add non-DOT federal funds and service agreement funds as eligible sources of local matching funds.

Changes to Existing Formula Programs – House. The House bill adds a “low density population” adjustment factor to the Non-Urbanized Area Formula program (Section 3012). This adjustment would increase the share of funding going to small urbanized areas and non-urbanized areas in states with population densities below 10 persons per square mile (Alaska, Montana, North Dakota, and Wyoming) and to a lesser degree in states with population densities between 10 and 30 persons per square mile (Idaho, Nebraska, Nevada, New Mexico, South Dakota, and Utah).

Discretionary (Allocated) Programs

The funds in all remaining transit programs are, in theory, distributed through grants made at the discretion of the Secretary of Transportation, using criteria established in transit authorization and appropriation law. They also may be, and usually are, subject to congressional earmarking. The largest of these are the New Starts, Bus and Bus Facilities, and Job Access and Reverse Commute programs.

New Discretionary Programs — House and Senate.

Small Starts. This would be a component of the New Starts program, which provides funds to metropolitan areas for the construction of new fixed guideway systems (e.g., subways, light rail, etc.) or extensions to existing systems. New Starts

⁵⁴ According to the United States Census Bureau, *Statistical Abstract of the United States: 2003*, and Microsoft’s *Encarta* encyclopedia (used for information on non-state populations), those are, in descending order of population density, the District of Columbia, New Jersey, Puerto Rico, Rhode Island, the Virgin Islands, American Samoa, Massachusetts, Connecticut, Guam, Maryland, the Northern Mariana Islands, Delaware, and New York. The District of Columbia and other areas on this list are considered states for transit purposes (49 USC 5302(a)(13)).

projects are evaluated by FTA at several stages, and must be receive a recommendation from to proceed to the next stage. Projects with a federal share under \$25 million are currently exempted from the approval requirement, but must still meet FTA’s program management requirements. Both the House (Sec. 3010(a)) and Senate (Sec. 3011(f)) bills would eliminate the current exemption for projects with a federal share under \$25 million and replace it with a program for New Starts projects whose federal share is less than \$75 million (the Administration bill has a similar provision).⁵⁵ These “Small Starts” projects would have a simpler evaluation process than New Starts projects, with fewer review stages and fewer justification requirements. The House authorization is \$1.02 billion; the Senate bill does not provide a separate authorization limit for the Small Starts program. The way the House bill funds the program would slightly increase the share of total transit funding that goes to New Starts (including Small Starts) projects; the Senate bill would not.

Transit Program for National Parks. The House bill proposes a pilot program (Sec. 3021) to alleviate congestion, pollution, and related impacts in national parks by providing public transportation within the parks; the total authorization is \$80 million, to be distributed by grant to national park transit projects. The Senate bill has a similar program (Section 3041) that covers not only national parks but also national wildlife refuges and recreation areas managed by the Bureau of Land Management and Bureau of Reclamation; it is authorized at \$125 million for the six year authorization period, also to be apportioned through grants. The Administration bill also proposes a transit program for national parks and public lands.

New Discretionary Programs — House.

New Freedom Initiative. This program has been proposed by the Administration in their last several transportation budget requests; it is found in both the Administration proposal and the House bill (Sec. 3018). The Administration’s analysis of this proposal notes that 70% of persons with disabilities are unemployed, due in part to difficulties with transportation. This program would increase the availability of transportation services to persons with disabilities for the purpose of helping them get to jobs. The House bill would authorize \$590 million, to be allocated to states by formula: 60% to urbanized areas over 200,000 in population, 20% to urbanized areas whose populations fall between 50,000 and 200,000, and 20% to non-urbanized areas. Each state would receive funding proportionate to their aggregate share of the total disabled population in these three population groupings; however, the House bill includes a “low density population adjustment” factor to increase the share of funding for states with relatively low population densities.⁵⁶

⁵⁵ The House bill’s Small Starts language applies to “a new fixed guideway capital project [that] is less than \$75,000,000, and not less than \$25,000,000,...”, but the existing language providing an exception for projects less than \$25,000,000 (found at 49 U.S.C. 5309(e)(8)) is eliminated.

⁵⁶ For states with fewer than 10 persons per square mile (Alaska, Montana, North Dakota, and Wyoming) and those with 10-30 persons per square mile (Idaho, Nebraska, Nevada, New Mexico, South Dakota, and Utah), the number of disabled persons in their small (continued...)

The federal share would be 80% for capital projects and 50% for operating costs. To be eligible, projects would have to be included in a locally-developed plan that coordinates the transportation services provided by public transit and human services providers. Note that the Senate bill also contains a “New Freedom for the Elderly and Persons with Disabilities” program (Section 3012); this program is essentially a renaming of the existing formula program for the elderly and persons with disabilities, and emphasizes transportation assistance for access to health care rather than to employment.

Fuel Cell Bus Technology Development Program. The House bill would authorize an average of \$12 million annually (from Bus discretionary program funds) for a program to encourage the development of commercially viable fuel cell bus technology (Section 3039; funding set-aside in Section 3010).

Changes to Existing Discretionary Programs — House and Senate.

Additional Project Justification Requirement. In order to qualify for funding under the New Starts program, a transit project has to satisfy a variety of justification criteria (among other requirements). The House (Section 3010) and Senate (Section 3011) bills add a new justification requirement for potential New Starts projects (with a federal share of more than \$75 million). Applicants would have to demonstrate the presence of transit-supportive policies and existing land use before the Secretary could approve funding for the project; currently, transit supportive policies and existing land use are only something the Secretary has to consider in evaluating a project.

Changes to Existing Discretionary Programs — House. As noted in the New Formula Programs section above, the House bill would convert the existing Job Access and Reverse Commute program from a discretionary program to a formula program, a proposal also found in the Administration bill. The House bill would also create two set-asides within the Bus discretionary program: a \$10 million annual set-aside for ferry projects, and an average \$12 million annual set-aside for a fuel cell bus technology development program (Section 3010). Also, the House bill would reduce the federal share for Over-the-Road Bus Accessibility Program projects from 90% to 80% (Section 3035).

Other Changes

New Definitions for ‘Capital Projects’. The House (Section 3003) and Senate (Section 3004) bills add new items to the definition of “capital projects”, thus making these activities eligible for federal funding (most federal transit funding is limited to activities that are defined as capital projects). These items include

- intercity bus stations or terminals;

⁵⁶ (...continued)

urbanized areas and non-urbanized areas would be multiplied by factors ranging from 1.25 to 2.0, thus increasing the amount of funding these areas would receive relative to similar areas in other states.

- crime prevention and security projects, including emergency response drills and security training (this change was also in the Administration proposal);
- establishment of a debt service reserve (this change was also in the Administration proposal); and
- short-range planning and management activities and projects that improve coordination between public transportation agencies and other transportation service providers (a similar provision was also in the Administration proposal). The Senate bill does not add this provision to the definition of “capital projects,” but as a new term (“mobility management”); then in other sections, ‘mobility management’ is described as an activity eligible for funding.

Transit Security. The House (Section 3027) and Senate (Section 3027) bills adds security risks to safety hazards as issues the Secretary of Transportation can investigate in local transit systems; they also empower the Secretary to withhold federal transit funds until a local agency has developed and implemented a plan to mitigate problems found by the investigation. The Senate bill also requires the Secretary of Transportation to sign a Memorandum of Understanding with the Department of Homeland Security within 90 days of enactment of this bill. The Memorandum of Understanding should define the respective roles of DOT and the Department of Homeland Security regarding public transportation. The Department of Homeland Security now contains the Transportation Security Administration, which is charged with transportation security; but the FTA has long had and still has an Office of Safety and Security which works with transit agencies on safety and security issues. In a recent report⁵⁷, the General Accounting Office noted that the division of responsibilities for transit security between these two agencies was not clear, and recommended that they sign a Memorandum of Understanding to clarify their roles.

Lists of Projects. The House bill includes a list of 359 projects (Section 3038), with funding amounts specified for FY2005, FY2006, and FY2007, for the Bus and Bus Facilities Program; the Senate bill did not include a project list for this program, though the TEA-21 legislation did. Likewise, the House bill includes lists of projects for various stages of the New Starts program (Section 3037)(to be eligible for the New Starts program, a project must be listed in the authorization legislation); the Senate bill did not include a project list for this program either.

Charter bus service. Transit agencies which receive federal funding for buses are generally prohibited from providing charter bus service outside the their regular operating area; exceptions are permitted through agreement with the DOT, as long as the exceptions do not prevent private charter service operators from providing the service if they are able to do so. Disputes over instances of charter service provided by public transit agencies are a recurring issue for the DOT. The Senate bill contains an extensive amendment to the current statute which clarifies the statutory limitation on public transit operators providing charter bus service outside

⁵⁷ General Accounting Office, *Transportation Security: Federal Action Needed to Help Address Security Challenges*, GAO-03-843, June 2003.

of their regular operating area and strengthens the penalty (Section 3022(4)). However, it also provides two exceptions to that limitation: public transit operators could provide charter bus service to local government agencies and to social service agencies “with limited resources.” Many organizations could reasonably claim to have limited resources, and local government agencies could, for example, include school districts, in which case charter service could be provided to school groups. The House bill would change the current statute, which provides that the Secretary of Transportation may withhold from a transit operator an amount of federal funding the Secretary deems appropriate where the Secretary finds a pattern of violations of the limitation on charter service, by changing “may” to “shall” (Section 3023(c)).

Rural Transit. Both the House and Senate bills would significantly increase funding for transit in rural areas. This is true not just in dollars — from \$1.25 billion in TEA-21 to more than \$2.0 billion (House) and \$2.5 billion (Senate) — but also in rural transit’s share of the total federal transit budget — from 3.5% in TEA-21 to at least 3.9% in the House bill and 4.4% in the Senate bill. **(CRS contact: David Randall Peterman)**

Rail Provisions

House bill

High-Speed Rail Corridor Development. Currently, the federal high-speed rail corridor program supports planning for high-speed rail corridors. The House bill (Section 10001) would support the development of these corridors, and would authorize \$70 million annually, for FY2005-2012, for that purpose. It would also authorize \$30 million annually for FY2005-2012 for the federal high-speed rail technology development program.

Alaska Railroad. The House bill (Section 10002) directs the Secretary of Transportation to make grants to the Alaska railroad for capital rehabilitations and improvements for its passenger operations. The bill authorizes such sums as necessary for this purpose.⁵⁸

Senate bill

Amtrak Reauthorization. The Senate bill includes a provision reauthorizing Amtrak at \$2 billion for FY2004-FY2009 (Section 4601). Amtrak’s authorization lapsed at the end of FY2002, and its reauthorization has stalled due to disagreement over whether to reauthorize it in its current form or to significantly restructure federal passenger rail policy. This provision is the target of one of the Administration’s several veto threats.

⁵⁸ The House bill also provides funding for the Alaska Railroad under the transit title of the bill, as does the Senate bill.

Bonds for Transportation Infrastructure. The Senate bill would also create a corporation authorized to issue bonds to fund qualified federal transportation projects, including highway, transit, freight and intercity passenger rail projects (Sections 4602 and 4603). These three provisions (Sections 4601-4603) are related to S. 1505, the American Rail Equity Act of 2003. No authorization figure is given for bonds to be issued.

Use of Highway Account Monies for Rail Projects. The Senate bill would prohibit the use of Highway Account monies for rail projects beginning after the date the act is enacted, “except for any rail project involving publicly owned rail facilities or any rail project yielding a public benefit” (Section 5001(g)). Since virtually any rail project could be represented as providing a public benefit, this prohibition might have little practical effect. (CRS contact: David Randall Peterman)

Intermodal Issues

Intermodal Freight Connectors

Both the House and Senate bills establish a new program for financing improvements to intermodal connectors. Intermodal connectors are the access routes to airports, coastal or river ports, and rail or pipeline terminals.⁵⁹ The access routes are typically short segments of road (generally less than two miles in length) and are usually local, county, or city streets that connect the freight terminal to the National Highway System. Many of the connectors, especially those leading to seaports, are in older, industrialized urban areas. Two recent DOT surveys have found that these access roads, in many cases, are inadequate to accommodate the heavy truck traffic they handle.⁶⁰ The pavement may be in poor condition or the intersections and width of the roads may not be designed to handle large trucks. In some cases, there may be a preponderance of at-grade rail crossings which impede traffic flow.

Intermodal connectors have been described as “low hanging fruit,” a metaphor used to express the notion that relatively modest investment in these road segments could yield substantial returns in freight movement and reliability. However, several reasons have been cited as to why projects involving intermodal connectors may be difficult to advance. One reason may be that urban priorities typically emphasize commuter concerns over freight concerns. Financing these projects may be difficult because there is no dedicated funding source and each mode tends to jealously guard the use of their mode specific trust funds. Projects designed to improve the exchange between modes, therefore, may “fall through the cracks.” Existing potential funding

⁵⁹ For further information, see CRS Report RL31887, *Intermodal Connectors: A Method for Improving Transportation Efficiency?*

⁶⁰ U.S. DOT, FHWA, *NHS Intermodal Freight Connectors, A Report to Congress*, July 2000, available at [<http://ops.fhwa.dot.gov/freight/>] (viewed 1/20/04) and U.S. DOT, MARAD, *Intermodal Access to U.S. Ports - Report of Survey Findings*, August 2002, available at [<http://www.marad.dot.gov/publications/ports.htm>] (viewed 1/20/04).

sources have as their primary focus addressing some other transportation concern. Also, while the cost of improving the intermodal connections to a local freight hub will be born locally, the benefits in improved freight mobility may flow to shippers scattered outside the local municipality.

To address the issue of intermodal connectors, the House and Senate bills create a “Freight Intermodal Connectors” program. Both proposals would allow states to set aside a portion of their NHS funds to improve access routes to cargo hubs. Both proposals also allow states to opt out of the program if they do not have intermodal connections or their intermodal connectors are already in adequate condition. Projects are to be chosen based on the criteria specified in a 1996 DOT report to Congress entitled *Pulling Together: The NHS and its Connections to Major Intermodal Terminals*.⁶¹ In this report, primary criteria is based on a national comparison of the volume of truck traffic to and from a terminal while a secondary criteria allows for consideration of the importance of a terminal within a specific state. The federal share of the cost of these projects would be 80% according to the House bill and 90% according to the Senate bill. The Senate bill specifically mentions projects to eliminate railroad crossings or make railroad crossing improvements as an eligible use of funds under this program. While neither the House nor Senate proposals establish a dedicated funding source for intermodal connectors, these proposals essentially represent a formal recognition in legislative language of cargo hub access problems as an eligible use of NHS funds.

Freight Planning. A recent GAO report on freight transportation stated that “the fundamental limitation to overcoming freight mobility challenges is that the public-sector process at the state and local levels for planning and financing transportation improvements is not well suited to address freight projects.”⁶² The GAO recommended that the DOT help state and local planners consider freight when determining investment levels for transportation projects. Both the House and Senate bills include language intended to ensure greater consideration of cargo hubs and freight transport in state and MPO transportation planning processes. The approaches, however, are somewhat different. The Senate bill requires each state DOT to designate a “freight transportation coordinator” whose responsibility will be to ensure that freight considerations are integrated into the planning process, coordinate with other states to solve regional transportation problems, foster collaboration between public and private interests, and build professional capacity to better understand freight transportation needs within a state. The House bill requires the U.S. DOT to establish a “Freight Capacity Building Program” in order to better target investments in freight transportation systems and to strengthen the decision making process of state and local transportation agencies with regard to freight transport. The program would include research and education in the following areas: best practices, peer exchange, data analysis and tools, technical assistance, and public-private partnerships.

⁶¹ This report is available at [<http://ops.fhwa.dot.gov/freight/FPD/Docs/NHSITSConn.pdf>] (viewed 1/20/04).

⁶² U.S. General Accounting Office, *Freight Transportation: Strategies Needed to Address Planning and Financing Limitations*, GAO-04-165, Dec. 2003, p.3.

Rail Freight Infrastructure

Grants for Short Lines. The Senate bill would create a grant program for short line railroads to upgrade their track so that they can handle heavier 286,000 pound rail cars. Short line railroads often act as a feeder network to the larger, mainline railroads. Mainline railroads have adopted the use of larger and heavier 286,000 pound cars and short line railroads, in order to maintain their role as collectors and distributors of mainline traffic, need to improve their track structures to handle these new cars.

The bill would authorize \$350 million in grants for each year FY2004 - FY2006. The grants would cover 80% of the project cost with the remaining 20% covered by a non-federal source. Grants would be awarded on a competitive basis to either the railroad directly or to a State or local government with the concurrence of the railroad. In prescribing regulations for administering the grant program, the Secretary of Transportation is required to “condition the award of a grant to a railroad on reasonable assurances by the railroad that the facilities to be rehabilitated and improved will be economically and efficiently utilized,” and “ensure the award of a grant is justified by present and probable future demand for rail service by the railroad,” among other criteria.

Federal aid to short line railroads may generate debate during congressional consideration because unlike other modes, rail infrastructure is privately owned. In addition to the heavier car issue, supporters of government aid to railroads have argued that it is justified because, in some instances, it may be cheaper to upgrade rail lines than to expand highways. Others have argued that rail aid is needed to offset the effect of truck operators not paying the full cost of providing highway infrastructure to them. They cite a DOT highway cost allocation study that estimates that fuel taxes, registration fees, and taxes on equipment that the heaviest trucks pay into the Highway Trust Fund amount to 80% of their full cost of highway use.⁶³ Opponents of public aid to railroads argue that it would be better to refine truck user fees so that they cover the full cost of their infrastructure rather than provide offsetting subsidies to railroads. Opponents also question the government’s ability to choose rail projects that will generate the highest economic returns. They worry that states will compete with one another to assist railroads in their state in order not to lose economic development to a neighboring state.⁶⁴

Rail Line Relocation. The Senate bill establishes a grant program to assist municipalities in relocating rail track in order to improve public safety, the flow of motor vehicle traffic, or for economic development reasons. The Secretary of Transportation is required to conduct a costs-benefits analysis before awarding a grant to any particular project. The federal share of the cost of a project would be 90%, and at least half of all grants awarded would not be more than \$20 million each. Also, no one grant awarded would account for more than 25% of the total amount

⁶³ U.S. DOT, FHWA, *Federal Highway Cost Allocation Study*, 1997, with addendum in May 2000. Available at [<http://www.fhwa.dot.gov/policy/hcas/addendum.htm>] (viewed 1/20/04).

⁶⁴ For further arguments for and against public aid to freight railroads, see CRS Report RL31834, *Intermodal Rail Freight: A Role for Federal Funding?*

available in a given year. The bill authorizes \$350 million for this grant program for each FY2004 through 2008.

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. Prior to TEA-21, 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 TEA-21 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. TEA-21 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 authorizing legislation.⁶⁵

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, appeared high in the past 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 TEA-21. 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 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.

⁶⁵ Because the limitation on obligations is still included in appropriations limitations the funds provided are still considered discretionary for purposes of the congressional budget.