Transportation for America

SUMMARY OF SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
MAP-21 REAUTHORIZATION BILL
As Passed by the Committee on May 15, 2014

The U.S. Senate Environment and Public Works Committee (EPW) unanimously approved S. 2322, the MAP-21 Reauthorization Act on May 15, 2014. This bill reauthorizes the current federal surface transportation law, the Moving Ahead for Progress in the 21st Century Act (MAP-21) (P.L. 112-141), which expires on September 30, 2014. Due to the jurisdiction of the Senate EPW Committee, this bill addresses the highway portion of the program. Other committees in the Senate have jurisdiction over the transit, safety and funding aspects of reauthorization. This memo provides an overview of the key provisions included in the bill, as well as funding levels for key programs.

Funding

The EPW committee bill would reauthorize the Federal transportation program for six years (fiscal years (FY) 2015-2020). The bill would fund the highway program at MAP-21 levels, plus inflation. The Projects of National and Regional Significance Program would be authorized and funded through the Highway Trust Fund (HTF) at $400 million per year. This is $100 million less than MAP-21 authorized in FY13, but the funding would become more certain because it would be moved from the annual appropriations process, which hasn't in fact funded this program in either 2013 or 2014, to the HTF, which would guarantee funding. The EPW bill would also authorize a new National Freight Program. The funding for this program would be created by taking a portion of funds from all other Federal highway programs. The freight program would start in FY16 with $400 million, increasing by $400 million each year until 2020 where there would be $2 billion for this program.

An amendment was accepted during the Committee's consideration of the bill, offered by Senator Inhofe (R-OK), which would fund the Federal transportation research program with $250 million from the Transportation Infrastructure Finance and Innovation Act (TIFIA) program. This is a change to the bill as introduced because the original bill moved the Federal research program out of the Highway Trust Fund (HTF) and into the annual appropriations process. This means that the TIFIA program lost 25 percent of its funding, and is now funded at $750 million per year. The Federal transportation research program was funded at $400 million per year under MAP-21; the Inhofe amendment funds it at $250 million per year over the life of the bill. [see full funding table on page 5]

Multimodal Discretionary Grant Programs

The Projects of National and Regional Significance program would be authorized at $400 million per year and would be amended so that it functions much closer to a discretionary grant program than under its current form. For example, the Secretary will be required to "conduct a transparent and competitive national solicitation process to select eligible projects for funding." The program could fund all projects eligible under title 23 of the U.S. Code (highways) and chapter 53 of title 49 (public transportation), and states, local and tribal governments, federal land management agencies, transit agencies, public authorities, and port authorities are eligible.

The new program would require that the project costs the lesser of:

- $350 million
- for a single state, 30% of their Federal-aid highway apportionment
- for a state with a population density of less than 75 people per square mile, 15% of their Federal-aid highway apportionment; or

- for multiple states, 75% of the apportionment for the state with the largest Federal-aid highway apportionment.

The bill would set maximum grant sizes at $50 million, and require that no less than 20 percent of the program's funds be spent in rural areas or rural states. Further, the program would require that no less than 80 percent of the annual funding is spent on title 23 eligible projects, and that no more than 20 percent of annual funds are spent within a single state.

The EPW Committee bill would create a new competitive grant program, the American Transportation Awards, which would be subject to funding through the annual appropriations process. The bill would authorize the program at no more than $125 million annually and sets a maximum grant size of $10 million. Eligible recipients of American Transportation Awards would be State DOTs, metropolitan planning organizations (MPOs) and tribal organizations. Eligible projects are highway and transit projects. When evaluating projects, U.S. DOT would be required to consider if the project advances an innovative solution to achieve the national transportation goals and is effectively utilizing Federal funding.

Federal-Aid Highways

The EPW Committee reauthorization bill adds Federal-aid highway bridges (i.e. bridges not on the National Highway System and not local off-system bridges) as an eligible project to the National Highway Performance Program, and limits the amount of funds for this purpose to 15 percent of the program's annual apportionment. The bill also authorizes the Secretary to provide exceptions from the requirements of Title 23 (except environmental requirements, prevailing wage standards, and requirements related to parklands) for rural roadways and bridges eligible for federal funding. A project is eligible to seek this waiver if it meets one of the following requirements: (1) based on the most recent decennial census is located in a county that has a population density of 20 or fewer people per square mile or is the county with the lowest population density the State, (2) located within the operational right of way of an existing rural bridge or roadway, or (3) has received less than $5 million in federal funding or has a total estimated cost of less than $30 million and federal funding will make up less than 15 percent of the project cost. The Secretary can grant the exception if the project will not have a negative impact on the environment or safety or if the exception will reduce project cost, speed up construction or improve safety.

The Transportation Alternatives Program (TAP) would be amended under this bill so that the share of the program suballocated to regions would be increased from 50 percent to 66.7 percent. The bill would also permit nonprofit entities responsible for local transportation safety programs as eligible recipients of TAP funding, and would require States and MPOs to report annually to DOT on the processes used, projects requesting funding, and obligation rates, and for the DOT to provide these reports to the public on their website. The Secretary would also be required to "develop regulations or guidance that encourages the use of programmatic approaches to environmental review, expedited procurement techniques, and other best practices to facilitate productive and timely expenditure for projects that are small, low-impact, and constructed within an existing built environment."

The EPW bill would also add pedestrian safety eligibilities (hybrid beacons, medians and pedestrian islands, and safe routes to school) and bundling of bridge projects for 100 percent Federal share. The EPW bill would encourage States and MPOs to bundle multiple bridge projects as one project on their transportation improvement plans (TIPs) and State transportation improvement plans (STIP).

Senator Booker (D-NJ) and Senator Gillibrand (D-NY) had an amendment accepted during the Committee's consideration of the bill that would modify the Congestion Mitigation and Air Quality Improvement (CMAQ) Program by allowing states and MPOs to obligate funding for "the most cost-effective projects to reduce emissions from port owned or operated landside nonroad or on-road equipment that is operated within the boundaries of port property" within a nonattainment or maintenance area.

Freight

The EPW Committee reauthorization bill reiterates the goals for the National Freight Program included in MAP-21 but leads the goals section by talking about how investing in infrastructure and operational improvements of our highways can achieve those goals. The EPW Committee reauthorization bill adds critical urban freight corridors and National Highway System intermodal connections to the National Highway Freight Network.

The EPW Committee bill adds several more things for the Secretary to consider when designating the miles of roadway that make up the Primary Highway Freight Network. Specifically, the Secretary must consider: (1) the origins and destinations of freight in, to and from the United States, (2) significance of goods movement linking supply chains, (3) proximity of access to other freight intermodal facilities including rail, air, water and pipelines, and (4) bottlenecks identified by FHWA.

States would be allowed to increase the number of miles of the Primary Highway Freight Network by no more than ten percent if these additional miles close gaps between the network, or establish first- and last-mile connections important to the efficient movement of goods, including ports, international border crossings, airports, intermodal facilities, rail yards, logistics centers, warehouses and agricultural facilities. In adding miles a State must consider nominations from MPOs and ensure additional miles are consistent with the State freight plan. States would also be allowed to designate critical rural and urban corridors.

Funding for the National Freight Program is a take-down from all other Federal highway programs. The formula for how much of a State's Federal highway program allocation that must be used for the National Freight Program is based on the total mileage in the State designated as the Primary Highway Freight Network versus the total mileage in the Interstate not designated on the Primary Highway Freight Network. States are allowed to use ten percent of funding for projects within the boundaries of public and private freight rail, maritime projects, and intermodal facilities, but can only be used to cover the costs of surface transportation projects that facilitate access to and from the facility.

If a State is not making significant progress towards its performance targets, they are required to submit a report every two years outlining their freight policies and strategies that will guide their freight-related transportation investment and a description of what the state will do to meet the performance targets of the State.

Under MAP-21, States were encouraged to establish State Freight Advisory Committees. The EPW Committee reauthorization bill requires states to do this. Finally, States are required to develop a State Freight Plan looking at congestion or delay caused by freight movement and mitigation strategies. States are also required to develop a Freight Investment Plan, including a list of priority projects and how they will be funded. The Freight Investment Plan can be developed separately or incorporated into the State's long-range transportation plan.

Planning and Performance Management

The EPW Committee bill would require the Secretary to develop safety performance measures "for both motorized and non-motorized transportation" users.

The EPW reauthorization bill would also require DOT to develop a program to align reviews of projects and improve project delivery and the effectiveness of DOT in achieving the national goals of safety, infrastructure condition, congestion reduction, system reliability, freight movement and economic vitality and reduced project delivery delays. DOT would be required to report on its progress to Congress every two years. Also, the Office of the Inspector General must conduct a study on the development of this program three years after enactment.

Innovative Financing

The EPW Committee bill includes a couple of changes to the TIFIA program as well as funding for State Infrastructure Banks. First, TIFIA's funding has been cut to $750 million per year, which represents a $250 million cut. For TIFIA, the bill adds as an eligible project costs that improve or construct the public infrastructure associated with transit-oriented development. For these projects the project cost threshold is lowered to $10 million.

Also, if the annual funding for TIFIA is fully obligated before the end of the fiscal year, a project sponsor can enter into a master credit agreement and wait to execute the credit agreement until the fiscal year when the funds are available to receive credit assistance.

State Infrastructure Banks would also be reauthorized, which lapsed during MAP-21, and States would be permitted to use ten percent of their apportionment under the NHPP, Surface Transportation Program (STP) and the new National Freight Program to capitalize a State Infrastructure Bank. A State would be able to apply for a TIFIA loan to capitalize a State Infrastructure Bank.

Environmental Provisions

The EPW Committee bill makes a number of changes to the environmental review process designed to move projects through the review process more quickly. The first is that it ties the categorical exclusion for projects of limited federal assistance to the National Highway Construction Cost Index.

The second is that USDOT must align the sections 4(f) and 106 processes in coordination with the Department of Interior and the Advisory Council on Historic Preservation within 90 days of enactment. Section 4(f) is USDOT's guidelines surrounding the preservation of publicly owned public parks and recreation areas, waterfowl and wildlife refuges, and historic sites that have national, state or local significance. Section 106 of the National Preservation Act (NEPA) requires federal agencies to take into account the effects of their undertaking on historic properties and allow the Advisory Council on Historic Preservation the opportunity to comment. Under the EPW Committee bill a 4(f) analysis may be included in NEPA and seek concurrence from the Department of Interior and ACHP that satisfies 106. If concurrence is received then no other review under 106 or 4(f) would be required. Under the proposed legislation, once a determination has been made that there is no alternative to impacting the site, one mitigation package would be developed to fulfill both 106 and 4(f).

The third is that when a project sponsor applies to USDOT to initiate an environmental impact statement (EIS) under section 139 of title 23, USDOT must respond to the request within 45 days to initiate the EIS, turn down the application or request additional information.

The fourth is that USDOT can dismiss from detailed analysis under section 4(f) any alternative dismissed during the planning process, if that process was open to the public and that alternative is not necessary under NEPA or any other environmental analysis.

The fifth is that USDOT may provide technical assistance to a state taking on the responsibilities of categorical exclusions. The proposed legislation also gives USDOT the ability to terminate the delegation of CEs if a state is not carrying out the responsibilities correctly, once given 120 days to correct any failures.

Research

The EPW Committee bill funds the Federal transportation research program at $250 million per year, which represents a $150 million decrease from the annual program level in MAP-21. However, this bill preserves MAP-21 funding levels for the University Transportation Centers (UTCs) and the Bureau of Transportation Statistics, while the Highway Research and Development Program, Technology and Innovation Deployment Program, Training and Education Program, and the Intelligent Transportation Systems Program will all be cut by 50 percent compared to MAP-21 funding levels. The bill also makes UTCs an eligible project cost for the Surface Transportation Program (STP) program.

The bill would also require U.S. DOT to conduct research on at least three alternative funding mechanisms for the Highway Trust Fund that preserve the user fee structure to maintain the long-term solvency of the Highway Trust Fund. Working with the Department of Treasury, U.S. DOT would be required to establish a Surface Transportation Revenue Alternatives Advisory Council to inform and evaluate alternative funding mechanisms. The Advisory Council would be made up of U.S. DOT and Department of Treasury employees with experience in alternative revenue mechanisms, two representatives with State DOTs, representation from users of the transportation system and technology and public privacy experts.

Amendments to Note

During the Committee's consideration of the bill, there were 12 amendments included in an *en bloc* amendment package that was agreed to by the committee, including amendments mentioned above. Several other amendments of note were filed, but were not formally considered by the committee, including an:

- Amendment from Senators Booker (D-NJ) and Wicker (R-MS) that would create a competitive grant program accessible to local jurisdictions within each state by reserving a small portion of Federal highway programs;
- Amendment from Senator Whitehouse (D-RI) to lower the Projects of National and Regional Significance's cost threshold from $350 million to $10 million for projects in urban local jurisdictions, and $1 million for projects in rural local jurisdictions;
- Amendment from Senators Gillibrand (D-NY) and Merkley (D-OR) to include local governments as eligible entities for the new American Transportation Awards program, which is an $125 million annual general appropriations discretionary grant program that focuses on advancing innovative solutions to achieving our national transportation goals;
- Amendments from Senator Cardin (D-MD) to increase suballocation funding from 50% to 66.6% percent of the total program's funding, and to make passenger rail an eligible project cost for the STP program; and
- Amendments from Senator Carper (D-DE) to remove caps placed on funding multimodal projects within the PNRS and National Freight Program.

While these amendments were not formally considered during the EPW Committee markup, they could be included in the bill if the sponsors continue to push their proposals forward as the bill moves through the Senate.

Senate EPW Committee MAP-21 Reauthorization Act Funding Analysis

	USDOT Appropriation FY14	GROW AMERICA Act Proposed FY15*	EPW Authorization Proposed FY15	EPW Authorization Proposed FY16	EPW Authorization Proposed FY17	EPW Authorization Proposed FY18	EPW Authorization Proposed FY19	EPW Authorization Proposed FY20	Difference between FY14 and EPW Proposed FY15
Federal-Aid Highways	$40.3B	$48.1B	$40.9B	$41.6B	$42.5B	$43.3B	$44.2B	$45.1B	+$600M
TIGER	$600M	$1.25B	-	-	-	-	-	-	-$600M
Projects of National and Regional Significance	$0	-	$400M	$400M	$400M	$400M	$400M	$400M	+$400M
National Freight Program	-	$1.0B	-	$400M	$800M	$1.2B	$1.6B	$2.0B	-**
American Transportation Awards	-	-	$125M	$125M	$125M	$125M	$125M	$125M	+$125M

* The Administration's GROW AMERICA Act is a 4-year $302 billion transportation authorization proposal, which represents an $87 billion increase over the current spending levels set by MAP-21.

**The National Freight Program would not receive funds during FY15, but would provide $2B more than FY14 in FY2020, the final year of this Act.