ARTBA
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Surface Transportation Bill Conference Report Details

While members of the House and Senate conference committee on the surface transportation bill spent much of today working aggressively to complete all the logistics necessary to allow the bill to be voted on in both chambers prior to June 30, the text of the agreement was made available to the public early this morning. There is still no final word as to when the measure will be considered—and there is little doubt that it will be approved when the votes are held—but we can now provide details on the measure.

The "Moving Ahead for Progress in the 21st Century Act", or MAP-21, will authorize federal highway and transit investment through September 30, 2014. Since most of the bill's new provisions take effect October 1, 2012, the bill is essentially a final 3-month extension of SAFETEA-LU combined with a new 2-year authorization of the federal highway, transit and safety programs.

Investment

The highway and transit formula programs continue to be funded with contract authority. The transit new starts program, research programs and administrative expenses continue to be funded through annual appropriations from the federal general fund. The bill will provide modest annual increases in both programs to reflect projected inflation.

The chart below shows current investment levels (FY 2012) and what the bill would provide over the next two years:

Program	FY 2012	FY 2013	FY 2014
Highway ob limit	$39.144 billion	$39.699 billion	$40.256 billion
Exempt CA	$0.639 billion	$0.639 billion	$0.639 billion
Transit program[1]			
Formula programs	$8.361 billion	$8.478 billion	$8.595 billion
Capital Investment Grants	$1.955 billion	$1.907 billion	$1.907 billion
Research & training	$0.044 billion	$0.089 billion	$0.089 billion
Administration	$0.099 billion	$0.104 billion	$0.104 billion
Transit total	$10.459 billion	$10.578 billion	$10.695 billion

[1] There is no provision establishing an overall obligation ceiling for the public transportation program for FY 2013 and FY 2014.

To assure that the Highway Trust Fund has sufficient resources to finance these federal highway and transit investment levels, the bill:

- Extends the federal motor fuel taxes through September 30, 2016 and the truck excise taxes through September 30, 2017;
- Transfers $2.4 billion from the Liquid Underground Storage Tank Trust Fund into the HTF; and
- Shifts $18.8 billion from the general fund to the Highway Trust Fund, including $16.6 billion to the Highway Account and $2.2 billion to the Mass Transit Account.

To offset the budgetary impact of these transfers, the bill generates a total of $20.4 billion of new revenues over the next ten years through provisions affecting pension funding stabilization, Pension Benefit Guarantee Corporation premiums and provisions affecting the taxation of life insurance.

Highway Program Details:

State Distribution Formula. For FY 2013, each state will receive a total apportionment of highway program funds equal to its total apportionment in FY 2012. For FY 2014, the apportionment formula will begin with the FY 2012 shares followed by an adjustment to assure that no state receives less than 95 percent of its contribution to the Highway Trust Fund[2]. Once the apportionment of funds among the states is determined, each state's total will be divided among programs using the following formula:

- CMAQ and Metropolitan Planning– the same share of the state's total apportionment as in FY 2009;
- 63.7 percent of the remaining funds to the National Highway Performance Program;
- 29.3 percent of the remaining funds to the Surface Transportation Program; and
- 7 percent of remaining funds to the Highway Safety Improvement Program.

Beginning October 1, 2012, MAP-21 collapses SAFETEA-LU program structure into five main programs:

- National Highway Performance Program;
- Surface Transportation Program;
- Highway Safety Improvement Program;
- Congestion Mitigation and Air Quality Program; and
- Metropolitan Planning.

National Highway Performance Program. The bill combines the SAFETEA-LU National Highway System (NHS) and Interstate Maintenance Programs and part of the Bridge Program into one new National Highway Performance Program to provide support for the condition and performance of the NHS, construction of new facilities, and to assure that investments in the NHS achieve performance standards set in the state's asset management plan for the NHS. Eligible expenditures remain essentially the same as in the SAFETEA-LU NHS program, including highway and bridge improvements, safety improvements, flexing funds to transit, and environmental mitigation, among many others, as well as many of the eligible expenditures under the SAFETEA-LU bridge program. Each state is required to set goals to maintain or improve NHS conditions and performance consistent with minimum levels established by the Secretary of Transportation, develop an asset

[2] Since the amount of funds to be apportioned is significantly larger than HTF tax revenues, this provision will likely affect only a small number of states, if any.

management plan to achieve those goals, and report annually on progress toward the goals. Failure by a state to achieve maintenance standards for Interstate Highways and bridges will trigger spending requirements set by the bill.

Surface Transportation Program. The Surface Transportation Program is continued largely as in SAFETEA-LU. The program would also allow funds to be used to support bridges off the federal-aid system.

National Freight Policy. Although MAP-21 does not include a separate freight program, as was in the Senate bill, it does create a National Freight Policy designed to improve the condition and performance of the national freight network. The bill requires the Secretary of Transportation to:

- Establish a national freight network, to include up to 27,000 miles of roads that are critical to the movement of freight in the U.S., plus all other portions of the Interstate Highway System, plus any rural road designated by a state that carries significant truck traffic;

- Develop a national freight strategic plan, which is to assess the condition and performance of the national freight network, identify freight bottlenecks and major trade gateways, suggest potential improvements and identify best practices for improving freight transportation;

- Encourage states to develop a state freight plan, including identification of significant freight trends in the state, an inventory of freight bottlenecks, and a description of procedures the state will use to make investment decisions involving freight transportation; and

- Increase the federal share of costs to 95 percent for freight-related projects on the Interstate Highways and to 90 percent on other roads , to encourage states to make freight-improvement investments.

Environmental Streamlining:

The conference report includes several significant changes to the review and approval process for transportation projects. The conference report also includes two of ARTBA's long-held priorities in reforming the review and approval process: greater "lead agency authority" for the U.S. Department of Transportation (DOT) and the integration of the planning and NEPA processes. DOT (or a modal agency of its choice), as lead agency, now has the option to call a meeting of participating agencies and set a schedule for the review process. Additionally, there is a dispute resolution process which can now be used to resolve differences between cooperating agencies. Also, the conference report allows for the utilization of planning process documents in the NEPA process, though it does not mandate such use. Still, this is an improvement over the current process as it provides an opportunity to avoid duplication of work.

MAP-21 also will allow for the expanded use of the categorical exclusion (CE) process in a number of additional areas. The CE process, which is the least rigorous form of review, is used where projects will only have minimal, if any, environmental impacts. CEs may now be used for: projects within an existing right-of-way; certain components of multi-modal projects; repair and reconstruction of existing roads, highways and bridges; projects damaged by natural disaster; and projects receiving minimal federal funds.

The conference report allows projects developing a final environmental impact statement (FEIS) to simply attach a document showing changes to the original environmental impact statements (EIS) when additional information is so minor that it does not warrant preparation of a completely new document. Additionally, projects in the EIS phase for more than two years have the option of requesting the U.S. DOT to set a schedule to ensure the project will be completed within four years.

The conference report also continues SAFETEA-LU's efforts to delegate responsibilities to states, allowing all states to assume control of either CEs or the entire environmental review process. Additionally, states are allowed to use Surface Transportation Program funds to cover legal costs associated with delegation.

The conference report narrows the 180-day time limit to file lawsuits on a project decision started in SAFETEA-LU to 150 days.

Further, the bill would establish time limits on permitting decisions. Agencies must issue decisions on permits for transportation projects within 180 days of the application or the final NEPA decision on the project, whichever is later.

Public-Private Partnerships:

The conference report makes strategic investments to attract private sector resources. Specifically, the bill will increase funding for the Transportation Infrastructure Finance and Innovation Act (TIFIA) program from $122 million per year to $750 million in FY 2013 and $1 billion in FY 2014. Additionally, the agreement would increase the maximum potential TIFIA share of total project costs from 33 percent to 49 percent. The financial leverage reflected in TIFIA's statutory formula demonstrates that $1 billion in federal credit assistance would now have the potential to support more than $20 billion in project activity. This outcome, however, would require full utilization of the program's capacity.

The Conference Report would also adopt a proposal contained in the Senate-passed legislation that would allow a group of related transportation improvements to apply together as a unified program for TIFIA assistance rather than limiting credit assistance to individual projects. This change will enable state and local governments to potentially use a revenue-generating infrastructure project, such as a popular toll road, to finance other improvements that cannot feasibly generate its own revenues.

Finally, the agreement would expand the ability of states to use tolls on federal-aid highway capacity projects. However, the number of toll-free lanes must at least remain the same as before construction.

The three amendments successfully added by retiring Senator Jeff Bingaman (D-N.M.) to the earlier, Senate-passed MAP-21 are not included in the final conference report. Those provisions would have prohibited the use of Private Activity Bonds on leases of existing highway assets, lengthened the depreciation schedule for leases of existing highway assets, and penalized states with reductions in federal formula funds if they leased existing highway assets to the private sector. ARTBA strongly opposed the Bingaman provisions throughout the reauthorization process.

Other Policy Provisions:

- The conference report removes the ban on using Congestion Mitigation Air Quality (CMAQ) Program funds on projects which would add new capacity for single occupancy vehicles;

- Requires annual report in a user-friendly format on the Internet with information on all projects for which federal funds were obligated, as recommended by ARTBA;

- Establishes Transportation Alternatives program that would dedicate two percent of the amounts provided to states by formula for activities including bike and pedestrian trails, safe routes for children and individuals with disabilities, abandoned rail conversions, community improvement activities and environmental mitigation activities. According to Capitol Hill sources, the two percent threshold represents a $300 million reduction from what these activities received annually under SAFETEA-LU;

- Includes requirements for the development of updated national bridge and tunnel inspection standards, including penalties for states that remain non-compliant, and a training program for bridge and tunnel inspectors.

ARTBA will be producing a more detailed analysis of the new surface transportation law in the coming weeks. At this point, however, we are working with our industry allies to ensure the broadest possible vote in support of MAP-21 in both the House and Senate. The ARTBA co-chaired Transportation Construction Coalition (TCC) wrote to all members of Congress today urging support of the conference report. The TCC is also running print ads in several Capitol Hill publications tomorrow supporting the bill.

We will continue to keep you apprised of further developments.