



Analysis of the Surface Transportation Authorization Act of 2009

The Surface Transportation Authorization Act (STAA) of 2009 proposed by the House Transportation and Infrastructure (T&I) Committee would provide a six-year total of \$450 billion for the federal highway, public transportation and highway safety programs, compared to \$286 billion provided by the 2005 surface transportation reauthorization bill—the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). In addition, the STAA would authorize \$50 billion for high speed passenger rail, bringing the total to \$500 billion.

The Committee’s bill would provide \$337 billion for highway-eligible improvements. This represents a 35.5 percent increase compared to flat funding at the FY 2009 level, which is a more accurate reflection of the bill’s potential market impact than comparing aggregate investment levels with SAFETEA-LU. A number of major structural changes would be made to the highway program, including program consolidation, new program additions and an emphasis on meeting performance goals and accountability through new reporting requirements. Major new programs in the bill would emphasize maintenance of roads and bridges on the National Highway System (NHS), improvements to metropolitan mobility and improvements to freight corridors. The bill would also expand opportunities for innovative financing of surface transportation improvements by establishing a Metropolitan Infrastructure Bank program modeled on the existing State Infrastructure Banks and a new National Infrastructure Bank.

The core public transportation program would receive just under \$100 billion, a 61.1 percent increase compared to continued funding at the FY 2009 level. Transit projects would also have expanded eligibility for some highway program funds. Major changes to the New Starts Program include a more realistic approval process for new projects, an increased threshold for a project to qualify as a Small Start, and a spinoff of Fixed Guideway Modernization to a separate program. While some programs would be consolidated and most changed a bit, the most prevalent change would be a focus for almost all transit programs on setting and meeting performance standards.

While there are major new policy initiatives and reforms proposed in the legislation, the fundamental question of the measure’s financing structure remains to be answered. The Congressional Budget Office projects current Highway Trust Fund revenues will generate \$236 billion over the next six years—a substantial amount below the robust and appropriate level of investment proposed by the House T&I Committee. Financing this legislation, however, is the responsibility of the congressional tax committees. In contrast, the transportation committees are charged with developing the policy measures. It should also be noted that other than aggregate amounts for a handful of programs, the bill includes no specifics on the distribution of these funds by activity or state.

This document is not an attempt to repeat every programmatic detail of the 775-page reauthorization proposal, but rather to provide the highlights of major new policy changes proposed in the legislation.

Federal Highway Program

Critical Asset Investment Program

The legislation proposes a new Critical Asset Investment (CAI) program that would replace the current Interstate Maintenance, NHS and Bridge Programs. The purpose of the program is to preserve and improve highways and bridges on the National Highway System (which includes the Interstate Highways) and bring them into a state of good repair. Funds would be apportioned among the states by formula and could be used only for preservation, rehabilitation, protection or replacement of highway pavement on the NHS or bridges located on the NHS or other federal-aid highways. The legislation would require the secretary to develop six-year targets for each state to reduce its number of miles of Interstate and NHS highways in fair and poor condition and to reduce its percent of Interstate and NHS bridge decking rated structurally deficient. The bill would establish minimum levels for these targets (although those thresholds are not yet identified). Each state would be required to submit a plan for using its funding under this program to meet those targets, and then to submit an annual report detailing use of funds and progress toward its goals. If a state is not using its funds consistent with its approved plan, the bill would prohibit further obligation of funds until the state enters into a legally binding agreement with the secretary to use its funds in conformity with its plan.

- a. This new program essentially replaces the Interstate Maintenance, NHS and Bridge programs in SAFETEA-LU. The bill would provide no further funding for these three programs. Any contract authority remaining in these programs could continue to be obligated, however, and a state could with the approval of the secretary transfer funds from those programs into the CAI program.
- b. Construction of new highway travel lanes would not be allowed under the program—although auxiliary lanes, such as turn lanes, would be allowed. This represents a more restrictive use of funds than was allowed under the NHS program, which could be used for new capacity. The program would also allow for bridge capacity to be added when a bridge is being replaced.
- c. There does not appear to be any provision for using CAI funds to repair or replace bridges that are not on the federal aid system. Under SAFETEA-LU, a minimum percentage of Bridge Program funds had to be used on off-system bridges.
- d. There is no discretionary component to the CAI program. Both the IM and Bridge programs included a \$100 million annual set-aside that, in theory, the secretary could use to make discretionary grants. However, the bridge discretionary funds were entirely earmarked by SAFETEA-LU and the IM discretionary funds were earmarked in the annual appropriations process. As such, the secretary's ability to direct some of these programs' funds did not exist.

- e. Although the legislation does not include program authorizations, Committee documents indicate that at least \$100 billion of the proposed \$337 billion funding for highways would be for the CAI program.

Surface Transportation Program

The Surface Transportation Program (STP) would remain as a separate program with essentially the same provisions as under SAFETEA-LU, with the only major change being a change in the way funds are allocated within each state. Currently, 10 percent of STP funds are taken off the top for transportation enhancements (with no distributional requirements within the state). Of the remaining funds, just under two-thirds are allocated within the state by population and just over one-third can be used anywhere. The legislation would change that to: 80 percent of all STP funds would be allocated by population and 20 percent for use anywhere, with a requirement that 10 percent of the funds obligated within each of these categories be for transportation enhancements. This means, in general, metropolitan planning organizations (MPOs) will control a larger share of STP funds under the new bill than in the past and that enhancements will have to be spread around the state. Large MPOs would not, however, be allocated 80 percent of all STP funds; the amount under control of such MPOs would be based on their relative share of overall state population. It should also be noted the bill includes no language that would change existing practice of having these projects largely administered by state departments of transportation (DOTs).

The legislation would also require that state DOTs consult with rural planning organizations before obligating STP funds in rural areas, if such an organization exists.

Office of Intermodalism

The legislation would elevate the Office of Intermodalism from the Research and Innovative Technology Administration to the Office of the Secretary of Transportation (where it was originally housed) to coordinate all U.S. intermodal transportation policy and work to improve intermodal transportation efficiency. The office would be run by a new Undersecretary for Intermodalism who would be the fourth ranking official at the U.S. DOT, behind the secretary, deputy secretary and undersecretary of transportation for policy.

Specific responsibilities of the new office would be to: lead development of federal intermodal policy and the national strategic transportation plan; coordinate operations among transportation modes; work to reduce energy usage and greenhouse gas emissions; ferry transportation; coordinate activities between the Pipeline and Hazardous Materials Safety Administration and the transportation modal administrations; and oversee the new Metropolitan Mobility and Access and Projects of National Significance Programs.

The legislation would create a Council on Intermodalism, chaired by the secretary and consisting of officials from the DOT modal administrations. The Undersecretary for Intermodalism would be responsible for working directly with the council and presenting metropolitan mobility plans and projects of national significance for the council's approval or disapproval.

Metropolitan Mobility and Access Program

The bill would create a new Metropolitan Mobility and Access Program (MMAP) to provide \$50 billion in funding and financing over six years for multi-modal transportation projects proposed by MPOs. This is a discretionary grants program, as opposed to formula-based funding, and awards would go directly to MPOs, as opposed to state departments of transportation. The newly created National Infrastructure Bank (described later) would also be available to support MMAP projects.

MPOs would be required to develop a metropolitan mobility plan to be approved or disapproved by the Secretary of Transportation. The secretary's review would be based on an area's congestion challenges, population, surface transportation network and modal usage split, and how the plan addresses the following: improves passenger and freight movement; reduces congestion; creates economic benefits; improves safety; and improves environmental sustainability.

The purposes of this program are to reduce congestion, maximize the flow of people and goods, and improve safety, environmental sustainability, and livability in urban areas. The program would support operations and management improvements, demand strategies, and highway and transit capacity. Eligible projects would be highway, transit, and intermodal projects included in an approved metropolitan mobility plan and also contained in a state or MPO plan. Recipients are allowed to create Metropolitan Infrastructure Banks to leverage funds and include toll agreements (most likely for congestion pricing initiatives).

Funds from this program would be available for MPOs: with more than 500,000 people; who have applied for a grant; that have a metropolitan mobility plan approved by the secretary of transportation; demonstrate they can carry out the plan and have already implemented low cost traffic management strategies with separate funds.

Funds would be divided into two levels: Tier 1 Grants for MPOs with more than 1,000,000 people and experiencing substantial travel time delays (40 percent of funds); and Tier 2 Grants (60 percent of the funds) for all MPOs that do not receive a Tier 1 Grant. Tier 1 Grants would be limited to 10 or fewer recipients.

MMAP funds would be 80 percent federal and the U.S. DOT would have the option to fund projects through a full-funding grant agreement with the funding recipient. For those MPOs choosing to enter a full-funding grant agreement, the bill would establish the following series of performance standards to be achieved: reduce delay hours; improve travel time and reliability; reduce fatalities; improve commercial vehicle access; enhance regional productivity; increase public transportation access; reduce emissions; and reduce single occupancy vehicle trips.

This program is clearly aimed at providing metropolitan areas an opportunity to expand transportation capacity to meet their growing challenges and for the first time would provide MPOs a direct source of federal funds. While highway, transit and freight improvements are all mentioned, the legislation provides no guarantee how funds will be allocated among the modes. MPOs would submit to the U.S. DOT mobility plans—which could include projects of various modes—and the U.S. DOT would be given

the authority to approve these plans. While transportation policy or concerns about transportation policy should not be based on the views of a current administration, it is important to ensure legislation provides as level a playing field as possible. As such, the MMAP's current performance standards should be modified to ensure they are not an impediment to MPOs desiring to advance a highway improvement project.

Projects of National Significance

The measure would create a new \$25 billion Projects of National Significance (PNS) Program to provide funds for high cost transportation infrastructure facilities that boost the economy and are difficult to fund with formula funds. Like the MMAP, PNS funds would be supplemented by resources and activities from the National Infrastructure Bank. The program is also a discretionary grant program, as opposed to a formulaic distribution of funds.

Single state projects must have a cost of \$500 million or more or represent 75 percent of a state's most recent highway apportionment. Multi-state projects must have a cost equal or greater than 75 percent of the greatest amount apportioned to any one of the participating states for the most recent year. The federal share of a project's costs would be 80 percent unless an applicant requested a lower federal share.

The following type of projects would be eligible under this program: highway, public transportation, international bridge or tunnel, freight rail, intermodal freight transfer facility, access to a freight rail or intermodal facility, and surface transportation improvements to improve the flow in and out of a port. Projects must be consistent with a state's long-term and freight plans, metropolitan mobility plans for projects in urban areas, and the National Transportation Strategic Plan (described later).

In selecting projects, the secretary is directed to consider the project's: potential benefit to a corridor or region with a high volume of passenger and freight traffic; projected reduction in congestion and improved freight movement; economic benefits; ability to facilitate regional mobility; safety improvements; enhancements of the national transportation system; use of new technologies; protection/maintenance of the environment; and support from non-federal funding.

The legislation directs the use of full-funding grant agreements for awarded projects and allows the secretary to utilize early system work agreements for National Environmental Policy Act (NEPA)-approved projects.

While highway and public transportation projects are eligible under the PNS Program, the selection criteria clearly focus this program on projects that improve goods movement. In fact, the legislation's freight corridor planning process is geared toward developing project proposals that could be funded from the PNS. Furthermore, the project eligibility and selection criteria appear to establish an open, mode neutral process. It should be noted, there is no aspect of the current federal surface transportation program structure that would fund these types of large, nationally-oriented projects other than earmarks.

National Infrastructure Bank

The bill would establish a National Infrastructure Bank that is intended to attract more private capital into infrastructure investment and supplement the normal surface transportation program's investment in the system. The bank could make loans to project sponsors and provide full faith and credit guarantees to institutional investors who make loans through the bank. The bank could finance a wide variety of infrastructure projects, including highways, transit, rail, intermodal projects and seaports. Bank loans could be combined with Federal grants from any DOT grant program for which the project is eligible and both public and private project sponsors could apply for financial assistance from the bank. The bank would be financed through the U.S. Treasury, which would be repaid over time using principal and interest collected from borrowers. The infrastructure bank is intended to supplement grant funding for the MMAP, PNS, and High Speed Rail programs.

Metropolitan Infrastructure Banks

The legislation would allow MPOs to set up Metropolitan Infrastructure Banks (MIB) similar to the State Infrastructure Banks that were authorized under SAFETEA-LU and earlier surface transportation authorization acts. Any MPO receiving federal funds under the new MMAP could use a portion of the funds to capitalize the bank, which would then loan funds to public or private agencies to make capital investments in projects consistent with the MPO's metropolitan mobility plan. While this would allow federal highway funds to be leveraged by MPO's, the legislation would allow the MIBs to make capital investments not just in highways but also in anything allowed in Chapter 53 of Title 49, which includes transit construction, bus purchases, bus repairs, etc.

Freight Improvement Program

This would be a new program to improve operations of the existing freight transportation system and add physical capacity where needed. There would be a formula component where states receive funds to construct, reconstruct or make operational improvements to highways or intermodal connections and a discretionary component where the Secretary of Transportation can authorize and fund up to 10 multi-state freight corridor coalitions. Each state must develop a freight plan establishing state freight needs and policies to guide the state's freight-related investment decisions, and have a Freight Advisory Committee of public and private stakeholders to advise the state on freight-related priorities, issues, projects and funding needs. Each state is required to establish freight performance targets using measures developed by the U.S. DOT and to measure progress annually. Organizations that represent a wide range of corridor stakeholders (including states, metropolitan planning organizations, ports, transportation modes and users within the corridor) can apply for designation as a "freight corridor coalition" and receive a discretionary grant from the U.S. DOT to cover their administrative expenses in developing a multimodal corridor improvement plan, but not to fund implementation of the plan.

- a. Apportioned funds could be used for highway improvements on the NHS, the National Network authorized under the 1982 STAA, or other roads that are designated as "secondary freight routes"—defined as secondary roads with "substantial economic or freight significance, including roads that serve the mining, agricultural, timber, and tourism industries." The tourism

provision seems to make virtually any road in a state eligible for improvements funded under the freight program, including many roads that carry little or no freight, and dilutes the focus of the program. The only limitations are that the secretary must approve routes to be designated as state freight roads and that secondary freight road mileage cannot exceed the total mileage of federal-aid highways in the state.

- b. The legislation would require funds apportioned by formula be used only on highways, but it would allow funds allocated to freight corridor coalitions for planning purposes to include freight rail projects as well as for “short sea shipping” projects, which are defined as “transportation of freight by water between domestic ports, either along the coast or on inland waterways.” Projects to construct such freight rail or short sea shipping projects would not be eligible under the freight improvement program, though some freight rail projects are currently eligible for loans and credit assistance under the existing Transportation Infrastructure Financing and Innovation Act program. These types of rail projects could also be financed through the bill’s new PNS Program. Short sea shipping projects would not be eligible for funding under the bill.

While it is clear the program will be part of the Highway Trust Fund, it is unclear how it will be financed or how much would be invested in these activities.

National Transportation Strategic Plan

The bill calls for the creation of a National Transportation Strategic Plan (NTSP). The undersecretary for intermodalism solicits states to submit projects for inclusion in the NTSP. Sixty days after submission, the undersecretary selects the projects to be included in the NTSP. In making the selections, the undersecretary considers whether the candidate project will generate national economic benefits (including productivity improvements from congestion relief, passenger and freight movement, transportation options for moving passengers and freight, intermodal links created by the project, and intermodal links). Plan elements are to be modeled on state-wide long range plans, with an emphasis on interconnectivity at state borders and projects of national and regional significance. The plan also includes high speed rail and short sea shipping.

The undersecretary is also directed to disseminate statistics and data for use by states in developing their long range plans, such as 20-year projections of: population, average daily truck flow, estimated peak period congestion on highway routes and in metropolitan areas, volumes on highways estimated to be moderately or highly congested in 20 years, highway bottlenecks, transit use, increases in an unmanned aerial system, capacity-constrained airports, congested air routes, number of active general aviation aircraft, miles flown, freight rail demand, shipping traffic at U.S. ports, and demand for suborbital space tourism.

CMAQ Program

The STAA reauthorizes the federal Clean Air Act’s (CAA’s) Congestion Mitigation and Air Quality Program (CMAQ). The CMAQ program provides funding for projects specifically aimed at reducing congestion

and improving air quality. However, CMAQ funds cannot be used on projects adding additional highway capacity except for the construction of “high occupancy vehicle” (HOV) and “high occupancy toll” (HOT) lanes. STAA also removes a priority for the use of CMAQ funds on diesel-retrofit projects put in place under SAFETEA-LU, but retains this as an eligible activity under the program.

The CMAQ program remains largely unchanged.

Office of Expedited Project Delivery

STAA creates the “Office of Expedited Project Delivery” (OEPD) within the Federal Highway Administration (FHWA). OEPD’s mission is to enhance the speed of project delivery for highway construction projects. One method of achieving this goal will be the development of a series of best practices and techniques (compiled in part from different states) in order to increase the rate of project delivery. OEPD will also facilitate the linking of the transportation planning process and environmental review under NEPA. The office will further promote establishing programmatic agreements to help reduce delay in the NEPA review process, particularly focusing on “categorical exclusions” (CEs), which are those instances where impacts are so minor a formal review process is not required.

OEPD will also identify “substantially delayed” projects and provide quarterly reports to the House T&I Committee and the Senate Committee on Environment and Public Works (EPW). The director of OEPD will determine which projects qualify as “substantially delayed.” Further, OEPD will provide an annual report to the EPW and T&I Committees on the speed of the project delivery process, analyzing trends and recommending further steps to enhance the speed of project delivery. An “Office of Expedited Project Delivery” is also created within the Federal Transit Administration to focus on the delivery of transit projects.

It should be noted that OEPD does not have any actual authority to enforce changes in the project delivery process. The office is intended to provide leadership in implementing the project delivery process improvements established in SAFETEA-LU, but the legislative language should be clarified to explicitly state this objective. To further strengthen this authority, OEPD should be directed to coordinate with other federal agencies involved in the project delivery process, such as the Department of Interior and the United States Army Corps of Engineers, to develop methods to streamline permitting procedures and develop other methods to improve project delivery.

Project Delivery

STAA would make a number of changes to the project delivery process in an attempt to reduce transportation project delay. The DOT is encouraged to use programmatic approaches with respect to environmental permits (for example, gathering environmental information up-front or issuing permits according to a schedule, instead of on an as-needed basis). Project sponsors are allowed to submit draft notices to the *Federal Register* for publication during the project initiation phase.

Products from the transportation planning process may be incorporated into NEPA’s environmental review, including purpose and need, travel corridor location, modal choice, description of setting,

analytical methodologies, alternatives analysis, identification of mitigation for impacts and planning analyses. The goal here is to reduce unnecessary duplication and project delay, as many of the requirements of NEPA are similar to the transportation planning process. One caveat is that elements from the planning process may not be used to satisfy NEPA if “significant new information” or a “new circumstance” that has a “reasonable likelihood” of affecting the planning product in question has arisen.

This section also establishes a timeframe of 120 days from the completion of the final environmental impact statement (EIS) for issuing a record of decision (ROD). Any deviation from this schedule requires a written explanatory statement from the secretary. Also, the secretary is required to submit a report to the T&I and EPW Committees every six months explaining all instances where a project has been delayed and include a plan for timely completion of the project.

The Surface Transportation Project Delivery Pilot Program (STPDPP) initiated by SAFETEA-LU has been opened to all states. Initially, the program which allows states to assume the role of the federal government for purposes of conducting environmental reviews under NEPA, was only open to five states (Alaska, Ohio, Okla., Texas and Calif.).

The major troubling aspect of this section is the “significant new information” or “new circumstance” which could prevent the integration of the transportation planning process with NEPA’s environmental review. There must be some definition on what constitutes “significant new information” or a “new circumstance.” Ideally, DOT should be empowered to make the call as to whether something rises to this level. Otherwise, this could become a tool for project-delaying third party litigation.

Currently, NEPA is not applied to the transportation planning process. If it were, projects would theoretically be forced to go through the NEPA process twice, once during the planning process and again during project construction. Section 1510(m)(2)(B)(iii) of STAA states the legislation “does not apply [NEPA] to the transportation planning process.” However, the very next clause, Section 1510(m)(2)(B)(iv) states Section 1510 “does not preclude application of [NEPA] to the transportation planning process.” As such, it is unclear as to the bill’s intent regarding NEPA and the transportation planning process.

Metropolitan Planning

The planning process is amended to encourage livability, increase coordination among land use, housing and transportation projects, reduction of dependence on foreign oil, reduction of transportation-related greenhouse gas (GHG) emissions and increase interconnectivity/intermodality. Within one year, each MPO must develop a strategy for reducing transportation-related GHGs as well as GHG emission-reduction targets. At a minimum, the strategy must be based on EPA models and methodologies, address transportation-related GHGs, include efforts to increase transit ridership, bicycling, walking and other forms of non-motorized transportation. Failure to submit a GHG reduction strategy can result in the MPOs transportation improvement plan (TIP) not being certified and a withholding of up to 20 percent of the MPO’s planning funds.

A new series of performance measures is created for MPOs, resulting in a number of additional considerations to the planning process. MPO's with 100,000 people or more must measure the degree to which their long-range transportation plan reduces congestion, improves mobility and safety, increases the state of good repair of surface transportation assets, decreases transportation-related GHG emissions, is consistent with land-use plans and increases connectivity and access to transportation. Larger MPOs (those with populations of 1 million or more) have additional requirements, including measuring the degree to which the long range transportation plan considers land-use plans supporting reduced dependency on single-occupant motor-vehicle trips, adequate housing for all income levels, limited impacts on farmland, natural resources and air quality, reduction of GHG emissions, increases in water and energy conservation and an improvement in the livability of communities. MPOs with populations of less than 100,000 will experience no changes and have the same planning requirements as they did under SAFETEA-LU.

The additional planning requirements have the potential to prolong the project delivery process. It should be noted, however, SAFETEA-LU added a number of additional planning criteria and there have been few public claims that these additional considerations have slowed down project delivery. What is unclear is to what extent an MPO (or a state) must "consider" all of the new planning factors and the degree to which these considerations may be challengeable in a court of law. STAA preserves current protections preventing court review over failure to consider any particular planning factor, particularly at the MPO or statewide plan level. It is important to assure this protection from court review also applies to the STAA's GHG reduction objective. Ideally, deference would be given to the MPO (or state) once these planning considerations are made.

Currently, Section 821(b) of the House-passed climate change legislation (the American Clean Energy Security Act) would give the EPA Administrator the authority to set GHG emissions standards for off-road vehicles (including construction equipment). If such standards are set, projects could be seen as violating GHG-reduction benchmarks because of a temporary spike in emissions during construction. In order to prevent this from happening, when considering transportation related GHG-reduction in project analysis, attention should be given to the overall emissions reduction contribution of the project after completion as opposed to during construction. In other words, there may be a spike in emissions while the project is being built, but if it can be shown the end result (through congestion reduction) will be an overall decline in emissions, the project should proceed.

Statewide Planning

The bill's new statewide planning requirements are similar to the metropolitan planning requirements. States must now consider sustainability, livability, reduction of transportation-related GHGs, reduction of reliance on foreign oil, adaptation to the effects of climate change, public health, housing and land-use patterns in the planning process. States must, as part of their strategic transportation plans, identify projects of statewide, regional and national significance as well as strategies to reduce congestion at airports, freight rail corridors and deep draft ports (if applicable).

Like MPOs, states must develop a strategy for reducing transportation-related GHGs as well as GHG emission-reduction targets. At a minimum, the strategy must be based on EPA models and methodologies, address transportation-related GHGs, include efforts to increase transit ridership, bicycling, walking and other forms of non-motorized transportation. Failure to submit a GHG reduction strategy can result in the state's long-range transportation plan not being certified and a withholding of up to 20 percent of the state's planning funds.

States must also add a number of new considerations to their long-range transportation plans. Like MPOs, states must measure the degree to which their long-range transportation plan reduces congestion, improves mobility and safety, increases the state of good repair of surface transportation assets, decreases transportation-related GHG emissions, is consistent with land-use plans and increases connectivity and access to transportation. States must also develop performance targets in each of these areas and produce an annual report detailing progress made towards achieving these targets.

Concerns with this section mirror those of the metropolitan planning section. It is confusing that both states and MPOs must go through such similar processes in terms of GHG reduction plans. Since GHGs do not draw distinctions between the borders of states and MPOs, it may be more effective to have one process administered as part of the state transportation planning process instead of one for states and one for MPOs. Under current law, MPO plans are incorporated into statewide plans. However, it is unclear if this would be the case with STAA's new GHG reduction plans.

Project Approval and Oversight

The legislation requires project delivery schedules to be submitted for all major projects (estimated total cost of \$500 million or more) to the secretary prior to the completion of the NEPA review process detailing the expected start and completion dates for the project. These schedules are to be revised upon any substantial change in the project delivery timeline.

Project delivery schedules are a new requirement for major projects and could potentially reduce delay by setting out a timeline at the beginning of the delivery process. They would also help the OEPD track projects to avoid and mitigate project delays.

Office of Livability

STAA 2009 would create an "Office of Livability" (OL) within FHWA. OL's mission is to increase surface transportation options, promote the intersection of transportation and quality of life issues and provide support for livable communities and sustainable modes of transportation. OL is directed to work collaboratively with the United States Department of Housing and Urban Development (HUD), the Environmental Protection Agency (EPA) and the Center for Disease Control (CDC) on the development of "livable" communities, focusing on improved access to public transportation, environmental issues, and issues concerning public health and quality of life. OL is also directed to establish national mode share targets for sustainable modes of transportation (transit, bike, bus, etc.) as well as a timeline for achieving those targets.

OL will also develop and disseminate best practices on a variety of areas related to “livability” including: the integration of land use and planning, speeding up delivery of non-motorized transportation projects, implementation of a “U.S. Bicycle Route” program and implementation of a “comprehensive streets” policy. “Comprehensive streets” is an approach to building streets which attempts to include the interests of all users, including cyclists, pedestrians and handicapped/elderly individuals. OL is also tasked with developing model legislation establishing bicycle and pedestrian-friendly policies for states within 18 months of the office’s creation. It should be noted the model legislation will be offered as a guide for states, but not be mandatory. Further, OL is directed to conduct a study on the rights of bicyclists and pedestrians and provide a report to Congress with recommendations within one year.

OL, similar to OEPD, has no authority to enforce the elements of “livability” in the planning process. Rather, the OL has authority over the administration of transportation enhancement funds, the “safe routes to school” program, the non-motorized transportation pilot program, the recreational trails program, the national scenic byways program, and the U.S. bicycle route program.

Standards

The legislation requires highway improvement projects to take into account and provide safe and continuous routes for non-motorized and light motorcycle traffic. OL is directed to issue guidance within one year on the implementation of “comprehensive streets” policies and “practical design” standards. “Comprehensive street” design policies consider the rights of all users, including bicyclists, pedestrians and the handicapped/elderly. Practical design standards focus on development of transportation projects while preserving scenic, aesthetic, historic and environmental resources and maintaining safety and mobility.

The “comprehensive streets” and “practical design standards” will be issued in guidance form. Although the concepts of “comprehensive streets” and “practical design standards” are currently considered by some in both urban and rural areas, the STAA would expand this consideration to all participants in the federal transportation planning process as part of the emphasis on livable communities. States and MPOs would still have substantial flexibility and this provision does not mandate specific outcomes.

Office of Public Benefit

The bill would establish within the FHWA an Office of Public Benefit to administer and oversee new federal standards for highway toll projects (involving future or past federal-aid funding) and transportation-related public-private partnerships (PPPs) that involve federal funds.

The office will be headed by a new director who will: review and approve/disapprove all proposed new toll rate schedules and changes to existing schedules; monitor compliance with toll agreements, with a focus on restrictions on the use of toll revenues, new prohibitions on non-compete agreements (no improvements to parallel routes in the same corridor) for new toll projects, and increased opportunities for public comments on toll projects and their potential impacts across a broad range of transportation impacts. The director would also be the secretary’s point person for ensuring adequate mitigation has

been done to protect low-income drivers and enough transit and highway operational improvements have been added to accommodate those diverted off the road because of the toll.

While the legislation is clearly intending to ensure toll projects meet a certain public value threshold, adding a new approval layer for toll projects has the potential to create uncertainty about the initiative's ultimate fate and could dilute the potential market opportunities for toll projects.

With respect to PPPs, the director will ensure that before contracts are let, PPP projects: provide value as compared to traditional methods; include transparency for contract terms; and provide the public with opportunities for comment. The bill would require PPPs to: prohibit closing a highway facility or portion thereof except under certain circumstances; allow competing capacity enhancements; enable the public authority to reclaim ownership of the facility prior to the end of the PPP agreement (with fair market value compensation for the private operator); and establish "handback" standards that the facility must meet before being returned to the public authority at the end of the PPP agreement. The measure also instructs the director to consider: the life cycle cost and delivery time of PPPs as opposed to traditional methods; the benefits and costs associated with the risk transfer of PPPs; and other benefits and costs.

Similar to the tolling provisions, these new requirements have the potential to delay PPP projects and, thereby, dilute the delivery time reduction benefits many of these projects offer.

Toll Roads

The legislation would make some substantial changes in the law regarding federal participation in toll roads.

- a. Current law allows use of excess revenues from toll roads (after debt service, investor return and maintenance) for purposes allowed under Title 23 of the U.S. Code, which means highway improvements. The STAA would expand this to permit excess toll revenues to be used for projects under Chapter 53 of Title 49, which is the public transportation portion of the U.S. Code. The only limitation is that the public transportation services must be provided in the same travel corridor as the toll road. Similar provisions are included in the legislation for excess toll revenues on High Occupancy Toll roads and any federal share of net revenues from toll roads.
- b. The legislation would prohibit federal participation in non-compete agreements in which the State is prohibited from improving or expanding the capacity of public roads in the same travel corridor as a toll road.
- c. The legislation would also require an opportunity for public comment on proposed tolls or toll revisions and make rates subject to the approval of the secretary. One criterion for toll approval would be that any private participant would achieve no more than a reasonable return on investment, in a sense making the U.S. DOT a public utility commission when it comes to highway toll rates and limit the attractiveness of toll road lease agreements.

Highway Bridge Inventories, Standards, and Inspections

The legislation would require an inventory of all public bridges that identifies those that are structurally deficient or functionally obsolete and assigns a risk-based priority for replacing or repairing these structures. The process is also expected to quantify replacement costs.

The secretary is directed to maintain bridge inspection standards that, among other things, establish inspection methodology, frequency, inspector qualifications and training, opportunities for new technology and procedures for reporting and evaluating the findings of those inspections. The measure requires: annual routine inspections of structurally deficient bridges; annual hands-on inspections of fracture critical members; and biennial routine inspections of other bridges.

The bill also instructs the secretary to develop an alternative process that aligns bridge inspection frequencies with the condition, structure type, and age of the structure. The process is to combine different levels of inspection intensity and scope with corresponding standards for inspector qualifications.

The bill's bridge inspection standards must be met for bridge improvement projects to be approved. States are directed to develop a plan for the inspection, rehabilitation or replacement of their bridges.

The bill continues to allow states to utilize amounts expended to replace or rehabilitate a bridge not on the federal system in excess of 20 percent of the project's cost as the non-federal share of spending for a project funded with Interstate Maintenance, Surface Transportation, Highway Safety Improvement, or Critical Asset Investment Program funds.

Highway Safety Improvement Program

The measure continues the Highway Safety Improvement Program (HSIP) with the stated purpose "to achieve a significant reduction in traffic fatalities and serious injuries on all public roads."

The measure authorizes expenditure of funds for some 21 categories of infrastructure safety improvements, including "geometric improvements to a road for safety purposes." Also the definition of "safety projects" is expanded a bit to include pedestrian and bicyclist safety, and to allow funds to be used for enhanced emergency medical services responding to crashes.

The first two years of the program are a continuation of current law, in that a state may qualify for funding by administering a strategic highway safety plan that: 1) identifies and analyzes highway safety problems and opportunities; 2) produces a program to reduce identified safety problems; and 3) evaluates the plan on a regular basis.

To qualify after 2012, each state must, in addition to the requirements above: 1) develop and implement an HSIP investment plan, and 2) produce a program of activities, projects, or strategies to reduce identified safety problems consistent with the State's strategic highway safety plan and HSIP investment plan. Funds will be withheld unless the secretary approves the HSIP investment plan, or the state dedicates a certain percentage of its obligation limitation for the year for use under HSIP.

The strategic highway safety plan must be updated every four years. The HSIP investment plan must be updated every two years. A state may obligate HSIP funds for any highway safety improvement project on a public road or publicly-owned bicycle or pedestrian pathway or trail; other safety projects; and to fund a full-time position of coordinator.

The secretary is required to establish quantifiable, six-year HSIP performance targets for each state, including a reduction in the annual number of highway fatalities and a reduction in the annual number of serious injuries. The targets must be at least as strict as levels set in the legislation (although these threshold levels have not yet been identified). Every year the state must report to the secretary on its progress toward meeting the targets.

The HSIP program continues construction and operational improvements on high risk rural roads for fiscal years 2010 and 2011. Funds for this program can be used for other eligible projects or activities if the state certifies it has met all of its needs for construction and operational improvements on high risk rural roads.

The secretary is required to submit to Congress a report that includes an evaluation of each state's performance, the HSIP performance targets established for the state, and recommendations the secretary may have for improvements to the program. The report will also include information on each state's Highway Rail Crossing performance.

The federal share of the cost of a highway safety improvement project carried out with HSIP funds will be 90 percent.

Current law allows up to 10 percent of HSIP funds to be used for behavior-based safety programs, such as public awareness campaigns and enforcement campaigns. The new bill contains a section for a similar provision, but the language has not been developed.

ARTBA is a strong supporter of the High Risk Rural Road program, but that program will end after 2011 according to this bill. It should be noted states must meet aggressive death and injury reduction goals in order to qualify for HSIP funds. Given this mandate and the fact that rural roads show a much greater risk for death and injury, it is very likely funds will continue to be directed to high risk rural roads as the crash data analysis imposed upon the states will likely highlight the need to address these problem areas. The bill also continues most aspects of the highway rail-grade crossing program.

Behavioral Safety Objectives/Penalties

The measure includes a number of provisions aimed at reducing impaired driving and increasing uses of seat belts. Unfortunately, the tool to achieve these objectives is an abundant use of highway sanctions that could deny states funds that could be used to improve public safety. If states fail to enact laws in accordance with the bill's minimal provision, the following penalties would be imposed:

1. No primary seatbelt law by October 2012 = 2 percent penalty; no law by October 2013 = 4 percent penalty; no law by October 2014 = 6 percent penalty; no law by October 2015 = 8

percent penalty. Penalties will be deducted from the Critical Asset Investment, Freight Improvement (FI), and STP programs.

2. No primary seatbelt law after September 30, 1994 = 3 percent penalty will be deducted from the same programs, and will be transferred to behavioral safety programs (continuation of an existing requirement).
3. Must have alcohol interlock device required on cars operated by drivers with DUI conviction for six months. If no law by October 2012 = 1 percent penalty; by October 2013 = 3 percent; by October 2014 = 5 percent. Penalties will be deducted from the CAI, FI, and STP programs.
4. No license revocation law for persons convicted of drug offenses by FY2010 = 10 percent penalty of funds allocated under the CAI, FI, and STP programs (continuation of an existing program).
5. States must comply with Federal Motor Carrier requirements by September 30, 2010 or will be penalized 5 percent of funds from the CAI, FI and STP programs.

The bill continues the requirement that states enact and enforce a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle be deemed to have committed a “per se” offense of “driving while intoxicated.” The existing highway funding penalties for failure to comply with this requirement are also continued.

Federal and Tribal Lands, Puerto Rico, and Territorial Highway Program

The legislation would bring many of the separate federal lands and territorial highway programs together under a single umbrella program. Included in this new program would be the existing Public Lands Highway program, the Forest Highways, the Park Roads and Parkways, the Indian Reservation Roads, the Puerto Rico Highway program, and the Territorial Highway program. The purpose is to apply consistent policies to these programs, including some planning, performance and reporting elements. The most significant change is that funds would be made available for two new categories of facilities: Bureau of Land Management roads and National Forest System Roads. Funds for either of these two types of facilities cannot be used for new road construction.

Prevailing Rate of Wage

The bill revises the language describing the scope of prevailing wage requirements on federal surface transportation projects. They are to apply to “construction work performed on projects assisted in whole or in part by and through the Federal Government” under the federal highway program. The existing law requires wage rates “not less than those prevailing on the same type of work on similar construction in the immediate locality.” The bill would change this to “projects of a character similar in the locality.”

The bill removes the requirement that the U.S. Secretary of Labor consult with state highway departments in determining the minimum wages for paid laborers and mechanics on projects in their

respective states. However, under regulations related to the Davis-Bacon Act, the Department of Labor may continue to obtain data from agencies – such as highway departments – on wage rates paid on construction projects under their jurisdiction.

Disadvantaged Business Enterprise (DBE) Program

The bill reauthorizes the DBE program, requiring that no less than 10 percent of funding under the federal highway program “be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.” Such “small business concerns” may not have average annual gross receipts of more than \$22,410,000 over the previous three fiscal years. Currently, U.S. DOT is to adjust this threshold annually for inflation.

The measure also requires U.S. DOT to formulate regulations to adjust the personal net worth cap annually for inflation. Similarly, additional regulations are to exclude retirement benefits from that calculation. Those regulations are to include safeguards, such as limits on the amount to be excluded, to prevent misusing this exclusion to circumvent the personal net worth requirements.

The bill requires U.S. DOT to establish a program which prohibits “excessive, unreasonable, or discriminatory bonding requirements” under federally-assisted surface transportation contracts. It also requires U.S. DOT to establish a mandatory training program for state transportation officials who certify firms eligible for the DBE program in their respective states. U.S. DOT may outsource the training program to private entities, and it must report to Congress on the results of the program two years after the bill’s enactment.

This section of the bill also delineates a number of non-binding “findings” relating to discrimination against “minority- and women-owned businesses seeking to do business in federally-assisted surface transportation markets.” The measure cites these concerns as rationale for continuing the DBE program.

Buy America

If the federal-aid highway program funds any part of a bridge project, the bill requires that existing Buy America provisions apply to all individual contracts on that project. For purposes of this requirement, the bridge project’s scope is “abutment to abutment (including the abutments)” and found in the project’s decision under the NEPA. This provision is described as clarifying congressional intent that Buy America applies to entire bridge projects, not just segments of those projects.

Public Transportation Program

The Public Transportation Program would remain as a separate program from the Highway Program with its own title in the legislation. The proposed changes in the measure clearly indicate its authors envision a significantly enhanced role for transit in the nation’s transportation system.

Policies

The legislation begins by eliminating the long list of “findings” from section 5301 of Title 49 of the U.S. Code and focusing the program on: (1) increasing transit ridership, (2) improving mobility, (3) reducing energy consumption and reliance on foreign oil, (4) providing transportation for the elderly and people with disabilities and (5) preserving the environment.

The overall structure of the transit program would not be changed significantly. Most of the funds would still be distributed among transit agencies as formula grants and the program would continue to finance new starts of fixed guideway transit projects, maintenance and improvements to existing fixed guideway transit systems, and bus purchases. The most prevalent change in the legislation would be establishment of performance goals for many of the transit programs and a requirement that plans be developed to attain those goals. The legislation also attempts to improve the efficiency of the transit program by consolidating some programs and amending others, but most existing transit programs would continue to exist in one form or another.

Although the legislation does not include authorization amounts, the Committee proposes a six-year authorization of just under \$100 billion for transit programs. This represents about a 90 percent increase over SAFETEA-LU.

Urbanized Area Formula Grants

The legislation makes some changes to the Urbanized Area Formula Grants program, which provides grants to transit agencies for capital improvements, planning and enhancements. Changes include:

- a. Larger transit agencies would be able to use a portion of their apportionments for operating costs. Under current law, only agencies in areas with less than 225,000 people can use federal transit program funds for operations. The new bill would allow areas up to 500,000 to use 20 percent of their federal transit funds for operating expenses, areas up to 1,000,000 to use 10 percent, and areas over 1,000,000 to use 5 percent. However, to use federal funds for operating costs, the transit agency has to certify it has dedicated sources of funds for operating costs and it will spend at least as much of its own funds as in the previous year. Recent surface transportation authorization bills have expanded the ability of transit agencies to use federal funds for operations, and this bill would continue that trend.
- b. Transit agencies would have to set six-year performance targets focused on reducing the percent of rolling stock, track, structures and stations rated as poor and increasing the energy-efficiency of its rolling stock and facilities. The targets would be updated every six years.
- c. Every transit agency receiving federal funds would have to develop a “State of Good Repair Investment Plan” which would inventory the condition of the agency’s existing fleet and facilities and then prioritize investments to meet the agency’s performance targets. Annual updates to the investment plan and annual progress reports would be required. If the secretary

disapproves a plan or update, the agency cannot obligate federal funds until a revised plan is approved.

- d. Other provisions of the urbanized area formula grant program remain the same.

Intermodal and Energy Efficient Transit Facilities Grants

This program, which would replace the current Clean Fuels Grant Program, would authorize the secretary to make discretionary grants for intermodal transit facilities or facilities that help reduce energy consumption or greenhouse gas emissions. Priority for the energy grant portion of the program would be given to projects on the basis of energy savings or emissions reductions.

Capital Investment Grants

The legislation would substantially rewrite the capital investment grant program to focus solely on New Starts, moving the Fixed Guideway Modernization Program and the bus program to other sections:

- a. It eliminates the alternatives analysis that had been required for fixed-guideway transit projects under SAFETEA-LU and earlier acts. Instead the new legislation requires that the project be the “locally-preferred alternative” as part of the area’s long-range transportation plan. This would simplify the planning process for transit projects.
- b. It ups the definition of a New Start as a new fixed guideway project requiring federal assistance of \$75 million under current law to \$100 million and redefines a Small Start as less than \$100 million.
- c. It eliminates the use of capital investment grants for modernization of existing fixed guideway systems and for purchase or rehabilitation of buses. Capital grants can only be used for new fixed guideway systems (including dedicated bus and HOV lanes), extensions of existing systems, or to develop corridors to support new systems.
- d. The legislation would greatly reduce the factors that the secretary must consider in approving a new start grant. The current list of 12 factors would be reduced to three—the benefits the proposed project would bring to the community, the amount of federal assistance to be provided and the amount and reliability of the local investment. The ratings system for New Starts would also be amended to reflect the change in evaluation criteria. The proposed changes would simplify the approval process for New Starts.
- e. The rules for Small Starts, defined as projects requiring less than \$100 million of federal funds, would be revised to conform to those for regular New Starts. Funds for Small Start projects would be made in a single grant, whenever possible.
- f. The legislation maintains the provision that the federal New Starts program can pay up to 80 percent of project costs. The provision allowing the federal government to pay more than 80 percent under certain circumstances would be eliminated.

- g. A new section establishes procedures to expedite project development.

Coordinated Access and Mobility Program Formula Grants

This new program would consolidate and replace the current “Formula Grants for Special Needs of Elderly Individuals with Disabilities,” the “Job Access and Reverse Commute Formula Grants,” and the “New Freedom Program.” The new program would provide funds for public transportation projects designed to meet the needs of the elderly and individuals with disabilities and for job access and reverse commute projects. The funds would be apportioned among the states in proportion to their share of the national target (elderly, disabled and low-income) population, with 60 percent targeted to urban areas above 200,000 population, 20 percent to areas with less than 200,000, and 20 percent to areas with less than 50,000. As with most other programs in the bill, there is a requirement that recipients establish performance targets based on measures developed by U.S. DOT, and a performance plan. The program could finance up to 80 percent of the cost of capital projects and 50 percent of operating costs.

Rural Area Formula Grants

The “Formula Grants for Other than Urbanized Areas” would be renamed and amended to emphasize the goal of providing public transportation services to rural areas. The only major change made by the bill would be to liberalize the ability of recipients to use funds to subsidize private intercity bus transportation. Performance targets would be required.

Transit Research Grants

The existing “Research, Development, Demonstration and Deployment Projects” program would be renamed and the eligible use of funds would be expanded to include training. The section would also include a new “National Fuel Cell Bus Transportation Development Program,” to fund up to three fuel cell bus technology and infrastructure projects. The “National Research Programs” section of existing law would be repealed.

Workforce Development Programs

This program renames and replaces the existing “Human Resource Programs” in order to provide funding for grants for basic skill training for youths interested in transit jobs, for transit worker education and retention grants and for workforce diversity grants. National and Regional Workforce Development Councils would be created to conduct research and develop programs to achieve the workforce development goals.

Fixed Guideway Modernization Formula Grants

The fixed guideway modernization grants program would become a separate program under the STAA, although provisions of the program are still under development. The bill also provides no indication of the amount of money each existing system would receive.