

GOVERNMENT RELATIONS, INC.
1050 17TH STREET
SUITE 510
WASHINGTON, DC 20036

(202) 775-0079

June 2012 Monthly Report for MTC

To: Steve Heminger, Executive Director
MTC

From: Tom Bulger, President
GRI

Re: Monthly Report for June 2012

Date: July 2, 2012

- **Congress Approves Surface Transportation Authorization Bill**
- **TIGER IV Funding Announced**
- **June Meetings**

Congress Approves Surface Transportation Authorization Bill

On June 29, the House approved H.R. 4348 — the long-awaited surface transportation authorization bill — on a 372 to 52 vote. The Senate followed shortly thereafter with a 74 to 19 vote. This ends nearly three years of frustrating legislative wrangling since the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) expired in 2009. The new, two-years-and-three-months bill cannot be called an elegant or transformational piece of legislation. Nevertheless, it buys time until the end of FY 2014 to fix the numerous problems associated with the federal transportation programs, notably how to fund transportation into the future.

Summary of the “Moving Ahead for Progress in the 21st Century Act” (MAP-21)

Federal Aid — Highway Provisions

- Authorizes \$40.6 billion for FY 2013 *and* \$40.6 billion for FY 2014 for the federal-aid highway programs, of which \$40 billion and \$40.6 billion are provided from the Highway Trust Fund.
- Restructures the federal highway programs by eliminating or consolidating approximately 60 programs and it structures the program around four “core” formula programs.

National Highway Performance Program

- Provides \$22.3 billion in FY 2013 *and* \$22.4 billion in FY 2014 to improve the condition and performance of the National Highway System.
- This program consolidates the existing Interstate Maintenance and National Highway System formula programs and aspects of the Highway Bridge program.

Surface Transportation Program

- Provides \$10.2 billion in FY 2013 *and* \$10.3 billion in FY 2014 to assist states and local governments improve the condition and performance of federal-aid highways and bridges on any public road.
- This program would continue to provide broad eligibility and would be sub-allocated within a state to local governments based on population. Off system bridges are eligible under this program.

Highway Safety Improvement Program (HSIP)

- Provides \$2.4 billion in FY 2013 *and* \$2.5 billion in FY 2014 to support safety projects.
- Continues to set-aside \$225 million in HSIP funds for highway-railway grade crossings.
- Eliminates the set-aside for high risk rural roads, but continues eligibility for these activities.

Congestion Mitigation and Air Quality Program (CMAQ)

- Provides \$2.26 billion in FY 2013 *and* \$2.28 billion for the CMAQ program.
- Note: the Senate’s provision providing sub-allocation of CMAQ funds was deleted in conference committee.

Distribution of Federal-Aid Highway Funds

The final agreement eliminates all formula factors for individual highway programs. Instead, it distributes highway formula funds based on each state share of total highway funds distributed in FY 2012. These amounts include apportioned formula and allocated (discretionary or earmarked) amounts. This is a beneficial shift for California.

Equity Bonus Program

The final agreement eliminates the Equity Bonus program. However, the agreement ensures that each state would be guaranteed a minimum return of 95 percent of its payments into the Trust Fund.

Transportation Alternatives

- Provides that two percent of amounts apportioned to states be set aside for a new Transportation Alternatives (TA) program. This funding would be used for transportation enhancements (TE) activities, the Safe Routes to School program, the recreational trails program, and to plan, design and construct “boulevards, main streets, and other roadways.” Under this consolidated program, funding for these activities is reduced by approximately \$300 million annually.
- Requires that 50 percent of a states’ TA allocation be sub-allocated within the state based on population. The remaining 50 percent of the TA funds can be used for projects in any area of the state. Metro areas over 200,000 populations are given project selection authority over its portion of the sub-allocated amounts.
- The conference report also allows states to transfer up to 50 percent of the amount of TA funds that are not sub-allocated within the states to other programs, and allows states to transfer funding out of TA set-aside to the CMAQ program if the state has a backlog of TA funds exceeding 100 percent of its annual TA set-aside.

National Freight Program

The National Freight Program in the Senate bill was dropped from the final agreement. Instead, the agreement establishes a national freight policy, which requires the designation of a primary freight network of up to 30,000 miles. To incentivize states to invest in freight projects, the agreement increases the federal share for freight projects identified on state freight plans. The federal share would increase from 80 to 90 percent for non-Interstate projects, and from 90 to 95 percent for projects on the Interstate system.

Buy America

Strengthens Buy America requirements to apply to federal highway and bridge projects by prohibiting the segmentation of such projects to avoid Buy America requirements.

The Transportation Infrastructure Finance and Innovation Act (TIFIA)

Increases annual funding for the federal credit assistance under the TIFIA program from \$122 million to \$750 million in FY 2013 and \$1 billion in FY 2014.

Tolling and Public-Private Partnerships

Expands the ability of the states to place tolls on any federal-aid facility (including the Interstate) for new capacity.

Projects of National and Regional Significance (PNRS)

Authorizes \$500 million from the General Fund in FY 2013 for high-cost surface transportation projects.

Ferry Boat and Terminal Facilities

- Provides \$67 million in both FY 2013 and FY 2014 for the Ferry Boat and Ferry Terminal Facilities Program.
- The set-asides in current law are eliminated and the funds are distributed by formula.

Surface Transportation Research

- Provides \$400 million annually for transportation research and education.
- Authorizes 35 competitive grants to be provided annually for University Transportation Centers.

Transportation Planning

The conference agreement is largely consistent with existing law.

Environmental Streamlining Provisions

While the provisions in the conference report are a significant improvement over the drastic provisions that were included in the original House bill (H.R.7 and H.R. 4348), there are still some provisions in this section that are of concern and could actually have the unintended effect of slowing project delivery.

Advance Acquisition of Real Property Interests

Allows states to acquire real property interests before the completion of the National Environmental Policy Act (NEPA) review process.

Letting of Contracts

Allows states to be reimbursed for pre-construction and design contracts before the NEPA analysis has been completed.

Innovative Project Delivery Methods

Allows up to 100 percent federal cost share for projects that use innovative technologies that increase the efficiency of construction and improve safety and extend the life of the facility.

Rulemaking Regarding Efficient Environmental Reviews for Project Decision-making

Requires the Secretary to promulgate a rulemaking to allow the use of programmatic approaches to conduct environmental reviews.

Accelerated Decision-making

- Sets deadlines for decisions by lead agency and other federal agencies with responsibilities for environmental review.
- Escalates dispute resolution to agency heads, governors, Council on Environmental Quality (CEQ), and finally the President.
- Includes financial penalties for agencies that do not complete other environmental reviews by certain deadlines. Fines can be up to seven percent of an agency's budget per fiscal year.

Assistance to Affected Federal and State Agencies

Requires memorandums of understanding (MOUs) in cases where the departments of transportation (DOTs) funds dedicated staff at other agencies.

Limitations on Claims

Shortens the Statute of Limitations for filing a challenge to a project from 180 days to 150 after Record of Decision.

Accelerating Completion of Complex Projects

Requires DOTs to establish schedules for the completion of all reviews within four years after the Notice of Intent (NOI) was issued.

Integration of Planning and Environmental Review

Allows planning products to be adopted by the lead Federal agency and used by other Federal agencies.

Development of Programmatic Mitigation Plans

Allows states or MPOs to develop programmatic mitigation plans.

State Assumption of Responsibility for Categorical Exclusions

Amends current program to stipulate that a state, as a condition of assuming responsibility for determining categorical exclusions, is not required to forego project delivery methods that are otherwise permissible for highway projects.

Surface Transportation Project Delivery Program

- Makes permanent the current pilot program that lets DOT delegate NEPA review authority to five states.
- Expands the option to all states and to include rail, and public transit multimodal projects.
- Continues to prevent delegation of Clean Air Act determinations.

Application of Categorical Exclusions (CE) and Multimodal Projects

Allows lead agency to use CE's of cooperating agencies and modes.

Categorical Exclusions in Emergencies

In the case of an emergency declared by a state in concurrence with the Secretary, or a disaster, the Secretary shall promulgate a rulemaking to treat repairs or reconstruction as an activity that is CE of repair within two years after the damage occurred.

Rulemaking Regarding Categorical Exclusions for Projects within the Right of Way

Within 180 days the Secretary shall designate any project within an existing operational right of way as a CE.

Categorical Exclusions for Projects with Limited Federal Assistance

Designates projects with less than \$5 million in federal funds or with an estimated cost of less than \$30 million with no more than 15 percent federal funds as a CE, regardless of potential impact.

Accelerated Decision-making of Environmental Reviews

Allows for errata sheets to be used to modify a final EIS.

Memoranda of Agency Agreements for Early Coordination

Includes a Sense of the Congress to use early coordination and MOUs.

Environmental Procedures Initiative

Requires the DOT to establish an initiative to review and develop consistent procedures for environmental review.

Review of State Environmental Reviews and Approvals for the Purpose of Eliminating Duplication of Environmental Reviews

Requires a Government Accountability Office (GAO) study to assess whether states have laws that are comparable to federal environmental review laws.

Review of Federal Projects and Program Delivery

Requires a DOT study of the completion times of CEs, Environmental Assessments and EISs in the pre-2005 tie period, 2005 to present, and after the date of enactment of this Act.

Public Transportation

- Authorizes \$10.6 billion for FY 2013 and \$ 10.7 for FY 2014 for transit of which \$8.5 billion and \$8.6 billion are out of the Mass Transit Account of the Highway Trust Fund.
- Public Transportation Formula Programs — authorizes the following public transportation formula programs:
 - **Urbanized Area Formula:** Provides \$4.398 billion in FY 2013 and \$4.459 billion in FY 2014.
 - **Elderly and Disabled Formula Grants:** Provides \$254.8 million for FY 2013 and \$258.3 million for FY 2014 for a program that consolidates the existing Elderly and Disabled and New Freedom programs into a single program. Eliminates the Job Access and Reverse Commute program (JARC), but requires funding for these activities under the urban and rural formula programs.
 - **Rural Area Formula Grants:** Provided \$599.5 million in FY 2013 and \$607.8 million for FY 2014 for the Rural Area Formula grants program. Creates two new programs within the rural program:
 - Public Transportation on Indian Reservations at \$30 million.
 - Appalachian Development Public Transportation Program at \$20 million.
 - **Bus and Bus Facilities Formula Grants:** Provides \$422 million in FY 2013 and \$427.8 million in FY 2014, which converts the existing competitive Bus and Bus Facilities program into a formula program (\$65 million of program funds are distributed evenly among states and territories with each receiving a fixed amount; the rest distributed according to population and the bus factors.
 - **State of Good Repair Grants (formerly Rail Modernization program):** Provides \$2.136 billion in FY 2013 AND \$2.166 billion in FY 2014.
 - **High Density Formula Grants:** Provides \$518.7 million in FY 2013 and \$525.9 million in FY 2014.
 - **Limited Transit Operating Assistance:** Allows transit systems operating fewer than 100 buses in peak service to use a portion of their Section 5307 grant funds for

- operating expenses. The agreement does not include the Senate-passed provision to allow areas over 200,000 populations to use a portion of their Section 5307 funds for operating assistance during times of high unemployment.
- **New Starts:** Streamlines the New Starts program; makes core capacity projects eligible for funding; and retains eligibility for Bus Rapid Transit projects. However, allows FTA to provide up to three BRT projects each year that meet criteria of “fixed guideway” bus projects to receive an 80 percent Federal share under New Starts.
 - **Rail Modernization:** Replaces the existing Rail Modernization program with a program to move all systems toward a state of good repair. Eliminates funding tiers and earmarks and replaces these with a new structure that focuses on the age of the system, revenue vehicle miles and directional route miles. Sets aside 2.85 percent of program funds for High- Intensity Motorbus program to fund bus systems that operate primarily in HOV lanes.
 - **Public Transportation Safety:** Strengthens transit safety by establishing comprehensive safety plans; provides FTA with a regulatory and enforcement role over transit safety.

Privatization:

Includes several privatization provisions that were contained in H.R.7, including provisions requiring FTA to:

- Better coordinate public and private sector- provided public transportation services
- Provide technical assistance to recipients on practices and methods to best utilize private providers.
- Identify best practices, if requested by a New Starts sponsor for public-private partnerships models.
- Perform financial assessments that include the calculation of public and private benefits.
- Identify any regulations or practices that impede greater use of public-private partnerships.
- Conduct a study on the effects of contracting out public transit services on cost, availability and level of service, efficiency, and quality of service.
- Publish policy guidance regarding how best to document compliance by recipients of Federal assistance with the requirements regarding private enterprise participation in transit planning.

Rail Provisions

The conference report does not contain any provisions on rail. Nor does it extend Buy America coverage to the Federal Railroad Administration’s grant and loan programs.

Additional Material

In the weeks ahead, we will obtain more detailed information on the new law, including formula computer financial statements that are not available at this time.

TIGER IV Funding Announced

In June, the Secretary of Transportation announced the recipients of the latest round of Transportation Improvements Generating Economic Recovery (TIGER) discretionary grants. Two TIGER IV grants were awarded in the Bay Area. They were:

- \$15 million for the Port of Oakland Intermodal Rail project, and
- \$10 million for the Mission Bay/UCSF Hospital Multi-Modal transportation project.

June Meetings

- We conducted a number of Congressional meetings regarding surface transportation legislation with Rep. Earl Blumenauer (D- OR), as well as staff of:
 - Rep. Rob Wittman (R-VA)
 - Rep. Daniel Webster (R-FL)
 - Rep. Jon Runyan (R-N.J.)
 - Rep. Steve Southerland (R-FL)
 - Rep. Rick Crawford (R-AR)
 - Rep. Mario Diaz-Balart (R-FL)
 - Rep. Reid Ribble (R-WI)
 - Rep. Patrick Meehan (R-PA)
- *American Public Transportation Association (APTA) Washington Representatives Meeting* on June 1, 2012.
- I attended the retirement event for Jimmy Miller on June 7 in the House Transportation & Infrastructure (T&I) Committee room. Approximately 50 members of Congress, including four former chairmen of the T&I Committee attended. I had the honor of presenting a Bay Bridge rivet to Mr. Miller.