Federal Surface Transportation Reauthorization

REVIEW OF PROVISIONS IN SENATE BILL S. 1813

Moving Ahead for Progress in the 21st Century (MAP-21)

June 21, 2012

Prepared by
Strategic Transportation Issues Committee of the
Mid America Association of State Transportation Officials

Contents:

Executive Summary

This document, prepared by members of MAASTO's Strategic Transportation Issues Committee, outlines the highway funding, transit funding, innovative finance and performance measure provisions of the Senate Bill S. 1813, "Moving Ahead for Progress in the 21st Century" or MAP-21.[1] The bill passed the Senate on March 14, 2012.

MAP-21 Highlights:

- Maintains SAFETEA-LU funding levels through Federal Fiscal Year 2013 (September 30, 2013).
- Eliminates earmarks and reduces available federal discretionary grants.
- Includes significant program consolidations.
- Includes significant state performance measurement and reporting requirements.
- Increases funding for existing Transportation Infrastructure Financing and Innovation Act (TIFIA) program and includes various program modifications.

Implementation Challenges: While maintaining existing funding levels is considered a positive aspect of the proposed MAP-21, its short timeline will pose challenges. States will just begin to implement new program, planning and performance requirements when MAP-21 expires and another federal reauthorization will be needed. Some MAP-21 provisions would not commence until after the new authorization expires, leaving states without stability and consistency needed to effectively implement policy.

Ratchet Provision: MAP-21 includes the provision that if the Highway Trust Fund (HTF) does not have adequate funds to meet obligations, the United States Department of Transportation (USDOT) Secretary can automatically reduce or "ratchet down" the amount obligated to the states. If the estimated balance falls below one to two billion dollars at the end of the next year, the Obligation Authority will be reduced.

Highway Trust Fund Condition: The Senate proposal included various adjustments to existing revenue sources to fund the bill's short timeframe and program levels; however the long-term structural problem with the HTF has not been addressed. If the conference committee is unable to agree on a compromise bill that includes a revenue increase, program reductions or general fund support, the HTF is expected to be unsupportable by early 2013.

Reauthorization Conference Committee: In April 2012, the House of Representatives passed H.R. 4348, after its surface transportation reauthorization proposal, H.R. 7 did not reach the House floor for full debate and consideration. H.R. 4348 allowed the transportation reauthorization effort to move forward into a congressional conference committee. The Senate's approved transportation reauthorization proposal, MAP-21 is the focus for the conference committee negotiations. H.R. 4348 includes four significant provisions: 1.) extends SAFETEA-LU until October 1, 2012; 2.) provides federal approval for TransCanada's Keystone XL Pipeline from Canada to Texas; 3.) includes environmental streamlining provisions from H.R. 7; and 4.) prohibits changes in federal rules further regulating the containment and disposal of coal ash.

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Highway Funding

Title and Section

Division A, Federal-Aid Highways and Highway Safety Construction Programs
Title I, Federal Aid Highways
Subtitle A, Authorizations and Programs, Sections 1101-1119
Subtitle D, Highway Safety
Subtitle E, Miscellaneous
Title III, Highway Spending Controls

Division E, Research and Education
Subtitle A – Funding

Summary of Funding Provisions

<u>Title I- Federal Aid Highways Authorized levels</u>

Funding level for highway program is maintained close to the current levels, but absent additional revenues from the Finance Committee, the revenues into the Highway Account remain substantially below that necessary to keep the Highway Trust Fund solvent. The Proposed Contract Authority for Federal FY 2012 is $39.912 billion.

Proposed Federal Obligation Authority	Federal FY 2011 Obligation Authority
Federal FY 2012 - $42.303 billion - $41.564 billion Obligation Limit plus $739 million exempt	Federal FY 2011 - $41.846 billion - $41.107 billion Obligation Limit plus $739 million exempt
Federal FY 2013- $42.966 billion - $42.227 billion Obligation Limit plus $739 million exempt	

There are six core highway programs proposed in MAP-21:

- National Highway Performance Program – Section 104(b)(1);
- Transportation Mobility Program – Section 104(b)(2);
- Highway Safety Improvement Program – Section 104(b)(3);
- National Freight Program – Section 104(b)(5);
- Congestion Mitigation and Air Quality Program – Section 104(b)(4); and
- Metropolitan Planning Program – Section 104(b)(6).

Distribution of Funds to the States (Section 1105): Historically, the apportionment of funds for the core formula programs related to specific formula factors such as vehicle miles, lane miles, bridge needs and population. This use of specific formula factors for each of the program would change:

- The amount of a state's combined apportionment for the six core programs is based on the state's percentage share of total apportionments and allocations received between 2005 and 2009 under SAFETEA-LU.
- State's apportionments for the Congestion Mitigation and Air Quality (CMAQ) and Metropolitan Planning programs are calculated first, or taken "off the top". The CMAQ and Transportation Enhancements (TE) amount are combined into a single CMAQ formula program under this bill.
- The amount of funds apportioned to each state for the CMAQ program would be based on the share of CMAQ and TE funding received in 2009.
- The funds apportioned to each state for the Metropolitan Planning program would be based on the share of MPO funds received in 2009.

Under SAFETEA-LU, the distribution of funds was to a large extent based on the funding received in previous authorizations, ISTEA and TEA-21. This amount was supplemented with the large Equity Bonus program that provided all states additional funding and discretionary and earmark programs which were used by Congress and the Administration to direct funds to specific states and projects.

- The Equity Bonus program and earmarks are eliminated and very limited discretionary programs remain in MAP-21.
- The funding distribution is no longer connected to the achievement of national and regional transportation goals or priorities; however, there are certain performance targets that will be established in each of the programs.

Adjustments to initial amount (Equity Provision)(Section 1105): Amended provision, Section 104(c)(1)(B) provides for an adjustment to the initial distribution of funds to the states to ensure that each state shall receive no less than 95 *percent of the estimated payments* into the Highway Account of the Highway Trust Fund (HTF).

- This change is to a state's percent of dollar contributions rather than from the percent of a state's share of contributions.
- States are not expected to benefit, given that apportionments are likely to remain at the level of receipts.

Further Adjustments for Privatized Highways (Section 1005): Added a new provision that applies to states that have privatized parts of their highway system. Section 104(c)(1)(C) reduces a state's apportionments based on the number of miles of privatized highway lanes on the National Highway System (NHS) in the state and the number of vehicle miles traveled on privatized highway lanes on the NHS. Funds that are withheld would be redistributed to the remaining states. Privatized highways are highways that were formally a publically operated toll road that are now under private control for operations and ownership over the toll revenues. Privatized highways that were originally financed and constructed using private funds and operated by a private entity are excluded from the calculation.

Distribution of State Apportionments among Core Programs (Section 1105): The CMAQ program and Metropolitan Planning program total amounts are subtracted from the combined apportionment and the remaining funds are distributed as follows:

- National Highway Performance Program receives 58 percent;
- Transportation Mobility Program receives 29.3 percent;
- Highway Safety Improvement Program receives 7 percent; and
- National Freight Program receives 5.7 percent.

Six Core Programs

National Highway Performance Program (Section 1106): The NHS consists of the current federal-aid system, which includes the current NHS system, other urban and rural principal arterials, and other connector highways that provide access between arterial routes on the NHS and a major intermodal facility.

Projects must be on the NHS and achieve national performance goals for improving safety, mobility or freight movement on the NHS. Eligible projects also include the control of noxious weeds, bicycle transportation and pedestrian walkways and wetland mitigation banks. The amount of National Highway Performance Program funds that can be used for projects that add new highway capacity cannot exceed 40 percent of the NHS funds for the most recent three years. Exceptions include improving a roadway to current standards, or providing additional lanes on a bridge during reconstruction or rehabilitation necessary to meet standards for types and volumes of projected traffic.

To obligate funding under this program, each state shall have in effect: 1) a risk-based asset management plan approved by the USDOT Secretary and 2) targets that address the newly-implemented performance measures.[2]

Emergency Relief (Section 1107): Not more than $100 million is authorized from the HTF each year under this program. The reconstruction or replacement of a bridge is not eligible if a construction phase is included in the current improvement program

Transportation Mobility Program (Section 1108): This program, which is the successor to the Surface Transportation Program (STP), is designed to improve the condition and performance on Federal-aid highways and bridges on any public road. SAFETEA-LU's provision requiring ten percent off the top for TE projects was eliminated. TE projects are moved into the revised CMAQ Programs, discussed in the next page below.
The USDOT Secretary shall establish standards for bridges not on the Federal system.

Highway Safety Improvement Program (Section 1112): While the USDOT Secretary does not approve the process for updating the Highway Safety Plan, the USDOT Secretary shall establish requirements for updates.

- For 2012 and 2014, not less than eight percent of the safety apportionment Section 104(b)(3) shall be used for data improvement activities.

[2] See the Performance Measures section of this document for more information.

- For 2014 and thereafter, four percent can be waived if the state demonstrates to the USDOT Secretary that all needs for data collection have been met.
- Within first year of bill enactment, the USDOT Secretary shall issue guidance on safety performance measures. Within a year after guidance is issued, states shall set performance targets.[3]

Congestion Mitigation and Air Quality Program (Sec 1113): The revised CMAQ Program restricts the use of funds for projects that will result in new capacity available to single-occupant vehicles. There are new suballocation and set aside requirements that will restrict the location and project types for state with non-attainment areas. States without a non-attainment area may use funds for projects under the Transportation Mobility Program (23 USC Section 133).

MAP-21 retains many of SAFETEA-LU's Transportation Enhancement program features under the new CMAQ Program and classifies them under "Additional Activities". For example, the amount equal to the ten percent STP set-aside in 2009 shall be reserved for projects providing transportation choices. Funds may be obligated for any of 28 specific purposes including: Transportation Enhancements; Recreational Trails; Safe Routes to Schools; pedestrian walkways; bicycle infrastructure; on-road and off-road trails for pedestrians; transportation projects to achieve Americans with Disabilities Act compliance; traffic calming techniques; lighting and safety related structures; activities for safety and education for pedestrians, bicyclists and to encourage walking and bicycling; conversion of abandoned railroad right of way for pedestrian, bicyclist and other non motorized transportation uses; carpool, vanpool or ride share projects. Transportation museums were specifically excluded.

The "Additional Activities" funds (previously under TE) are suballocated to urban areas based on population:

- Fifty percent to: 1) urban areas over 200,000; 2) population over 5,000, and 3) any area of the state; and
- Fifty percent to any areas of the state.

The funds would be distributed through an in-state competitive application/allocation system, giving local governments direct access to the funds, thus largely bypassing the state DOTs. Tier I and Tier II MPOs, are able to select projects to be funded within their boundaries. Projects are not allowed on roads functionally classified as local or rural minor collectors.

National Freight Program (Section 1115): The USDOT Secretary shall designate the Primary Freight Network at a maximum of 27,000 centerline miles (plus additional 3,000 miles to be identified after the initial designation). There is no requirement in MAP-21 that USDOT include state participation in the designation of the freight network.

The bill identifies the types of projects that are eligible for the funds provided to the states, including but not limited to: construction; reconstruction and rehabilitation of the network; widening shoulders; Intelligent Transportation Systems; environmental mitigation; geometric improvements to interchanges and ramps; railway-highway grade separations; truck-only lanes; climbing lanes; truck parking; ramp metering; and other projects to improve the flow of freight.

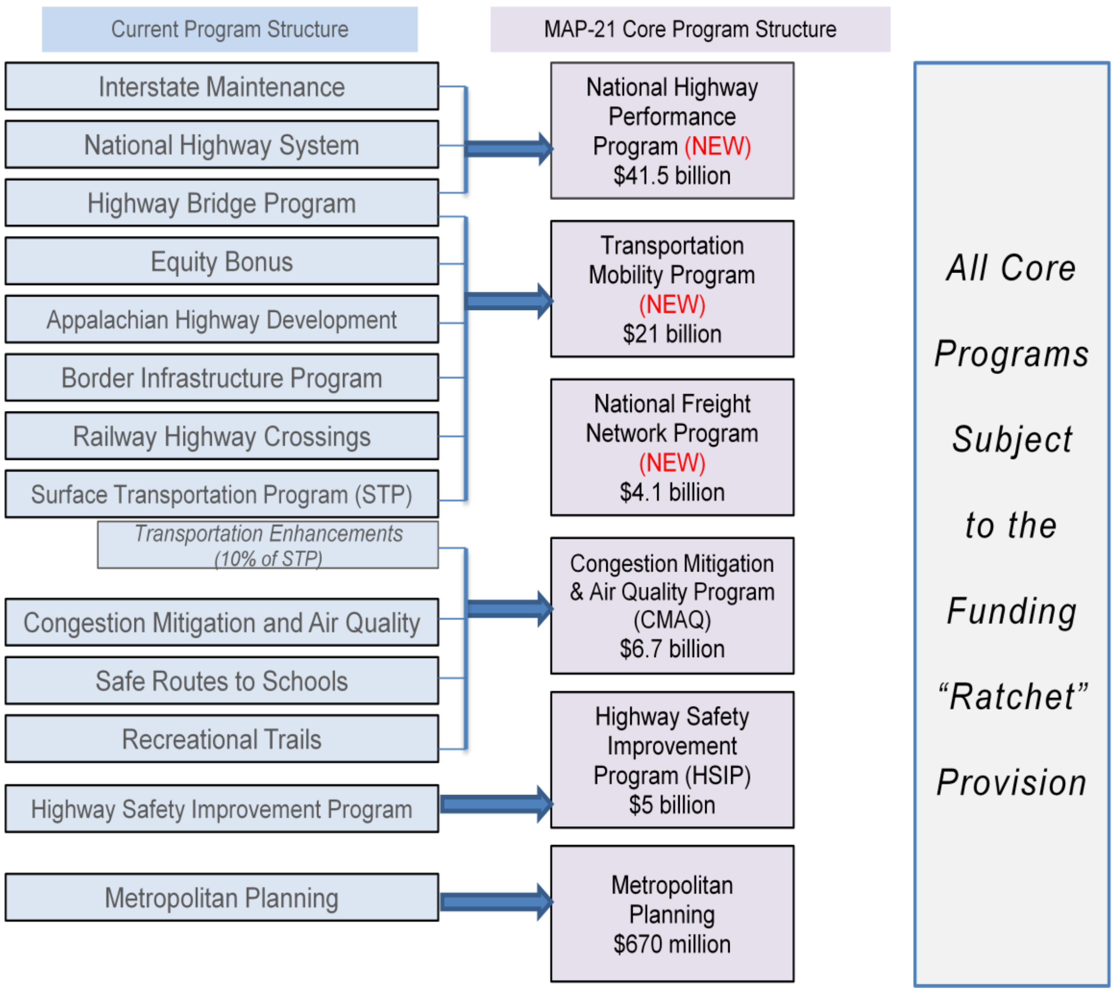
[3] See Performance Measures section of this document for more information.

Additionally:

- A state may designate a critical rural freight corridor within their state.
- States shall use no more than 20 percent of their program funds on critical rural freight corridors.
- Performance measures are required.

Summary of MAP-21 Core Programs

The below chart outlines the comparison of the current program structure to the MAP-21 proposed structure:



The table on the following page includes MAP-21 estimates based on FHWA 2009 apportionments and 2005-2009 Apportionments and Allocations to states under SAFETEA-LU.[4] The first chart is the estimated funding of MAP-21 core programs without SPR set-aside; the middle chart provides the average percentages of funding to each core program; and the bottom chart includes MAP-21 core program funding including State Planning and Research (SPR) set-aside of two percent. The table does not reflect any adjustments that may be necessary with the implementation of Section 1005 of MAP-21 for privatized highways.

[4] Table was developed by Iowa DOT.

ESTIMATED --- Core Program Apportionments --- MAP-21**

	Illinois	Indiana	Iowa	Kansas	Kentucky (millions)	Michigan	Minnesota	Missouri	Ohio	Wisconsin
National Highway Performance Program	706.40	491.13	253.99	216.80	370.82	568.53	374.09	513.98	720.53	400.29
Transportation Mobility Program	356.85	248.11	128.31	109.52	187.33	287.21	188.98	259.65	363.99	202.21
Highway Safety Improvement Program	85.26	59.27	30.65	26.17	44.75	68.62	45.15	62.03	86.96	48.31
CMAQ	144.17	70.19	23.02	22.03	29.03	109.17	57.18	46.70	134.38	48.77
National Freight Program	69.42	48.27	24.96	21.31	36.44	55.87	36.76	50.51	70.81	39.34
Metropolitan Planning	16.62	5.09	1.88	2.06	2.57	10.87	4.98	5.17	12.05	4.54
Total	1,378.72	922.05	462.81	397.88	670.94	1,100.25	707.13	938.04	1,388.72	743.45
National Highway Performance Program	51.2%	53.3%	54.9%	54.5%	55.3%	51.7%	52.9%	54.8%	51.9%	53.8%
Transportation Mobility Program	25.9%	26.9%	27.7%	27.5%	27.9%	26.1%	26.7%	27.7%	26.2%	27.2%
Highway Safety Improvement Program	6.2%	6.4%	6.6%	6.6%	6.7%	6.2%	6.4%	6.6%	6.3%	6.5%
CMAQ	10.5%	7.6%	5.0%	5.5%	4.3%	9.9%	8.1%	5.0%	9.7%	6.6%
National Freight Program	5.0%	5.2%	5.4%	5.4%	5.4%	5.1%	5.2%	5.4%	5.1%	5.3%
Metropolitan Planning	1.2%	0.6%	0.4%	0.5%	0.4%	1.0%	0.7%	0.6%	0.9%	0.6%

	Illinois	Indiana	Iowa	Kansas	Kentucky (millions)	Michigan	Minnesota	Missouri	Ohio	Wisconsin
National Highway Performance Program	692.27	481.31	248.91	212.46	363.40	557.16	366.60	503.70	706.12	392.28
Transportation Mobility Program	349.72	243.14	125.74	107.33	183.58	281.46	185.20	254.46	356.71	198.17
Highway Safety Improvement Program	83.55	58.09	30.04	25.64	43.86	67.24	44.25	60.79	85.22	47.34
CMAQ	141.29	68.79	22.56	21.59	28.45	106.98	56.03	45.76	131.69	47.79
National Freight Program	68.03	47.30	24.46	20.88	35.71	54.76	36.03	49.50	69.39	38.55
Metropolitan Planning	16.62	5.09	1.88	2.06	2.57	10.87	4.98	5.17	12.05	4.54
State Planning and Research	27.24	18.34	9.22	7.92	13.37	21.79	14.04	18.66	27.53	14.78
Total	1,378.72	922.05	462.81	397.88	670.94	1,100.25	707.13	938.04	1,388.72	743.45

**NOTE: The tables were developed using FHWA's 2005-2009 apportionments and allocations for SAFETEA-LU programs (Tables FA-4 and FE-221-B) and applied to the new core program structure. The information in this table is not confirmed by FHWA or the Senate staff.

Other Programs/Provisions

Projects of National and Regional Significance (Section 1118): This discretionary grant program includes an application process and project selection by USDOT to fund critical high cost projects. Funding for program begins in FY 2013 with an authorization of one billion dollars that is available until expended. The federal share is up to 50 percent. Other federal funds may provide up to an additional 30 percent of the project cost.

Projects must be capital projects eligible under Title 23 or Chapter 53 of Title 49 for surface transportation infrastructure, to facilitate intermodal interchange, or for transfer and access into and out of intermodal facilities, including ports. Additionally, projects must be equal to or exceed $500 million or 60 percent of a state's apportionment of highway funds or 75 percent of states' apportionment for a multistate project.

Metropolitan Transportation Planning (Section 1201): The Metropolitan Planning program would receive a direct share of the each state's combined apportionment based on the state's percentage of funds received in 2009. Funds are distributed by the states to the MPOs.

Subtitle D – Highway Safety

Adjustments to Penalty provisions (Section 1404): MAP-21 includes revisions which adjust the penalty percentages and references to the new program structure for a number of motor vehicle, motor carrier and driver safety provisions.

Subtitle E – Miscellaneous

Federal Share Payable (Section 1506): There is no change from SAFETEA-LU.

Transferability of Federal-aid highway funds (Section 1507): Subject to some restrictions, a state may transfer 20 percent of a program's annual apportionment to another program.

Electric Vehicle Charging Stations (Section 1509): Electric vehicle charging stations at new or previously funded parking facilities are eligible activities for federal funding under MAP-21.

Uniform Relocation Assistance Act Amendments (Section 1514): Increases the eligible limits for: 1) moving and related expenses; 2) replacement housing for homeowners; and 3) replacement housing for tenants and certain others.

Consolidation of Programs; repeal of obsolete provisions (Section 1516): From the funds made available to the USDOT Secretary, not less than $10 million shall be used for the following activities: Operation Lifesaver, National Work Zone Safety Information Clearinghouse, Public Road Safety Clearinghouse, Bicycle and Pedestrian Safety Clearinghouse, National Safe Routes to School Clearinghouse and to provide work zone safety grants.

Rescissions (Section 1517): Unobligated balances in the amount of $2.391 billion in FY 2012 and $3.054 billion in FY 2013 are permanently rescinded. States shall determine the amount to be rescinded from the eligible programs.

Report on Highway Trust Fund Expenditures (Section 1522): No later than 150 days after enactment, the Comptroller General shall submit to Congress a report on the activities funded from the Highway Trust Fund during each of FY 2009 through FY 2011, including purposes other than the construction and maintenance of highways and bridges. The report shall be submitted every five years.

Treatment of Historic Signs (Section 1526): The USDOT Secretary shall exempt historic signs from the Manual on Uniform Traffic Devices requirements.

Exemptions from Requirements for Certain Farm Vehicles (Section 1529): This section lists specific federal requirements which are waived for certain farm vehicles and the individual operating the vehicle such as commercial driver's license and hours of service.

Title III – Highway Spending Controls

<u>Highway Spending Controls (Section 3001)</u>: Within 60 days after bill enactment, the USDOT Secretary in consultation with Secretary of Treasury shall estimate the balance of the Highway Account at the end of the fiscal year based on the obligation authority (OA) assumed in MAP-21.

- If the estimated balance falls below $2 billion at the end of FFY 2012 or $1 billion at the end of FFY 2013, the OA will be reduced.
- This is called the "ratchet" provision.
- It is unclear whether the required OA reductions would be implemented using an across-the-board reduction to all core programs or would be targeted toward certain core programs.

Division E Research and Education

<u>Authorization (Section 51001)</u>: The following amounts are authorized for each program in FFYs 2012 and FFY 2013.

- Highway Research and Development - $90 million per year
- Technology and Innovation Deployment - $90 million per year
- Training and Education - $24 million per year
- Intelligent Transportation Systems - $100 million per year
- University Transportation Centers - $70 million per year
- Bureau of Transportation Statistics - $26 million per year

The federal share is 80 percent, unless otherwise determined by the USDOT Secretary, and are non-transferable and available until expended.

<u>State Planning and Research Program (SPR) (Section 52005)</u>: MAP-21 continues the SPR program with a two-percent set aside from a state's total apportionment under the core programs, after deducting funds allocated to the Metropolitan Planning program. However rather than the SPR funds distributed 75 percent for planning and 25 percent research, not less than six percent of the funds shall be made available to the USDOT Secretary to carry out Section 503(c)(2)(C) for the Implementation of Future Strategic Highway Research Program Findings and Results or SHRP 2. SPR distribution includes: 70 percent for planning; 24 percent for research; and six percent to the USDOT Secretary for SHRP 2.

<u>Prize Authority (Section 52009):</u> The USDOT Secretary is authorized to carry out a program to competitively award cash prizes to stimulate innovation in basic and applied research, technology development and prototype demonstration that have the potential for application to the national transportation system.

<u>University Transportation Centers (Section 52010)</u>: Within one year after bill enactment, the USDOT Secretary shall select and make grant amounts available to:

- Five National University Centers - $3.25 million per year for each with a 50 percent non-federal match. At least two centers must focus on public transit issues.

- Ten Regional University Centers - $2.75 million per year for each with a 50 percent non-federal match requirement. Consideration shall be given to minority institutions.
- Twenty Tier One University Transportation Centers can receive not more than $1.5 million per year with a 25 percent non-federal match.

Key Positives/Negatives

MAP-21 maintains similar levels of funding as SAFETEA-LU which is considered a positive aspect to the proposal. With the elimination of earmarks and the reduction of available discretionary funds, the focus of highway funding to states is through core formula programs. MAP-21 is proposed only for a short duration, at less than two years and does not address the estimated HTF shortfall beyond FFY 2013.

MAP-21's "ratchet mechanism" to reduce states' obligation authority will automatically initiate if the HTF estimated balance falls below the criteria set (two billion dollars at the end of FFY 12 or one billion dollars at the end of FFY 13.). The potential reduction could be significant and detrimental to state highway programs if Congress fails to resolve the shortfall of the HTF.

MAP-21 provides for an adjustment to the initial distribution of funds to the states to ensure that each state shall receive no less than 95 percent of the estimated payments into the Highway Account of the HTF. This change includes a state's percent of dollar contributions rather than from the percent of a state's share of contributions. States are not expected to benefit, given that apportionments are likely to remain at the level of receipts.

The program consolidation proposed in MAP-21 may have been intended to enhance flexibility of transportation agencies, which is a key ingredient in contributing to the success of a performance-orientated program. However, the combination of tighter restrictions on transferability of funds between programs and new suballocation and set-aside requirements may make highway program funding less flexible.

Finance – Transportation Infrastructure Finance and Innovation Act (TIFIA)

Title and Section

Division A, Title II – America Fast Forward Financing Innovation, Section 2002
Division C, Title III – Surface Transportation and Freight Policy Act of 2012, Section 33010
Division D, Title III – Revenue Provisions, Section 40309

Summary of TIFIA Provisions

Several major changes in TIFIA are proposed in MAP-21 including:

- Increasing the funding for TIFIA from $122 million annually under SAFETEA-LU to $1 billion annually in MAP-21.
- Increasing the total percentage of a project's cost that can be supported by credit assistance through the TIFIA program from 33 percent in SAFETEA-LU to 49 percent in MAP-21.
- Increasing the ability for rural projects to compete for TIFIA financing by: 1.) Defining "rural infrastructure project" as one outside of an urbanized area of 250,000 people, or one that connects a rural area to a city with a population of less than 250,000 within the city limits; 2.) Establishing a minimum project cost for rural projects of $25 million; and 3.) Setting aside ten percent of TIFIA funding for rural projects (but allows those funds to be used on any project if they remain unobligated on June 1).

The definition of a project eligible for funding is expanded to include a grouping of smaller, related projects that are combined to meet the cost threshold for TIFIA eligibility. MAP-21 also requires a rating on a project's credit instrument by two ratings agencies, except for the senior debt on rural or ITS projects, which only require one agency rating (current law only requires a rating from one agency). Selection criteria were also revised by:

- Eliminating subjective project selection criteria;
- Requiring a rolling application process through the USDOT;
- Making credit assistance available on "terms acceptable to the Secretary" of USDOT; and
- If all available funding is committed, allows projects to enter a queue, and allows federal highway and transit funding to be used to pay the interest subsidy;

MAP-21 also created new exceptions for rural projects and "limited buydowns" from the requirement that the interest rate on a secured loan or a drawdown on a line of credit be not less than the yield on a treasury. A "limited buydown" is a newly defined term that allows the interest rate to be bought down in cases where rates increase while the project is acquiring financing. Additionally, MAP-21 creates new exceptions that permit secured loans or draw down on a line of credit to be subordinated for highly rated projects, projects backed by revenue sources not tied to the performance of the facility, and projects that rely on TIFIA for only 33 percent (not the maximum allowable) of their financing.

MAP-21 caps the federal share at 80 percent for projects that combine a secured loan through the TIFIA program with other sources of federal funding. It also requires the redistribution of unobligated TIFIA funds. If, on August 1 of the second year after enactment and each year thereafter, the balance of unobligated TIFIA funds is 150 percent of the amount made available that year, the excess amount is to be distributed to states in proportion to the amount of Obligation Authority they received that year and is useable as Transportation Mobility Program (formerly STP) funds.

Summary of Tolling Provisions

The legislation directs the Comptroller General to conduct a "toll fairness study" to review the toll rate setting practices of bridges and tunnels on the federal-aid system, or bridges constructed under certain authorizing statutes. The study must examine the extent to which the use of toll revenue is consistent with mandated uses, and the transparency and accountability of the funding and management decisions of the toll authorities.

Summary of Provisions Relating to Private Sector Involvement in Project Finance

The legislation lengthens the depreciation timeline for highways that are leased to private sector operators from 15 years to 45 years. It also prohibits the use of private activity bonds to finance leased highway property. Finally, apportioned highway funding would be reduced for states with highway facilities that meet all of the following conditions: 1.) The facility was constructed with public funds; 2.) The facility was formerly a publically operated toll facility; and 3.) The facility is currently operated by a private sector partner who has ownership over toll revenue.

Key Positives/Negatives

Expanding the dollar and percentage amounts could be beneficial for potential private public partnership projects. The changes in TIFIA law could be beneficial by lowering the financing costs for larger projects such as the rebuilding of an interstate.

One concern is the maximum federal involvement for a project receiving TIFIA assistance, cannot exceed 80 percent. Current law allows for a higher federal share for many types of projects, including most work on the interstate. This change could impact states' abilities to fund certain projects; a limit of 90 percent may be more appropriate. Another concern is the legislation does not expand states' ability to toll their interstates. Given the funding constraints associated with traditional sources of revenue, new flexibility in the use of tolls would provide states that have an interest in pursuing this option, an addition tool that could supplement revenue or mitigate future costs. The legislation appears to actually move in the opposite direction by placing more restrictions on private sector involvement in toll projects.

Performance Management

Title and Section

Title I Federal-Aid Highways, Subtitle A Authorizations and Programs

Section 1106 National Highway Performance Program
Section 1108 Transportation Mobility Program
Section 1111 National Bridge and Tunnel Inventory and Inspection Standards
Section 1112 Highway Safety Improvement Program
Section 1113 Congestion Mitigation and Air Quality Program
Section 1115 National Freight Program

Subtitle B Performance Management

Section 1201 Metropolitan Transportation Planning
Section 1202 Statewide and Nonmetropolitan Transportation Planning
Section 1203 National Goals

Subtitle E Miscellaneous

Section 1519 Effective and Significant Performance Measures

Summary of Performance Management

MAP-21 establishes of the policy of federal, state and local performance targets and management as a basis for federal transportation programs. All six core Federal-Aid highway programs and statewide planning contain performance management provisions:

1) Metropolitan transportation planning;
2) Statewide and non-metropolitan transportation planning[5];
3) National Highway Performance Program;
4) Transportation Mobility Program;
5) Congestion Mitigation and Air Quality Improvement (CMAQ) Program;
6) National Freight Program; and
7) Highway Safety Improvement Program (HSIP).

Additionally, performance management has been established through a new policy for the National bridge and tunnel inventory and inspection standards.

National Goals (Section 1203): National goals are formally established in MAP-21 (Subtitle B, Performance Management). The policy dictates that Performance Management will provide the most efficient investment of funds by refocusing on national transportation goals, increasing accountability and transparency and improving project decision making through performance-based planning and programming.

[5] Funding part of Federal-Aid Highway Program, however not one of the six core programs.

The five broad goals include:

- Safety (reducing fatalities and serious injuries);
- Infrastructure condition (maintain system in a state of good repair);
- System reliability (improve efficiency);
- Freight movement and economic vitality (improve network, rural access to trade markets, regional economic development); and,
- Environmental sustainability (enhance system performance while protecting/enhancing national environment).

Statewide and Nonmetropolitan Transportation Planning (Section 1202): MAP-21 requires statewide planning to include a performance-based approach to transportation decision-making in support of the national goals. Each state shall establish performance targets in four program areas: the National Highway Performance Program, Highway Safety Improvement Program, Congestion Mitigation and Air Quality Improvement Program and the National Freight Program.

Targets would be included in each program plan; State National Highway System asset management plan, the state strategic highway safety plan, the congestion mitigation and air quality performance plan and the national freight strategic plan. These targets shall be used as the basis for policies, programs and investment priorities as integrated into statewide transportation plans and statewide transportation improvement programs. Targets would be developed within 12 to 24 months[6] after MAP-21 enactment based on yet-to-be-determined USDOT performance measures for core highway programs.

- *Statewide Transportation Plan:* The statewide transportation plan must cover a forecast period of at least 20 years and include a description of the performance measures and targets used in assessing the existing and future performance of the transportation system.
    - System Performance Report: MAP-21 also requires a system performance report, which evaluates existing and future condition of the transportation system, including performance targets and progress in achieving targets.
    - Financial Plan: The statewide transportation plan must also include a financial plan which provides a project resource requirements during the 20-year planning horizon; the projected difference between costs and revenues; strategies for garnering new revenues; estimates of future trends; and an aggregate of cost ranges for projects in 'out' years.
- *Statewide Transportation Improvement Program (STIP):* The STIP is required to cover a four year period and updated at least once every four years. It must include a discussion of the anticipated impact of the STIP toward achieving targets in the STIP and linking investment priorities to performance targets.
- *Evaluation of Performance-Based Planning Processes:* The USDOT will continue to certify statewide transportation plans and STIPs.

[6] National Highway Performance Program and CMAQ Improvement Program performance targets are set by USDOT within 18 months, while National Freight Program is two years and Highway Safety Improvement Program is 12 months.

Metropolitan Planning (Section 1201): MAP-21 performance management requirements for Metropolitan Planning Organizations (MPOs) are similar to the states' requirements. MPOs are required to use a performance-based approach to transportation decision-making to support national goals.

Within 90 days of state establishment, each MPO would be required to establish performance targets, in cooperation with the state, for the National Highway Performance Program, Highway Safety Improvement Program, Congestion Mitigation and Air Quality Improvement Program and the National Freight Program. Targets would be incorporated into the Metropolitan Transportation Plan and the Transportation Improvement Program.

National Highway Performance Program (Section 1106): In order to obligate funding under this program, states are required to prepare risk-based, asset management plans with performance metrics and targets for the National Highway System (NHS). Within 18 months, USDOT would develop minimum standards for states to use in developing and operating pavement management systems and bridge management systems including:

- Measures for states to use to assess the following: pavement condition on the Interstate system; NHS pavement condition (excluding the Interstate); NHS bridge condition; the performance of the Interstate System; and the performance of the NHS (excluding the Interstate System).
- The data elements that are necessary to collect and maintain data, and a standardized process for collection and sharing of data with appropriate governmental entities at the Federal, state and local levels (including metropolitan planning organizations); and
- Minimum levels for the condition of pavement on the Interstate System and the condition of bridges on the NHS.

Once USDOT establishes rules, each state would have one year to adopt minimum performance measures to maintain Interstate Highway and NHS on-system bridge conditions. Minimum requirements to address each performance measure are identified in the bill.

State asset management plans would at minimum include a summary of the highway infrastructure assets on the NHS and asset conditions; asset management objectives and measures; performance gap identification; lifecycle cost and risk management analysis; a financial plan; and investment strategies. Development of the plan is eligible for federal funding under this program and the Transportation Mobility Program. The plan would be required every four years to be certified by USDOT.

If a state does not meet certain minimum condition levels for the Interstate System and/or NHS bridge conditions set by the USDOT in two consecutive reporting periods (eight years), the state must transfer ten percent of the funds apportioned for fiscal year 2009 under the Interstate maintenance program and/or highway bridge program, respectively, to address the deficiencies/issues.

National bridge and tunnel inventory and inspection standards (Section 1111): This section establishes inspection standards and a new national inventory of bridges and tunnels. Under the bill, USDOT would establish, in consultation with states and others, procedures to conduct compliance reviews for the established standards and the calculation or reevaluation of bridge load ratings. USDOT would also establish, in consultation with the states and others, state reporting procedures, monitoring activities and corrective actions.

If an annual review shows state noncompliance, USDOT shall issue a report detailing the issues of the noncompliance by December 31 of the calendar year in which the review was made; and provide the state an opportunity to address the noncompliance by developing a corrective action plan or resolving the noncompliance issues within 45 days after the date of notification.

If a state does not satisfy the noncompliance issues and corrective requirements by August 1st of the calendar year following the year of a finding of noncompliance, USDOT shall, on October 1st of that year, and each year after if necessary, require the state to dedicate its apportioned funds to correct the noncompliance with the minimum inspection standards.

Highway Safety Improvement Program (HSIP) (Section 1112): One year after enactment, the USDOT Secretary shall issue guidance on establishing, collecting and reporting of performance measures that reflect:

- Serious injuries and fatalities per vehicle mile;
- Serious injuries and fatalities per capita; and
- The number of serious injuries and fatalities.

After the USDOT issues guidance, states would have one year to set performance targets that reflect the three measure areas. HSIP specifies if state's fatality rate on high-risk rural roads increases over the most recent two-year period, the state must spend at least twice its FFY 2009 high risk rural road set aside.

If a state's fatality rate at the rail-highway crossing (at grade) increases over the most recent two-year period the state must spend at least 120 percent of its FFY 2009 section 130 apportionment on grade crossing improvements.

If the state does not meet or make significant progress toward meeting performance targets after two years, it must use obligation authority equal to apportionment under Section 104(b)(3) only for highway safety improvement projects until targets are met or significant progress is made and an implementation plan is submitted. If the USDOT Secretary determines that a state has not met targets, the state shall report annually to the USDOT Secretary on the activities undertaken to make progress.

Transportation Mobility Program (Section 1108): Under this program, states would be required to keep total deck area of deficient off-system bridges from increasing. If total deck areas of deficient off-system bridges in a state increases for the two most recent consecutive years, the state would be required to obligate for the improvements from the amounts apportioned to the state of not less than 110 percent of the obligated amounts for off-system bridges for FFY 2009.

Congestion Mitigation and Air Quality Improvement Program (Section 1113): Under MAP-21, each Tier I MPO would be required to develop a performance plan that includes an area baseline level for traffic congestion and on-road mobile source emissions; identifies air quality and traffic congestion reduction target levels; and includes a description of projects identified for funding and their impacts on emission and congestion targets. The performance measures are established by USDOT within 18 months of bill passage.

National Freight Program (Section 1115): The National Freight Program is built on investment in the primary freight network (as established by the USDOT Secretary but limited to 27,000 centerline miles that are most critical to the movement of freight) and critical freight corridors, which are designated by the state if meet certain criteria. Two years after enactment, the USDOT Secretary - in consultation with state DOT's and other public and private transportation stakeholders - must establish quantifiable performance measures for freight movement on the primary freight network. The states have one year after the USDOT Secretary establishes measures to develop performance targets for the primary freight network, and must report progress every two years.

Effective and Significant Performance Measures (Section 1519): Subtitle E Miscellaneous, Section 1519 specifies that USDOT limit the number of performance measures to the most significant and effective measures. The provision also provides for states to set different performance targets for rural and urban performance.

Key Positives/Negatives:

MAP-21 does not prescribe a consistent or systematic way to report on performance measures nor does it account for differences between urban and rural areas, states or regions. There are serious financial consequences for very few measures, which are scattered among many programs and established within a 12 to 24 month timeframe. Without specific provisions in MAP-21, the bill directs USDOT to set standards, develop policy and administrative rules. It is difficult to determine program performance measures and targets impact on states. In addition, once the two-year reauthorization expires under MAP-21, the performance targets and program will have just been established (or possibly not at all), limiting the effectiveness of the effort.

Possible Significant Effect on States: The establishment of federally required performance measures under MAP-21 may have a potentially significant effect on states. States with more established performance management systems may find the federalized approach a natural extension for them. However, the states with less experience with performance metrics or those without an established process will need to adjust rather quickly.

Increased Perception of Accountability: A positive aspect of a nationally established transportation performance measures is additional public funding accountability. It could enhance the public's perception of the beneficial use of state and federal transportation funding, which may improve support for transportation funds.

USDOT Will Set Policy: MAP-21 counts heavily on the USDOT to set standards and policy through administrative rules, which makes it difficult to determine to what degree the states could be negatively affected. It is not known how USDOT will approach the process to establish performance targets and measures for each state, including rural and urban areas. USDOT will need to develop a consistent, systematic way to establish both national and state performance targets, and a process to work with each state in achieving those targets.

Financial Consequences for States: A potential concern for states is the financial consequences that are possible within very few measures scattered among all the core programs in MAP-21. The imbalance between the measures that have clear financial implications and those measures that are only a "target" could potentially cause confusion and narrow the states' priorities. In addition, it may not be realistic for every state to meet a standardized national target, due to factors such as historically controversial projects, climate and environmental conditions and expensive costs of some projects.

Public Transportation

Title and Section

DIVISION B—PUBLIC TRANSPORTATION

Sec. 20005 Metropolitan transportation planning

Sec. 20006 Statewide and nonmetropolitan transportation planning

Sec. 20007 Public Transportation Emergency Relief Program

Sec. 20008 Urbanized area formula grants

Sec. 20009 Clean fuel grant program

Sec. 20010 Fixed guideway capital investment grants

Sec. 20011 Formula grants for the enhanced mobility of seniors and individuals with disabilities

Sec. 20012 Formula grants for other than urbanized areas

Sec. 20019 Transit asset management

Sec. 20021 Public transportation safety

Sec. 20027 Apportionment of appropriations for formula grants

Sec. 20028 State of good repair grants

Sec. 20030 Apportionments based on growing States and high density States formula factors

Summary of Funding Provisions

For FY 2013, the obligation limitation for transit programs funded out of the Mass Transit Account of the Highway Trust Fund is maintained at current levels ($8.361 billion). The level for General Fund programs is $2.1 billion, slightly higher than current levels.

Proposed Federal FY 2013	Federal FY 2011
Obligation authority - $8.361 billion	Obligation authority - $8.361 billion
Contract authority - $2.098 billion	Contract authority - $1.859 billion

Transit program will consist of nine major programs including:

- 5303 Metropolitan Planning Program (formula)
- 5304 Nonmetropolitan Planning (formula)
- 5306 Public Transportation Emergency Relief
- 5307 Urbanized Area Formula Program (formula)
- 5308 Clean Fuels (competitive)
- 5309 Fixed Guideway - new /modernization (formula)
- 5310 Enhanced Mobility (formula)
- 5311 Non-urbanized (formula)
- 5337 State of Good Repair (formula and competitive)
- 5340 Growing States/High Density States (formula)

Distribution of funds to the states: While the total funding level for transit projects would remain relatively constant under MAP-21, a greater percentage is distributed by formula rather than competitive awards or specific apportionments.

Major Programs[7]

5303 Metropolitan Planning and 5304 Nonmetropolitan Planning (Sections 20005 and 20006): MAP-21 changes Title 49 planning provisions significantly, raising some population thresholds and adding an emphasis on performance measures to planning requirements (the provisions in Title 23 and Title 49 are virtually identical). However, the funding level and distribution remains largely unchanged. Under MAP-21, Section 5305 provides a total of $124.9 million for planning. Of this amount, 82.72 percent goes to Metropolitan Planning, and 17.28 percent goes to statewide and nonmetropolitan planning (the current split). A pilot program would also be created to assist in planning transit-oriented development to support New Starts projects.

5306 Public Transportation Emergency Relief (Section 20007): This new program would function much like the FHWA Emergency Relief program. "Such sums as necessary" would be provided from the general fund to pay certain capital and operating costs in the event of a disaster. The USDOT and the Department of Homeland Security would coordinate the roles and responsibilities of each agency.

5307 Urbanized Formula (Section 20008): The basic apportionment structure and purpose of Section 5307 would be retained under MAP-21, providing funds for maintenance costs (and some operating costs) of all types of public transit systems in large and small urbanized areas. The total funding level of $4.8 billion, however, represents an increase of about $600 million. The Job Access and Reverse Commute program would move to this section.

- *Operating costs for areas over 200,000* - While operating costs would continue to be ineligible for most areas over 200,000, the bill would add provisions to allow some use for operating costs of non-fixed guideway systems operating fewer than 100 buses during peak hours. Also, all types of systems may use a certain percentage for operating costs during periods of high unemployment.
- *Operating costs for areas under 200,000* – Continue to be eligible up to 100 percent of funds.

5308 Clean Fuels Competitive Grants (Section 20009): This program would continue as a competitive program funding projects mainly in air quality non-attainment or maintenance areas. Eligibility includes purchase or lease of buses powered with clean fuels such as compressed natural gas and biodiesel, and construction of facilities to accommodate clean fuel buses. The current total level of funding would be maintained under MAP-21.

5309 Fixed Guideway Capital Investment Grants (Section 20010): Currently, Section 5309 funds new capital investment (New Starts) and modernization of fixed guideway systems, plus all types of capital costs for Bus and Bus Facilities projects. MAP-21 would send two of these categories/funding to other sections, retaining only New Starts, with $1.96 billion from the general fund distributed as full funding grant agreements. This is a 22 percent increase for New Starts projects, but eligibility is expanded to include extensions to existing systems, plus bus rapid transit projects and their extensions. The definition of bus rapid transit is tightened to include only systems

[7] Funds are from the Mass Transit Account of the Highway Trust Fund, unless otherwise noted.

with fixed guideway characteristics. The bill streamlines the grant process, based on feedback from sponsors and stakeholders.

The Small Starts threshold would be raised to $100 million from the current $75 million and the review process for those projects is also expedited. A new category is created for demonstration projects by sponsors that propose a significant amount of local and/or private funding, thus reducing the federal share.

With this program change, the Bus and Bus Facility Program is essentially eliminated and states and transit systems would need to obtain funding from the other programs.

5310 Enhanced Mobility Formula (Section 20011): Currently, Section 5310 provides formula funds for projects to meet the needs of elderly individuals and individuals with disabilities. A second program called New Freedom (Section 5317) funds projects that go above and beyond ADA requirements. MAP-21 would combine the objectives and funding of the two programs, providing a total of $248.6 million. The current formula for 5310 is based entirely on the relative number of elderly individuals and individuals with disabilities in a state. MAP-21 would retain that factor, but direct 60 percent of the funds to large urbanized areas, 20 percent to small urbanized areas, and 20 percent to nonurbanized areas. Also, the government share increases to 100 percent.

5311 Formula Grants for Other Than Urbanized Areas (Section 20012): This program would continue to provide funding for transit projects in other than urbanized (rural) areas. Funding for Sec. 5311 would increase by 34 percent from FY 2011. The formula for distributing funds would change significantly. Currently, 80 percent is apportioned based on population and 20 percent is apportioned based on land area (with no state receiving more than five percent). MAP-21 would retain that 80/20 split for most of the funds (83.15 percent), but the rest would be apportioned based on a combination of land area, vehicle revenue miles, and low income population. Eligibility would be added for “access to jobs” projects (with funds awarded competitively by the state) and also for planning activities over-and-above to those funded under Section 5305.

The USDOT Secretary would be required to establish a pilot program for up to 20 states that use Sec. 5311 funding to support intercity bus service. Those states could use the capital costs of unsubsidized service provided by a private operator as in-kind match.

5337 State of Good Repair Grants (Section 20028): To address the need to move all systems toward a state of good repair and enable them to maintain that status, the Senate bill establishes a program that combines funding: 1) currently apportioned mainly to specific existing fixed guideway systems for modernization projects, and 2) currently awarded competitively for bus and bus facilities capital and maintenance projects;

In general, MAP-21 would distribute funds for fixed guideway modernization through a formulas based on system age and miles, rather than through specific apportionments. Eligibility is also expanded to include bus rapid transit (as newly defined), and buses running in HOV lanes. The total for these two categories is $1.99 billion.

Two other categories of projects under 5337 have separate sources of funding, and would remain as competitive grants: 1.) Fixed Guideway State of Good Repair competitive grants are funded with $7.46 million from the General Fund; and 2.) Bus and Bus Facilities State of Good Repair competitive grants (for systems covered under none of the definitions above, i.e. Bus and Bus Facilities in more rural areas) - funded with $75 million set-aside from Section 5309.

Section 5340 Growing States and High Density States (Section 20030): The current purpose and distribution of Sec. 5340 funds would continue under MAP-21. This program boosts allocations based on census population projections. Half is distributed based on the projection for 2025, and half based on densities above 370 persons per square mile. The total available amount would increase by 30.5 percent, to $511.5 million.

Other provisions

Transit asset management: Recipients would be required to establish and use an asset management system for developing capital asset inventories and condition assessments. Reports would be required on the condition of their system as a whole, including a description of the change in overall condition since the last report. The USDOT Secretary would define the term "state of good repair" and establish standards for measuring the condition of capital assets.

Public transportation safety program: Elements include:

- Minimum performance standards for vehicles used in public transportation, applicable to all systems that receive federal funding;
- Comprehensive safety plans developed by public transportation agencies; and
- Additional federal oversight authority for agencies in violation of federal safety laws.

Key Positives/Negatives

MAP-21 shifts transit funding to formula based programs and include several consolidations, which are anticipated to simplify administrative aspects. However, MAP-21 essentially eliminates the current Bus and Bus Facility Program (for capital projects) by directing $75 million per year of the funding to the program and diverting remaining funding to other transit formula programs. The Bus and Bus facility funding through SAFETEA-LU over the past five years has averaged over $800 million. With the need for bus replacements and expanded transit service, the significant decrease in federal funding for transit capital projects will increase the financial burden on states and local governments.