Analysis of the 2015 Senate Highway Reauthorization Plan: The DRIVE Act

The "Developing a Reliable and Innovative Vision for the Economy Act," or DRIVE Act, which was unanimously approved June 24 by the Senate Committee on Environment and Public Works (EPW), would reauthorize the federal highway program for a six-year period, fiscal years 2016-21.

It calls for $277.4 billion in total highway investment, a $32 billion increase compared to maintaining FY 2015 funding. About half of the proposed increase would support two new proposed initiatives—a National Freight Program and a program of Assistance for Major Projects. The other half of the proposed increase would provide small annual increases in core highway program funding. Funding details are shown in the following table[1].

Highway Program Funding Under the Proposed DRIVE Act

	FY2015 Annualized Authorization	FY2016 Authorization	FY2017 Authorization	FY2018 Authorization	FY2019 Authorization	FY2020 Authorization	FY2021 Authorization	6-Year Total
Apportioned Programs, Total	37,798,000,000	40,579,500,000	41,421,300,000	42,327,100,000	43,300,400,000	44,394,700,000	45,515,900,000	257,538,900,000
Estimated Split Among Programs:								
National Highway Performance Program	21,908,178,122	22,812,584,401	23,261,124,227	23,748,362,561	24,276,415,712	24,877,633,226	25,495,116,209	144,471,236,336
Surface Transportation Program	10,077,074,081	10,177,922,270	10,378,040,043	10,595,423,295	10,831,016,246	11,099,251,745	11,374,744,152	64,456,397,751
Highway Safety Improvement Program	2,192,406,423	1,885,777,017	1,927,180,701	1,972,156,541	2,020,899,911	2,076,396,918	2,133,395,343	12,015,806,431
Railway-Highway Crossings Program	220,000,000	220,000,000	220,000,000	220,000,000	220,000,000	220,000,000	220,000,000	1,320,000,000
Congestion Mitigation and Air Quality Improvement	2,266,889,602	2,313,252,359	2,358,701,911	2,408,072,702	2,461,579,166	2,522,499,214	2,585,067,398	14,649,172,750
Metropolitan Planning Program	313,551,772	336,920,468	344,057,458	351,737,066	359,988,958	369,266,717	378,772,548	2,140,743,215
National Freight Program	0	1,983,043,485	2,082,195,660	2,181,347,835	2,280,500,007	2,379,652,180	2,478,804,350	13,385,543,517
Transportation Alternatives Program	819,900,000	850,000,000	850,000,000	850,000,000	850,000,000	850,000,000	850,000,000	5,100,000,000
Other Programs, Total	3,097,000,000	3,136,000,000	3,215,000,000	3,294,000,000	3,373,000,000	3,402,000,000	3,431,000,000	19,851,000,000
TIFIA	1,000,000,000	675,000,000	675,000,000	675,000,000	675,000,000	675,000,000	675,000,000	4,050,000,000
Federal Lands and Tribal Transportation Programs								
Tribal Transportation Program	450,000,000	460,000,000	470,000,000	480,000,000	490,000,000	500,000,000	510,000,000	2,910,000,000
Federal Lands Transportation Program	300,000,000	305,000,000	310,000,000	315,000,000	320,000,000	325,000,000	330,000,000	1,905,000,000
Federal Lands Access Program	250,000,000	255,000,000	260,000,000	265,000,000	270,000,000	275,000,000	280,000,000	1,605,000,000
Territorial and Puerto Rico Highway Program	190,000,000	190,000,000	190,000,000	190,000,000	190,000,000	190,000,000	190,000,000	1,140,000,000
Assistance for Major Projects Program		300,000,000	350,000,000	400,000,000	450,000,000	450,000,000	450,000,000	2,400,000,000
Research, Technology and Education Authorizations								
Highway Research and Development Program	115,000,000	135,000,000	135,000,000	135,000,000	135,000,000	135,000,000	135,000,000	810,000,000
Technology & Innovation Development Program	62,500,000	62,500,000	62,500,000	62,500,000	62,500,000	62,500,000	62,500,000	375,000,000
Training and Education	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	144,000,000
Intelligent Transportation Systems	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000	600,000,000
University Transportation Centers Program	72,500,000	72,500,000	72,500,000	72,500,000	72,500,000	72,500,000	72,500,000	435,000,000
Bureau of Transportation Statistics	26,000,000	26,000,000	26,000,000	26,000,000	26,000,000	26,000,000	26,000,000	156,000,000
Construction of Ferry Boats and Terminal Facilities	67,000,000	75,000,000	75,000,000	75,000,000	75,000,000	75,000,000	75,000,000	450,000,000
FHWA Administration	440,000,000	456,000,000	465,000,000	474,000,000	483,000,000	492,000,000	501,000,000	2,871,000,000
Total Contract Authority	40,895,000,000	43,715,500,000	44,636,300,000	45,621,100,000	46,673,400,000	47,796,700,000	48,946,900,000	277,389,900,000
Obligation Limitation	40,256,000,000	43,076,500,000	43,997,300,000	44,982,100,000	46,034,400,000	47,157,700,000	48,307,900,000	273,555,900,000
Exempt Contract Authority	639,000,000	639,000,000	639,000,000	639,000,000	639,000,000	639,000,000	639,000,000	3,834,000,000
Total Obligation Authority	40,895,000,000	43,715,500,000	44,636,300,000	45,621,100,000	46,673,400,000	47,796,700,000	48,946,900,000	277,389,900,000

[1] Apportioned amounts are FHWA estimates. Other program amounts are from the DRIVE Act. Amounts for FY 2015 assume final authorizing legislation for the year will maintain funding for all programs at the FY 2014 level.

The DRIVE Act has two major parts. Part A, "Authorizations and Programs," contains the sections of the act that address the program structure and funding for FY 2016-21. Part B, "Acceleration of Project Delivery," contains provisions designed to improve the project review and delivery process for highway projects. It also includes provisions related to transportation research and innovation, amendments to the Transportation Infrastructure Finance and Innovation Act (TIFIA) program and language authorizing the highway program for the last quarter of FY 2015.

The bill does not address reauthorization of the public transportation program or the highway safety programs, nor does it include any revenue provisions, as each of these components of a surface transportation reauthorization bill are under the jurisdiction of other committees. However, Senate EPW Committee Chairman James Inhofe (R-Oklahoma) has said the Senate Finance Committee—which controls the Highway Trust Fund's revenue stream—would need to generate an additional $90 billion to support the DRIVE Act's investment levels.

Highway Program Structure

The 2012 surface transportation law "Moving Ahead for Progress in the 21st Century Act," or MAP-21, consolidated many of the individual highway programs in earlier authorization laws into five core programs. The DRIVE Act would continue these programs—with modest changes—and create two new ones:

- National Highway Performance Program. The largest program created by MAP-21, the National Highway Performance Program (NHPP) consolidated the former National Highway System (NHS) Program, the Interstate Maintenance Program and the on-system Bridge Program into a single program focused on maintaining and improving the National Highway System. Under MAP-21, this program received 63.7 percent of apportioned funds after provision for the Metropolitan Planning (MP) and Congestion Mitigation & Air Quality (CMAQ) programs. This will increase to 65 percent under the proposed DRIVE Act[2]. Beyond that, the DRIVE Act does not significantly amend the NHPP, although it eases the provisions for states to withdraw previously-designated roads as part of the NHS;

- Surface Transportation Program. MAP-21 consolidated the Surface Transportation Program (STP), the off-system Bridge Program, the Border Infrastructure Program and the Appalachian Development Highway System Program from prior laws into a single Surface Transportation Program that gives highway agencies significant flexibility to use program funds for virtually any improvement project that meets their transportation needs, subject only to a requirement that a set percent of funds be used in urbanized areas and certain set asides. Under MAP-21, the STP program received 29.3 percent of funding after provision for the MP and CMAQ programs; this would fall to 29 percent in the DRIVE Act;

[2] Under the DRIVE proposal, the percent distribution of apportioned funds among the National Highway Performance Program, the Surface Transportation Program and the Highway Safety Improvement Program would be after funds are deducted for the Metropolitan Planning Program, the CMAQ Program and the National Freight Program.

The DRIVE Act includes two changes to the STP Program:

- o It increases the proportion of funds states must direct to urbanized areas from 50 to 55 percent, thus reducing the share available for use in any part of the state to 45 percent.
- o It changes the MAP-21 requirement that a set percent of funds be invested in off-system bridges. MAP-21 required that each state invest an amount of STP funds equal to 15 percent of its FY 2009 Bridge Program funds in bridges that are not part of the federal-aid system—primarily bridges on local roads. The DRIVE bill would change the requirement to "off-NHS bridges." By adding many on-system bridges that formerly could not be used to satisfy this requirement, it effectively reduces the amount of federal funds states would have to invest in local bridges.

- <u>CMAQ Program</u>. This long-standing program focuses on reducing highway traffic congestion and improving air quality with a particular focus on states and areas that do not meet current air quality standards. The DRIVE Act would make only a few changes to the CMAQ program: CMAQ funds could be used not only for attainment of ambient air quality standards but also to maintain standards in an attainment area; the diesel retrofit program would be expanded to include port-related off-road equipment and vehicles; and low-population-density states would be exempt from PM 2.5 attainment requirements if the non-attainment area has no projects that are part of a transportation plan and vehicles are an insignificant contributor to PM 2.5 non-attainment;

- <u>Highway Safety Improvement Program</u>(HSIP). The DRIVE Act would reauthorize this program virtually intact, only adding a handful of new investment options such as installation of vehicle-to-infrastructure communication equipment, pedestrian hybrid beacons, and improvements that add separation between vehicles and pedestrians. Under MAP-21, the HSIP got 7 percent of funding after provision for the MP and CMAQ programs; this will fall to 6 percent in the DRIVE Act, making it the only apportioned program that would receive less annual funding under the DRIVE Act than under MAP-21; and

- <u>Transportation Alternatives</u>. MAP-21 collapsed the Transportation Enhancement Program, Safe Routes to School and the Recreational Trails Program into a comprehensive Transportation Alternatives Program. The most significant DRIVE Act change to this program changes its funding from 2 percent of annual apportionments to a flat $850 million per year. The DRIVE Act would also expand eligible recipients for funds to include nonprofits responsible for administration of local transportation safety programs and would require annual reports from state and local planning organization on number of project applications and awards.

The DRIVE Act's two new initiatives are:

- <u>National Freight Program</u>. It would transform the National Freight Policy provisions of MAP-21 into a new program that would fund freight-related highway improvements. The bill authorizes a six-year total of $14 billion for the program but FHWA estimates that, after takedowns, funding will total $13.4 billion as shown in the table on page 1. Funds would be apportioned among the states by formula, but states would have to establish a freight advisory committee and develop a state freight investment plan before obligating any funds. Under the proposal, the Secretary of Transportation and the states would designate a national freight network comprised of the Interstate Highways and other roads both urban and rural that are critical to the safe and efficient shipment of freight in the U.S. The national and state networks would be updated every five years. Program funds would be directed under national and state strategic plans to projects that improve highway freight transportation; and

- Assistance to Major Projects Program. The bill would provide $2.4 billion over the six years to help fund major highway improvement projects that exceed state funds available under the core highway programs. Eligible projects generally must cost the lesser of $350 million or 30 percent of a state's annual federal highway funding, but no state may receive more than 20 percent of the annual total. The bill also includes separate limits for multi-state projects. Under the program, the FHWA Administrator each year would compile a list of eligible projects for submission to Congress, which would make the final selection.

The bill makes a number of other highway policy reforms, including:

- States would be authorized to bundle multiple similar bridge projects into one project that would be awarded as a single contract;
- States would be given more flexibility in approving small highway improvement projects in rural areas;
- States would be authorized to free up earmarked funds more than 10 years old for other highway improvement projects;
- The restriction on using federal funds to add capacity to toll roads on the Interstate System would be removed provided there is no reduction in the number of non-HOV lanes;
- U.S. DOT would be required to track "toll credits" accrued by states, and establish a toll credit marketplace pilot program enabling states to sell or transfer toll credits among one another. States accrue toll credits by making capital investments in federally-approved toll roads or bridges. The states can then use these credits as a "soft match" on federal-aid highway or transit projects, meaning they do not represent an actual source of funding but can reduce the actual investment a state or local agency must make for that project.
- States that have been awarded approval to toll existing portions of the Interstate Highway System as part of a pilot project created in 1998 would be required to move forward with those projects by a date certain;
- The creation of a program providing funding to construct, reconstruct or rehabilitate nationally significant transportation facilities on federal or tribal lands, authorizing an appropriation of up to $150 million each year out of general funds; and
- The requirement for a quarterly "Highway Trust Fund Transparency and Accountability Reports", to be published on the U.S. Department of Transportation (DOT) website, with state-by-state details on highway program funding, including amount of funds available and obligated, along with details on all projects funded within each state.

Accelerated Project Delivery

The DRIVE Act builds upon improvements to the project delivery process initiated in MAP-21. Whereas MAP-21 introduced many new reforms to the project delivery process, it clarifies those reforms and, in some cases, expands opportunities for their use.

Programmatic Agreements. The measure focuses on the use of "programmatic agreements" during project review and approval. Programmatic agreements are a means of delineating responsibilities at the beginning of the environmental review and approval process. Ideally, programmatic agreements strive to specify clear roles and responsibilities for those involved in the project review and approval process, eliminating or reducing duplication of effort, while also seeking to establish clear expectations for review timeframes and processing options. FHWA has highlighted the use of programmatic agreements in its "Every Day Counts" program as an effective tool in reducing project delay.

It directs the U.S. DOT to establish a programmatic agreement "template," which could be used as the basis for individualized programmatic agreements designed for specific projects. Once a programmatic agreement is adopted for use on a project, all agencies are directed to follow the recommendations of the agreement. Prior to the DRIVE Act, agencies merely had to take such recommendations into consideration, but were not bound to follow them.

Categorical Exclusions. The Senate plan also continues MAP-21's expansion of the use of categorical exclusions (CEs) by directing the U.S. DOT to allow for classes of CEs to be implemented through a programmatic agreement. Currently, according to FHWA, CEs account for more than 90 percent of transportation project reviews. Despite being the least burdensome form of environmental review, CEs can still take more than a year to complete.

It allows the use of programmatic agreements to process CEs as a group, rather than on a case-by-case basis in an effort to reduce their approval time. This programmatic approach to CEs was a key recommendation of the ARTBA Trans 2020 Reauthorization Task Force, which noted that reducing the amount of time it takes to process CEs could free up resources for more complicated environmental assessments (EAs), environmental impact statements (EISs) and permitting decisions.

Deadlines. The Senate bill adds to MAP-21's efforts to use deadlines to reduce delay in the transportation project review and approval process. Specifically, the legislation creates the following new deadlines:

- A 45-day deadline for the receipt of a project application for the U.S. DOT to decide whether or not the environmental review process may be initiated; and
- A 45-day deadline for the U.S. DOT to respond to a request to designate a specific modal administration as lead agency (this deadline may be extended up to an additional 45 days if additional information is received).

Combining Planning and NEPA. The DRIVE Act also focuses on reducing duplicative efforts in the National Environmental Policy Act (NEPA) and transportation planning processes. For transportation projects, an extensive amount of information is gathered during the planning process, which often occurs prior to the actual triggering of NEPA review requirements. It would allow information gathered during the planning process, to the extent it is still current and relevant, to satisfy NEPA requirements, limiting duplicative reviews and reducing the amount of delay in the NEPA process. Further, alternatives to proposed transportation projects analyzed and rejected during the planning process would not need to be re-analyzed during NEPA review.

It specifies that information gathered during the planning process cannot be used to satisfy NEPA requirements if "significant new information" has been identified warranting a new analysis. The phrase "significant new information," however, is not defined in the statute.

Historic Preservation Requirements. The proposal would simplify historical preservation and mitigation requirements. Under the Act, the Secretary of Transportation may determine that no practical alternative exists when a project might impact a historical resource. When such a determination is made, there would no longer be a need for any further alternatives analysis.

Bridge Repair Projects. It also seeks to streamline the environmental review process for bridge repair projects in two ways. First, the DRIVE Act exempts "common post 1945 concrete or steel bridge[s] or culvert[s]" from individual review. This was actually done through regulation by FHWA in 2012, but the DRIVE Act makes the change permanent. Second, it loosens requirements under the Migratory Bird Treaty Act for repairs made to bridges in "serious" condition (as classified by DOT's Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges) or worse.

TIFIA

The TIFIA Program provides loans and credit assistance for large-scaled surface transportation capital projects. While the DRIVE Act would increase investment in a number of components of the federal highway programs, the measure would impose a nearly 33 percent cut in funds allocated to the TIFIA program. It would maintain TIFIA funding for the next six years at $675 million—$325 million less than the $1 billion provided for the program in FY 2014 and FY 2015. While the EPW Committee has not provided a justification for this reduction, the FHWA transferred $639 million in TIFIA funds to the core highway program on April 27 because the program's uncommitted balance exceeded its statutory limit of $750 million. ARTBA has supported the TIFIA Program since its creation in 1998 and will work to increase TIFIA funding as the reauthorization process moves forward.

At the same time, the bill would seek to diversify the TIFIA program's portfolio by expanding or facilitating the eligibility of several types of projects. These include transit-oriented development, environmental mitigation, and projects that are located in rural areas, smaller in scale (i.e. less than $75 million) or administered by local governments.

Highway Research, Technology and Education Authorizations

The DRIVE Act would reauthorize all of the existing MAP-21 highway research, technology and education programs with only a handful of modifications. Significant changes include a new grant program under the Intelligent Transportation Systems Program and two new major studies, one on the future of the Interstate Highway System and one on future user-based funding alternatives for the surface transportation program.

Funding for most highway research programs would remain at the FY 2015 level throughout the six-year reauthorization period. The exception is the Highway Research and Development Program, where funding would be increased by $20 million under the DRIVE Act, but all of the increase would be channeled into the two new studies, with no increase for ongoing activities under the program.

The two studies authorized by the bill include:

- <u>Future Interstate Study</u>. The bill would provide $5 million in FY 2016 for a study of the actions needed to upgrade the Interstate Highway System to meet the growing needs over the next 50 years. The study would be administered by the Transportation Research Board (TRB) and be based on the December 2013 National Cooperative Highway Research Program report on "Specifications for a National Study of the Future 3R, 4R and Capacity Needs of the Interstate System." The final report would be due in three years and would include recommendations for System improvements and revisions to laws that TRB deems appropriate; and

- <u>Researching Transportation System Funding Alternatives</u>. The bill would provide $15 million for this study in FY 2016 and $20 million each year through FY 2021. The purpose is to evaluate two alternative future user-based funding options for the surface transportation program. The study's core would be field trials to evaluate implementation, compliance issues and revenue potential for the two alternatives, ultimately generating recommendations regarding adoption and implementation of those user-based revenue mechanisms. The study would be administered by the Secretary of Transportation with help from an Advisory Council that would help select alternatives to be studied and the process and criteria used for selecting research activities.

Other changes include:

- <u>Technology & Innovation Development Program</u>. The bill would amend this program to require the Secretary to use at least 50 percent of funding for grants and contracts to carry out demonstration programs that will accelerate the deployment and adoption of transportation research activities. It also establishes criteria and processes for awarding innovation grants under the program; and

- <u>ITS Program</u>. The bill would add a new "Systems Operation and ITS Deployment Grant Program" to the existing ITS Program. The purpose would be to accelerate the deployment of ITS to improve system performance, reduce fatalities, reduce congestion, and optimize existing roadway capacity. The DRIVE Act establishes a process and criteria for awarding grants and lays out eligible uses. $30 million of annual ITS funds would be devoted to this program and grants would require a 50 percent non-federal share.