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Folder Title:
NEXTEA [National Economic Crossroads Transportation Efficiency Act] [1]

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ISTEA REAUTHORIZATION

May 5, 1998

Core principles. Final legislation must be consistent with the following principles:

- The projected budget surplus shall not be used to pay for the legislation.
- Spending shall be offset fully, without lowering the cap on other discretionary spending.
- After a phase-in period, total budget resources spent each year should equal total receipts to the Highway Trust Fund (HTF).
- Spending levels in the legislation shall be sustainable after the end of the authorization period.

Aggregate Funding. Any agreement reached on funding issues is contingent on agreement regarding policy issues.

- Aggregate budgetary resources (obligation limitations plus any budget authority not subject to limitation) will total $218.9 billion over the period 1998-2004.

- A new budget mechanism will provide, after an appropriate phase-in period, negotiated assurances that all receipts to the HTF will be obligated. Total budgetary resources in each year will equal estimated *prior year* receipts (as in the Chafee-Bond proposal) in order to provide States with certainty about spending levels.

- Assured spending will be distributed between highway spending and transit spending in the same proportions as total authorizations are distributed between highways and transit in the Senate bill. Within the total for highways, highway safety will be funded at the authorization levels contained in the Administration's NEXTEA proposal. This offer assumes that no demonstration projects are funded. If any demonstration projects are included in final legislation, they will need to be funded within the total for highways.

- Balances in the Highway Account of the HTF, except those amounts needed to pay for prior year spending, will be transferred to the General Fund. The Highway Trust Fund will not collect interest.

- In 1999 and 2000, total funding would equal the levels in the President's Budget; in 2001, total funding would equal 97 percent of total HTF receipts; in 2002 and beyond, total funding would equal 100 percent of total HTF receipts:

(In billions of dollars)

	1998	1999	2000	2001	2002	2003	2004	Total
Prior-Year Receipts[1/]	23.9	32.3	32.4	33.2	33.8	34.4	35.1	225.2
Total								
Budget resources	28.0	27.8	27.7	32.1	33.8	34.4	35.1	218.9
Outlays	26.5	27.3	27.7	28.7	30.8	32.5	33.5	206.9
Hwy Funding								
BR	*23.1*	*23.0*	*22.9*	*26.0*	*27.4*	*27.9*	*28.4*	*178.8*
OL	*22.3*	*23.4*	*23.4*	*24.1*	*25.6*	*26.7*	*27.4*	*173.1*
Transit Funding								
BR	*4.8*	*4.8*	*4.8*	*6.1*	*6.4*	*6.5*	*6.7*	*40.1*
OL	*4.2*	*3.9*	*4.3*	*4.6*	*5.1*	*5.7*	*6.0*	*33.8*

1/ Receipts have been normalized to eliminate the '97 TRA one-time shift of deposits between '98 and '99.

- All outlays above those called for in the President's Budget will be offset fully under CBO scoring by implementing, as part of the reauthorization, the "VA tobacco" proposal contained in the President's Budget. Outlays savings associated with the VA tobacco offset, *net of funds needed for the President's GI Bill initiative*, are as follows:

(In billions of dollars)

	1998	1999	2000	2001	2002	2003	2004	Total
OMB scoring	n.a.	-0.7	-1.2	-2.1	-6.0	-6.0	-6.0	-21.8
CBO scoring	n.a.	-0.4	-0.8	-1.7	-2.6	-3.6	-4.6	-13.5

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May 5, 1998

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- Assured spending will be distributed between highway spending and transit spending in the same proportions as total authorizations are distributed between highways and transit in the Senate bill. Within the total for highways, highway safety will be funded at the authorization levels contained in the Administration's NEXTEA proposal. This offer assumes that no demonstration projects are funded. If any demonstration projects are included in final legislation, they will need to be funded within the total for highways.

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(In billions of dollars)

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Prior-Year Receipts 1/	23.9	32.3	32.4	33.2	33.8	34.4	35.1	225.2
Total								
Budget resources	28.0	27.8	27.7	32.1	33.8	34.4	35.1	218.9
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Hwy Funding								
BR	*23.1*	*23.0*	*22.9*	*26.0*	*27.4*	*27.9*	*28.4*	*178.8*
OL	*22.3*	*23.4*	*23.4*	*24.1*	*25.6*	*26.7*	*27.4*	*173.1*
Transit Funding								
BR	*4.8*	*4.8*	*4.8*	*6.1*	*6.4*	*6.5*	*6.7*	*40.1*
OL	*4.2*	*3.9*	*4.3*	*4.6*	*5.1*	*5.7*	*6.0*	*33.8*

1/ Receipts have been normalized to eliminate the '97 TRA one-time shift of deposits between '98 and '99.

- All outlays above those called for in the President's Budget will be offset fully under CBO scoring by implementing, as part of the reauthorization, the "VA tobacco" proposal contained in the President's Budget. Outlays savings associated with the VA tobacco offset, *net of funds needed for the President's GI Bill initiative*, are as follows:

(In billions of dollars)

	1998	1999	2000	2001	2002	2003	2004	Total
OMB scoring	n.a.	-0.7	-1.2	-2.1	-6.0	-6.0	-6.0	-21.8
CBO scoring	n.a.	-0.4	-0.8	-1.7	-2.6	-3.6	-4.6	-13.5

Tab A

Congressional Leadership Proposed Offsets

Offset	Savings over 1999-2003
• *VA tobacco*	$16 billion

CBO would be directed to use OMB scoring of roughly $16 billion over five years. Congress appears ready to adopt the Administration's request that some funds be reserved for expanded veteran's benefits.

• *Social Services Block Grant*	$3.1 billion

Your budget used this offset to fund increases in other social services programs. Using this offset for highways would make it difficult to fund any program increases in the Labor/H appropriations bill or to pay for even a modest child care proposal.

• *Increase in GNMA fees*	$0.9 billion

This proposal would triple the fee increase proposed in your budget. Although not objectionable from a policy standpoint, an increase of this size could be difficult to achieve. Your budget uses this offset to pay for new housing initiatives.

• *FHA policy reforms*	$1.0 billion

Your budget proposed increasing the limit on FHA-insured loans to pay for a second round of Empowerment Zones. The offset noted above abandons that loan limit increase in favor of unspecified 'reforms.' It is unclear whether such reforms could be either identified or passed by Congress.

• *Fees on Fannie Mae and Freddie Mac*	$4.5 billion

This offset has been proposed and quickly shot down many times over the last ten years. No one believes this has a credible chance of passage.

OMB Scoring

Comparison of Current Congressional Offers
($ in Millions)

		1998	1999	2000	2001	2002	2003	Total 1998-2003
Option 2								
	BR	27,631	32,556	33,489	33,921	34,361	34,827	196,785
	OL	27,056	29,300	31,812	33,185	33,890	34,721	189,964
CBO WODI								
	BR	27,631	27,631	27,631	27,631	27,631	27,631	165,786
	OL	27,111	28,210	28,640	28,707	28,539	28,550	169,757
Increase above WODI								
	BR	0	4,925	5,858	6,290	6,730	7,196	30,999
	OL	-55	1,090	3,172	4,478	5,351	6,171	20,207
President's Budget (CBO Scoring)								
	BR	27,952	27,790	27,700	27,645	27,625	27,625	166,337
	OL	27,171	28,292	28,429	28,598	28,387	28,374	169,251
Increase above President's Budget								
	BR	-321	4,766	5,789	6,276	6,736	7,202	30,448
	OL	-115	1,008	3,383	4,587	5,503	6,347	20,713

C. Mann
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

May 13, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Franklin D. Raines

SUBJECT: Status of the Intermodal Surface Transportation Efficiency Act (ISTEA) Reauthorization -- INFORMATION

Erskine asked us to send you a comparison of the House and Senate versions of the transportation reauthorization bill now being considered in Conference.

Background

Earlier this month, the Administration offered a compromise on ISTEA that would provide Congress one of their key objectives (a guarantee that annual surface transportation spending would equal Highway Trust Fund receipts). In exchange for this spending guarantee, the proposal would set spending significantly below the levels contemplated in the House and Senate bills. The compromise would preserve the budget surplus and would protect discretionary funding for your other priorities.

Congress would like to complete floor action on this bill prior to the Memorial Day recess that begins May 22, but it is unclear whether they can meet this deadline. ISTEA programs have been operating this year under a short-term extension that permits transit, highway safety, and Department of Transportation administrative programs to continue at a reduced level for the next several months. However, States have been prohibited from obligating new highway construction funds since May 1, 1998. Although construction work continues using carryover funds, the pressure will increase for Congress to authorize a bill quickly.

On May 12, the Administration sent a letter to the conferees (attached) notifying them that your senior advisers will recommend that you veto the conference report if it "makes available an excessive level of budgetary resources if financed by spending the surplus, by reducing the domestic discretionary caps, by using unacceptable offsets, or by forcing cuts in domestic priorities." In addition, the letter stated that your senior advisers would "also recommend veto of a conference report that skews transportation priorities."

Funding Issues

The following table summarizes the funding levels included in the various reauthorization proposals. Each proposal is described in more detail below. For 1999 alone, surface transportation programs would be funded at more than 25 percent above the levels in the President's budget (roughly 1998 enacted). The attachment provides annual funding levels for each proposal.

Comparison of Budgetary Resources 1998-2003
(Mandatory and Discretionary $ in billions)

	Admin. NEXTEA	House BESTEA	Senate ISTEA 2	Admin. May 5 Proposal
Highways	137.6	183.0	177.5	150.3
Transit	28.7	36.7	40.5	33.5
TOTAL	166.5	219.7	218.0	183.8

<u>House: Building an Efficient Surface Transportation Efficiency Act (BESTEA)</u>

The House bill would provide $219.7 billion in budgetary resources, $53 billion above your request. This includes $9.3 billion for almost 1,500 highway demonstration projects that are funded as mandatory spending. Nearly 17 percent of the spending authorized by BESTEA is provided for transit. BESTEA includes a requirement that the Conference Report identify offsets to pay for any spending in the bill above a baseline frozen at the 1998 enacted level. To date, no offsets have been identified.

Under BESTEA, total budgetary resources (the amounts available for obligation) would be set at levels significantly above HTF receipts. Supporters nonetheless claim that "spending equals receipts" because <u>outlays</u> would equal receipts during the period 1998-2003. This of course means that beyond 2003 outlays would significantly exceed tax receipts. BESTEA would guarantee this spending by taking "off budget" all highway and transit spending that is financed by the Highway Trust Fund. To fund the spending contained in BESTEA, other non-defense outlays would need to be reduced by $34 billion during the period 1999-2003.

<u>Senate: The Intermodal Surface Transportation Efficiency Act 2 (ISTEA 2)</u>

The Senate proposal would provide $218 billion in budgetary resources, $51 billion above the President's Request. ISTEA2 includes no demonstration projects, although some

Senate demonstration projects will likely be included in the final bill. ISTEA2 includes a requirement that demonstration projects be incorporated into the regular highway program formula allocations among the States, thereby diminishing the incentive for earmarking. Roughly 19 percent of the total spending in ISTEA 2 would be devoted to transit.

ISTEA2 continues the current budgetary treatment of highway and transit programs. Almost all funding is subject to the appropriations process and is not guaranteed. ISTEA2 does not include any offsets, although the Senate Budget Resolution assumes that many of your new mandatory offset proposals would be redirected to offset highway spending.

Administration Proposal

On May 5, the Administration proposed a compromise designed to reflect four core principles: (1) the budget surplus shall not be used to pay for the legislation; (2) spending shall be offset fully, without lowering the cap on other discretionary spending; (3) after a phase-in period, total budgetary resources spent annually should equal total Trust Fund receipts; and (4) spending levels must be sustainable for the long-run.

The Administration proposal would provide total spending equal to $218.9 billion -- the average of the House and Senate bills -- but spread that spending over seven years rather than the six years contained in BESTEA and ISTEA 2. (The Administration offer would provide $183.8 billion during the 1998-2003 period contemplated by the House and Senate bills, an increase of $17.4 billion in budgetary resources and $8.1 in outlays over our original NEXTEA proposal). As in the Senate bill, the Administration's proposal would provide 19 percent of total resources to transit. No demonstration projects would be provided; to the extent they were included in the final legislation, they would need to be funded out of the total for highways.

The Administration proposal incorporates a key Congressional goal: guaranteeing that annual spending on surface transportation equal to annual receipts into the Highway Trust Fund. In contrast to BESTEA, however, the Administration's proposal sets spending so that budgetary resources, not outlays, equal receipts. This not only lowers the cost of our proposal, but also allows program spending levels to be sustained in the long-run (the House and Senate bills would obligate far more than receipts -- thus, at some time not too far beyond the budget window, spending would have to be curtailed or the gas tax would have to be increased). In addition, the Administration's proposal would guarantee *all* spending for transit and highways alike.

The Administration proposal would phase in the spending guarantee. Spending would equal the levels in the President's Budget for 1999 and 2000, and then rise to 97 percent of prior-year Trust Fund receipts in 2001, and 100 percent of prior-year receipts thereafter. This spending level would be guaranteed by creating a third category of spending (surface transportation) under the Budget Enforcement Act. This category would set not only a *floor*, but also a *ceiling* on surface transportation spending, and thereby protect other discretionary spending from pressure to approve even higher levels of transportation spending.

Our proposal would be offset fully by CBO's current scoring of the $13.5 billion VA/tobacco provision contained in your budget. If CBO chose to adopt OMB scoring of this provision (at $21.8 billion), our proposal would support an additional $8.3 billion of transportation spending through 2004 (net of the spending on veterans' training and education programs).

Key Policy Issues

Many of the priorities included in the Administration's NEXTEA proposal are incorporated in both the House and Senate bills. For example, the Disadvantaged Business Enterprise program has been retained and the new Access to Jobs program is funded. Below are several of the issues that still need to be resolved in Conference.

- .08 Blood Alcohol - As you know, the Senate bill includes a provision which withholds highway construction funds from States (beginning in Fiscal Year 2002) if they have not adopted a .08 blood alcohol concentration standard under state drunk driving laws. The House bill does not contain a similar provision. To date, the conferees have made no progress on this issue.

- Environmental Programs - BESTEA includes an onerous provision that would permit the oversight of the National Environmental Policy Act process to be delegated to the States. In addition, we oppose the transferability of environmental program funds to highway construction.

- Woodrow Wilson Bridge - The Woodrow Wilson Bridge is the only Federally-owned bridge on the Interstate System. The bridge is on the Capitol Beltway south of Washington. The Administration requested $400 million as the Federal share of the $1.9 billion replacement cost, with Maryland and Virginia responsible for the remaining cost. The Senate bill includes $900 million as the Federal share for this project, while the House provides no funding. In discussions with the Maryland and Virginia delegations, the Administration has pledged that it will not oppose up to $900 million as the Federal share and, if Maryland and Virginia want it, a Federal loan to help finance the State share. Maryland and Virginia are pushing for no less than $1.5 billion in Federal grant funding. To date, it appears that $900 million is as much as the States can expect from the conferees.

Attachments

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 12, 1998

THE DIRECTOR

The Honorable Bud Shuster
Chairman
Committee on Transportation
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

As the House-Senate conference on reauthorization of the *Intermodal Surface Transportation Efficiency Act* (H.R. 2400) proceeds, I write urging your consideration of a proposal the Administration has made to resolve the important budget issues raised by this legislation.

On April 30, I sent you a letter expressing the Administration's serious concerns about the excessive spending in the House and Senate bills; in particular, that the spending levels would either require unacceptable reductions in high priority discretionary program funding, or they would drain anticipated budget surpluses prior to fulfilling our commitment to save Social Security first.

These budgetary concerns were reiterated in a May 1 letter to conferees from Secretary Slater, along with a detailed review of other important policy issues that need to be resolved in an acceptable manner in order to bring this legislation to a conclusion. These issues include a stronger national standard for drunk driving and other safety concerns, maintenance of the historical balance in highway-transit funding, and ensuring protection of the environment as we carry out transportation programs.

Last week, during the course of ongoing discussions with conferees, the Administration proposed the attached framework for bridging some of the distance between the funding levels supported by the Administration, the House and the Senate. The framework is based on four principles: (1) the projected budget surplus shall not be used to pay for the legislation; (2) spending shall be offset fully, without lowering the caps on discretionary spending; (3) after a phase-in period, total budget resources spent each year should equal total receipts to the Highway Trust Fund (HTF); and (4) spending levels in the legislation shall be sustainable after the end of the authorization period.

This framework fulfills the objective of many in Congress that one hundred percent of Highway Trust Fund receipts be available for obligation. After an appropriate phase-in period, a new budget mechanism would require that total funding equal 100 percent of total HTF receipts. This funding guarantee would serve as both a floor and a ceiling for fiscal years 1999-2004. In exchange for the unprecedented guarantee of authority to spend all prior year Trust Fund receipts, this framework also establishes that total surface transportation spending will not exceed receipts. Total funding over the reauthorization period would equal $218.9 billion, which is between the amounts called for in the House and Senate bills. However, this funding would be provided over seven years, instead of six, in order to satisfy the Administration's core principles that the surplus not be depleted and the spending caps not be reduced.

The President's senior advisers would recommend that he veto a conference report that makes available an excessive level of budgetary resources if financed by spending the surplus, by reducing the domestic discretionary caps, by using unacceptable offsets, or by forcing cuts in domestic priorities. We would also recommend veto of a conference report that skews transportation priorities.

We need final action now on this critical legislation. The Administration strongly urges the conferees to seriously consider the framework discussed in this letter, which would ensure stable funding for surface transportation, in a manner that is both fiscally responsible and consistent with the President's pledge to save Social Security first.

Sincerely,

Franklin D. Raines
Director

Attachment

Identical Letter Sent To:

The Honorable Bud Shuster
The Honorable James Oberstar
The Honorable Tom Petri
The Honorable Nick Rahall
The Honorable John Chafee
The Honorable Max Baucus
The Honorable John Warner
The Honorable William Roth
The Honorable Daniel Patrick Moynihan
The Honorable Alfonse D'Amato
The Honorable Paul Sarbanes
The Honorable John McCain
The Honorable Ted Stevens
The Honorable Ernest Hollings
The Honorable Pete Domenici
The Honorable Frank Lautenberg
The Honorable Tom Bliley
The Honorable George Brown
The Honorable John Dingell
The Honorable Jim Sensenbrenner

Surface Transportation Reauthorization Funding
Comparison of Congressional and Administration Proposals
(Mandatory and Discretionary $ in billions)

	1998	1999	2000	2001	2002	2003	2004	1998-2003 Total	1998-2004 Total
President's Budget									
BR	28.0	27.8	27.7	27.7	27.7	27.6	27.7	166.5	194.2
OL	26.5	27.3	27.7	27.8	28.0	28.1	28.1	165.4	193.5
Highway/Safety									
BR	*23.1*	*23.0*	*22.9*	*22.9*	*22.8*	*22.8*	*22.8*	*137.6*	*160.4*
OL	*22.3*	*23.3*	*23.4*	*23.3*	*23.2*	*23.1*	*23.2*	*138.7*	*161.9*
Transit									
BR	*4.8*	*4.8*	*4.8*	*4.8*	*4.8*	*4.8*	*4.9*	*28.7*	*33.6*
OL	*4.2*	*3.9*	*4.3*	*4.5*	*4.8*	*4.9*	*4.9*	*26.5*	*31.4*
HR 2400, BESTEA									
BR	29.3	35.0	38.9	38.8	38.9	38.8	–	219.7	–
OL	26.6	28.8	32.9	35.7	37.2	37.9	–	199.1	–
Highway/Safety									
BR	*24.5*	*29.0*	*32.5*	*32.4*	*32.4*	*32.4*	–	*183.0*	–
OL	*22.4*	*24.9*	*28.2*	*30.5*	*31.2*	*31.6*	–	*168.8*	–
Transit									
BR	*4.8*	*6.0*	*6.5*	*6.5*	*6.5*	*6.5*	–	*36.7*	–
OL	*4.2*	*4.0*	*4.7*	*5.3*	*5.9*	*6.3*	–	*30.3*	–
S 1173, ISTEA2									
BR	27.8	36.7	37.4	38.0	38.7	39.5	–	218.0	–
OL	26.4	29.4	33.4	35.5	36.9	38.0	–	199.6	–
Highway/Safety									
BR	*22.9*	*29.8*	*30.4*	*30.9*	*31.4*	*32.0*	–	*177.5*	–
OL	*22.3*	*25.3*	*28.4*	*29.7*	*30.4*	*31.0*	–	*167.1*	–
Transit									
BR	*4.8*	*6.9*	*7.0*	*7.1*	*7.3*	*7.5*	–	*40.5*	–
OL	*4.2*	*4.1*	*5.0*	*5.7*	*6.5*	*7.0*	–	*32.5*	–
Offer									
BR	28.0	27.8	27.7	32.1	33.8	34.4	35.1	183.8	218.9
OL	26.5	27.3	27.7	28.7	30.8	32.5	33.5	173.4	206.9
Highway/Safety									
BR	*23.1*	*23.0*	*22.9*	*26.0*	*27.4*	*27.9*	*28.4*	*150.3*	*178.8*
OL	*22.3*	*23.4*	*23.4*	*24.1*	*25.6*	*26.8*	*27.4*	*145.7*	*173.1*
Transit									
BR	*4.8*	*4.8*	*4.8*	*6.1*	*6.4*	*6.5*	*6.7*	*33.5*	*40.1*
OL	*4.2*	*3.9*	*4.3*	*4.6*	*5.1*	*5.7*	*6.0*	*27.7*	*33.8*

cc: **Lew**
Stein
Sperling
Forbes
Brain
Emery
Kieffer
Damus
Robyn
Marr
Lance

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

May 1, 1998

The Honorable Bud Shuster
Chairman, Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As conferees meet on H.R. 2400 to resolve differences between the *Intermodal Surface Transportation Efficiency Act of 1998* and the *Building Efficient Surface Transportation and Equity Act of 1998*, I write to offer the Administration's views on major programmatic issues raised by this extremely important, time-sensitive legislation. I congratulate Members for their bipartisan efforts to achieve enactment of a reauthorization bill, and I pledge the Administration's assistance throughout the conference process to achieve legislation the President can sign.

Office of Management and Budget Director Raines, in a separate letter, has communicated the Administration's serious concerns about the excessive funding levels in this legislation. I want to emphasize that, while there are many positive aspects to this legislation, the excessive funding levels in both bills remain a paramount concern of the Administration. The funding levels in these bills fail to give due consideration to other priorities in the budget: either they would require an unacceptable reduction in high priority discretionary program funding, or they would drain anticipated budget surpluses prior to fulfilling our commitment to save Social Security first. Both of these outcomes would have unacceptable consequences for the American people. We look forward to working with the conferees to develop legislation that reflects sound transportation policies and that is funded at appropriate levels consistent with preserving the surplus and meeting our nation's other pressing priorities.

Just over a year ago, the President announced a 6-year, $175-billion investment program for America's surface transportation system, which I am pleased to see is incorporated in large part in your bills. We said we needed to put a stronger emphasis on safety programs, and proposed increasing funding for highway safety by about 25 percent. We said we needed to continue to rebuild America, and proposed increasing core highway program spending by 30 percent, with comparable increases for transit. We said we needed to invest more in protecting the environment, for research and development, and to help in moving Americans from welfare to work. All of these elements are found in the two bills.

We need final action now on H.R. 2400. The obligation authority for highway spending ends this week, and carry-over balances in many of our highway safety programs will not sustain them for any extended period. We have been prepared for more than a year and at all stages to participate in completing this urgently needed bill, and we remain fully prepared to work for early enactment.

The President's proposal was for a record level of investment in the nation's infrastructure, accommodated within the framework of a balanced budget. The House and Senate bills retain ISTEA's core programs for transit and highways, which will allow us to continue our progress in rebuilding America and competing effectively in the global economy. Moreover, important safety and environmental programs are continued and enhanced. Both bills expand opportunity through continuation of an effective Disadvantaged Business Enterprise program, preservation of important labor standards and employee protection provisions, creation of a new program to address the transportation needs of those making the transition from welfare rolls to payrolls, establishment of border crossing and trade corridor provisions crucial for international commerce, and designation of intermodal connectors as part of a National Highway System.

The Administration is pleased by these positive developments. However, we have previously indicated our concerns about certain provisions. While progress has been made, some of the Administration's most serious concerns have not yet been addressed. I believe it is possible for a good bill to emerge from conference if we can work together to accomplish that aim.

Program Funding. As we work together to resolve the specific funding issues, I wish to emphasize that transit programs must continue to receive an equitable share of the bill's total funding and, at a minimum, the same proportion of funds as the Administration recommended in its NEXTEA proposal. With respect to other programs, while the Administration is committed to working with the conferees to craft a bill with acceptable spending levels, we urge the conferees to support adequate funding within these lower overall totals for several key programs. These include NHTSA, other safety areas, the Federal Lands Highway Program, Research and Technology, and the Bureau of Transportation Statistics.

We also urge adequate funding – a 1.5 percent takedown from the base of programs in the House bill – for Federal Highway Administration administrative costs, and an equivalent percentage for Federal Transit Administration administrative costs within the total transit authorization. These funds are necessary to provide sound oversight of these programs.

Safety. Transportation safety is everyone's top concern. The Senate bill requires States to enact legislation establishing a .08 percent blood alcohol content as the national standard for drunk driving. This is a positive step supported strongly by the President to help reduce the terrible loss of life on our highways due to drinking and driving. Further, it is consistent with the approach Congress endorsed in the "zero tolerance" provision contained in the National Highway System Designation Act of 1995 and the 1984 legislation establishing the minimum drinking age nationally. We support the Senate bill provision to carry out drugged driving research and related programs, and the Senate provision on banning "open containers" of alcohol in motor vehicles. We also support measures that will encourage the introduction of advanced air bags in a timely manner.

The bills provide selective exemptions from Federal truck size and weight limitations that would further complicate enforcement, discourage compliance, and pose a substantial hazard to all motorists. These exemptions are ill-advised, and we strongly oppose them. We would also oppose any statutory restriction on access to electronic or global positioning system data for enforcement of motor carrier safety regulations, including drivers' hours of service. Driver fatigue is a major safety problem, and there is no justification for placing more restrictions on federal authorities' ability to assure compliance with hours-of-service standards.

We oppose the Senate bill's "anti-lobbying" provision. This provision would curtail the Department's informational and educational activities for every surface transportation program. Our efforts to implement important highway safety programs, in particular, would be severely affected, since the Department carries out its statutory responsibility to assist the States in developing strong highway safety programs by providing safety information to its State and local partners. The Department's obligation to assist State and local governments in improving highway safety should in no way be compromised, or made ambiguous. We strongly urge you to eliminate this provision from the final bill.

We support the Senate provision to reauthorize the hazardous material transportation safety program that is so important to safe transport of these materials, but object to exceptions from key safety provisions. We also support: the Senate provision to help States improve "one-call" systems, and oppose any exceptions from the requirement.

We support the Senate language increasing the flexibility for the highway-rail grade crossing program. However, we believe the proportion of the STP (Surface Transportation Program) safety set-aside allocated to the grade-crossing program should more closely reflect the Administration's proposal. Additionally, we strongly support continuation of current law governing transfers out of the grade-crossing and hazard-elimination programs, as retained by the House legislation.

Environment. Both bills contain provisions that seek to make the integration of environmental review and transportation decision-making processes established under the National Environmental Policy Act (NEPA) more efficient. The Senate provision, which would continue to emphasize integration of these processes, most closely reflects Administration views. We cannot support the many House provisions that compromise fundamental aspects of the NEPA decision-making process. In particular, we strongly oppose delegating NEPA responsibilities to eight states on a pilot basis. The Department of Transportation, in coordination with the states, should continue to be responsible for ensuring that the environmental impacts of Federally funded projects are considered from a national perspective. We generally prefer the Senate provisions related to NEPA, which would continue to emphasize integration of transportation and environmental decision-making. However, for this reason, we will not support the Senate provision that would prevent states from conducting an environmental review of their Metropolitan and statewide plans.

In addition, we have serious concerns about the House provisions that address conflict of interest, time extensions, and "closing the record." We believe these provisions may actually increase the potential for litigation and delay the NEPA review process. While we support streamlining, we believe that the Senate bill does so in a more responsible manner.

The Administration supports the House language that makes new nonattainment areas designated under the recently promulgated Clean Air Act Standards, maintenance areas, and particulate matter nonattainment areas eligible for funding under the Congestion Mitigation and Air Quality Improvement (CMAQ) program. We also support the House language that adds maintenance areas and particulate matter nonattainment and maintenance areas to the formula calculation. In addition, we support inclusion of the newly designated nonattainment areas in this calculation.

The House bill also permits a portion of the increase in CMAQ funding levels to be used for other surface transportation projects. As under current law, we do not object to such transfers in States that do not have non-attainment or maintenance areas. We do, however, object to allowing States that have air quality non-attainment or maintenance areas to transfer funds because it could slow our progress in achieving national environmental objectives. Therefore, we oppose both the House and Senate provisions related to CMAQ transferability.

Transit. We urge the Conferees not to adopt the House cap limiting preventive maintenance and operating assistance to $400 million per year. This limitation will particularly hurt the larger urbanized areas—over 200,000 population—and will reduce the flexibility that all areas now have under current law.

To advance our clean air objectives, we must provide incentives to use transit that are similar to those already provided for automobile drivers. We urge that the final bill include the Senate provision that allows employers to offer their employees transit and vanpool benefits in lieu of compensation, thus equalizing the tax treatment of transit and vanpool benefits with those for parking and eliminating the bias in favor of automobiles.

Demonstration Projects and Other Earmarking. We are extremely concerned about the soaring number of "demonstration" projects—more than 1500 highway projects totaling $9 billion over six years (plus unknown additional costs in the outyears)—all of which circumvent the usual processes for State and local planning, environmental review, and public participation. We also object to the House earmarking of Intelligent Transportation System deployment funds. Allocation can be best accomplished in a competitive manner. While we support the consolidation of the University Research Institutes and University Transportation Centers programs, we do not support earmarking.

Intelligent Transportation Systems. We support eligibility for Intelligent Transportation System capital investments under the highway and transit funding categories.

Mid-Course Correction. We object to the potential suspension of highway and transit funding in 2001 under the House bill's "mid-course correction" provisions, because it could delay the release of program funds and thus disrupt the continuity of these important programs.

Welfare to Work. The House bill limit on the number of projects will make it difficult for States and communities to succeed in meeting their targets for moving people from welfare to work. We urge support of the Senate provision on access to jobs. Both bills authorize $150 million annually for these projects, which can support many more than 10 projects over six years, and the limitation on the number of projects should be deleted. In addition, we urge the conferees to support employment opportunities for welfare recipients and people in empowerment zones and enterprise communities, as well as outreach and support activities to promote skill improvement for under-represented groups.

Prevailing Wage Standards. The Administration has consistently taken the position that prevailing wage standards should continue to cover construction under programs where such standards historically have applied, and should apply to any new federally assisted construction that may be authorized by the legislation. The Administration does not support the authorization of appropriations for the following projects. However, if any of the following authorizations are enacted, prevailing wage standards should be applied: in the House bill—section 902 (Light Density Rail Lines Pilot Projects), section 903 (the Miami-Orlando-Tampa Corridor project), and section 904(a) (Grants to Alaska Railroad)—and in the Senate Bill—section 1119 (Magnetic Levitation Transportation Technology Deployment Program), and section 3701 (Light Density Rail Line Pilot Projects).

In addition, the Administration does not support the high priority projects listed in section 127 of the House bill. However, if any of these projects are enacted, it should be clarified that prevailing wage standards apply.

Innovative Financing. The Senate bill authorizes State Infrastructure Banks (SIBs) and other innovative financing and credit enhancement provisions. The Administration supports the goal of increasing the ability of States to leverage their transportation resources. However, the Administration strongly opposes the Senate credit provisions for several reasons. We oppose any provision that would permit direct or indirect Federal guarantees of tax-exempt obligations that are prohibited by current tax law and Federal financial policies. The Administration also opposes the subordination of any Federal loans, because it would contravene Federal policy and would put the Federal Government at undue financial risk. Moreover, the proposed credit provisions could become a bad precedent for other Federal credit programs. In addition, the Administration strongly urges that the bill apply Federal labor standards and employee protection provisions to <u>all</u> projects funded through SIBs and other innovative financing and credit enhancement provisions. The Administration opposes repealing or limiting these critical labor protections afforded to working people on federally assisted highway and transit projects.

Ethanol. The bill should extend the excise tax incentives for ethanol, as the Senate bill does, but without phasing down the rates. This extension is critical to encouraging the use of alternative fuels to improve air quality. Ethanol is a clean-burning, made-in-America fuel that has created thousands of jobs and provided a multi-billion dollar boost to our rural communities and family farmers.

Intermodalism; Planning. The Senate bill allows Surface Transportation Program funds and National Highway System funds to be used for inter-city passenger rail and bus projects. It also allows the National Highway System funds to be used for publicly owned intermodal surface freight transfer facilities (other than airports and seaports), but it does not authorize expenditure of Surface Transportation Program funds for publicly owned rail freight infrastructure. Experience under ISTEA demonstrates that State and local officials used the project-selection authority wisely, thereby securing the maximum enhancement of our surface transportation system at the least cost. We urge that Congress support, at a minimum, the flexibility that the Senate bill provides and consider applying to the Surface Transportation Program the same flexibility to assist publicly owned freight facilities that the Senate bill creates in the NHS category. In addition, we urge support for an intermodal research and development program to ensure that investments in highways and transit facilities are balanced by investment in research that leverages multi-modal opportunities.

We strongly support requiring consideration of the seven planning categories, as proposed by the Administration and included in the Senate bill, to promote comprehensive and consistent local planning and decision making for highway and mass transit projects. We oppose the House language that makes consideration of planning factors voluntary and the Senate provision that weakens existing fiscal constraint requirements.

Federal Lands Highways Program/Cooperative Federal Lands Transportation Program. We urge the conferees to delete section 1115 of the Senate bill, which is a new program and is not in the President's budget. This program would provide money directly to States and counties for highways that cross, lead or are adjacent to federally-owned land or Indian reservations, and provides no role for land management agencies on these projects that could be incompatible with the agencies' management plans and responsibilities. These funds could be redirected into other FLHP program categories.

Frequency Spectrum. The Administration opposes language contained in the Senate bill directing the Federal Communications Commission and the Department of Commerce to assign spectrum to the Intelligent Transportation System. The Administration urges the conferees to use the language contained in the House version of the bill, which is consistent with the Administration's proposal. Under the House language, the Department of Transportation will work within the Inter-Department Radio Advisory Committee to satisfy spectrum requirements in an efficient and effective manner.

Rail loans: The Administration strongly opposes establishing a separate program for providing credit to private railroads. Further, a number of provisions in Title IX are either inconsistent with the Federal Credit Reform Act of 1990 or conflict with Administration guidance for budgeting and managing credit programs. We urge the conference to delete the provisions in Title IX authorizing the Secretary to provide direct loans and loan guarantees totaling $5 billion for rail purposes.

You have the opportunity to shape a surface transportation reauthorization measure that reflects the years of cooperative, productive efforts by all levels of government, the private sector, and transportation users. Congress, this Administration, States and communities have all been involved in the development of these policies and programs and they will serve us well into the 21st Century. I hope that the most contentious issues, especially the ones that threaten the achievement we have made in balancing the budget, will be resolved so that this legislation can be signed expeditiously by the President.

On behalf of the Administration, let me express our willingness to provide assistance during the conference committee's deliberations. This legislation is critically important, and I look forward to working with you to help draft a compromise that can be successfully enacted. An identical letter has been sent to each of the ISTEA conferees.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, it has no objection to the submission of these views for the consideration of Congress.

Sincerely,

Rodney E. Slater

Rodney E. Slater

Enclosure

ADDITIONAL TRANSPORTATION ISSUES TO BE RESOLVED BY THE CONFEREES

TRANSIT

Transit Project Management Oversight: We support the House language that allows transit funds to be used for technical assistance to remedy deficiencies.

Transit Asset Disposition: We support the Senate language that would allow operators to keep sales proceeds, but would urge that it require Department of Transportation approval.

Transit Revenue Bonds: We support the Senate provision permitting transit agencies to use fare-backed revenue bonds for the local match.

Local Share: We strongly oppose the Senate provision that permits transit fare revenues to be used as the local match, which is a long-standing prohibition under the Federal transit laws. This change could seriously undermine State and local public support for transit.

Clean Fuels: We oppose the Senate provision to establish a clean fuels program because all of the activities under this proposed program are eligible under current law. In addition, current law already provides an incentive for the purchase of alternative fueled vehicles.

ADA Eligibility: We support the Senate bill provision that allows paratransit that meets the requirements of the Americans with Disabilities Act as an eligible capital expense.

ENVIRONMENT

NEPA Conflict-of-Interest Considerations: Regarding NEPA conflict of interest provisions, the Administration prefers the Senate bill. In addition, the language should expressly preserve the federal government's obligation to address any objectivity and accuracy concerns by including the following language:

> This section shall not relieve the Federal official of his or her responsibilities for the scope, objectivity and content of the entire statement or of any other responsibility under 42 U.S.C. 4321 et seq.

Enhancements. The Administration also opposes the House provision that allows Enhancements funds to be transferred to other highway program categories.

PLANNING

Fiscal constraint: We support retaining ISTEA's current financial feasibility requirements for transportation plans, as the House bill does.

ADMINISTRATION AND MANAGEMENT

Penn Station and Union Station Boards: We support the Senate provision that would authorize the Secretary of Transportation, the Federal Railroad Administrator, and their designees to serve as ex officio members of the Boards of Directors for the Pennsylvania Station Redevelopment and Union Station Redevelopment Corporations.

Metric: The Administration opposes the provision in the Senate bill that would give States the option of using or not using the metric system in connection with highway construction contracts. This provision would create significant confusion, result in costly duplication in the preparation of engineering documents, contracts advertisements and other materials used in highway projects, and reverse the progress that the majority of States have already made in converting to the uniform metric system.

FINANCING

Boating Safety: The Administration supports the Senate provision to ensure adequate funding for the Coast Guard's Boating Safety Grant program. The Boating Safety Grant program should be treated like the mandatory Sport Fish Restoration Program, with which it splits the deposits into the Aquatic Resources Trust Fund. A strong, stable Boating Safety program is critical to reducing the approximately 800 annual boating fatalities. The Administration objects to the House bill's shifting of motorboat and small engine fuel tax receipts from the General Fund to the Aquatic Resources Trust Fund, which would require a large PAYGO offset.

Border Projects: The Administration is pleased at the inclusion of funds to support border projects in both the House and Senate bills. However, neither bill makes funds available directly to Federal agencies for projects that improve the movement of people and goods across the border. We urge the conferees to adopt language consistent with the Administration's proposed authorization making funding available to Federal agencies for these purposes.

COALFIELDS EXPRESSWAY

We strongly oppose the provision in the Senate bill that would make the Coalfields Expressway in Virginia eligible for Appalachian Development Highway System (ADHS) funds. This provision would add $1 billion to the cost to complete the ADHS, thereby delaying other existing ADHS projects.

EMPLOYEE PROVISIONS

Occupational Safety and Health Protection: The Senate bill contains a provision regarding Occupational Safety and Health Administration (OSHA) authority over worker protections in the transportation of hazardous materials that became a source of confusion for involved parties, and we instead support an alternative approach that clarifies OSHA's and DOT's authority.

Whistleblower Protection: Section 406 of the House bill would expand 49 U.S.C. 31315 to authorize exemptions from commercial motor vehicle safety regulations without requiring that workers be notified of such exemptions. Such exemptions without notification could reduce, without their knowledge, workers' whistleblower protections against adverse employment actions. Accordingly, we propose that section 406 be revised to require meaningful worker notification of any exemption that may affect a worker's whistleblower protections. In addition, although section 402 of the bill appropriately changes the definition of commercial motor vehicle in 49 U.S.C. 31101 for purposes of state grants, the section's inadvertent exclusion of many employees from whistleblower protections needs to be remedied.

On-the-job Training: The Senate bill would repeal section 23 U.S.C. 140(b) and enact, in section 2009, a similar provision at 23 U.S.C. 506(d). The Administration favors retaining the On-the-Job Training Supportive Services provisions at section 140(b) and amending Section 140(a) to permit States to reserve training slots for welfare recipients, as in the House bill, Section 129.

The Administration also favors the strongest possible words of encouragement to States to participate in the 0.5% discretionary funding On-the-Job Training Supportive Services, which benefit all trainees, including welfare recipients. The House and the Senate bills use the words "may be utilized" or "may be made available," respectively. We favor "should be utilized" or similar language.

HYBRID BUDGET PROCESS TO GUARANTEE THAT GAS TAX REVENUES ARE SPENT

This option creates a guarantee for the Highway Trust Fund that ensures that gas tax revenues are spent for their intended purpose, yet preserves the integrity of the Budget and Appropriations processes. This process contains three elements.

Non-Guaranteed Portion	Unprotected Discretionary	Additional funding to total contract authority in ISTEA II / BESTEA.
Guaranteed Portion	New Mandatory Spending offset in Bill	Extra exempts to the point where funding is equal to tax revenues
	WODI Baseline Exempts	Existing Exempts
	Discretionary firewall	WODI baseline adjusted for ARC

First, a firewall would be established under the caps to guarantee highway and transit spending at WODI baseline levels. This firewall would act as a floor on highway/transit funding. Otherwise, the role of the Appropriations Committee would be unchanged. (green portion)

Second, the amount of spending needed to ensure that gas tax revenues are spent for these programs in excess of the baseline would be added to the mandatory side of the budget. This level would be pegged to annual gas tax revenues. The discretionary caps would therefore not have to be changed. (yellow portion)

Third, the Appropriations Committee would be authorized to further increase Highway Trust Fund spending above the guaranteed amount if they choose. The outlays from such increases would be charged to the caps. (red portion)

[408-0848]

HYBRID BUDGET TRANSIT CONCEPT CALCULATION

		1998	1999	2000	2001	2002	2003	Total 98-03	Total 99-03
A.	Tax Revenue	3.407	5.256	4.436	4.506	4.578	4.657	26.840	23.433
B.	**Firewall Programs at Baseline**								
	trust fund capital	2.260	2.260	2.260	2.260	2.260	2.260	13.560	11.300
	formula	2.000	2.000	2.000	2.000	2.000	2.000	12.000	10.000
	general fund formula	0.240	0.240	0.240	0.240	0.240	0.240	1.440	1.200
	UTC	0.006	0.006	0.006	0.006	0.006	0.006	0.036	0.030
	Admin.	0.046	0.046	0.046	0.046	0.046	0.046	0.276	0.230
	Planning	0.092	0.092	0.092	0.092	0.092	0.092	0.552	0.460
	WMATA	--	0.200	0.200	0.200	0.200	0.200	1.000	1.000
	TOTAL	**4.644**	**4.844**	**4.844**	**4.844**	**4.844**	**4.844**	**28.864**	**24.220**
C.	**New Mandatory Program**	**0.000**	**0.563**	**1.031**	**1.031**	**1.031**	**1.031**	**4.689**	4.689
D.	**Total - Firewall + Mandatory**	**4.644**	**5.407**	**5.875**	**5.875**	**5.875**	**5.875**	**33.553**	28.909
E.	Administration Budget Resources	4.800	4.800	4.800	6.100	6.400	6.500	33.400	28.600
F.	Total CA -- House Bill Assumptions	4.895	5.625	6.316	6.316	6.316	6.316	35.784	30.889
G.	Total CA and Guaranteed BA -- Senate Bill Assumptions *	4.920	6.053	6.190	6.330	6.473	6.621	36.587	31.667

* (includes $1 billion per year in "Guaranteed" general fund authorizations in FY 1999-03)

Guaranteed Budget Calculation Concept - Highways

		1998	1999	2000	2001	2002	2003	Total 98-03	Total 99-03
A.	Tax Revenue (w/o spike)	27.149	27.634	28.066	28.506	28.972	29.471	169.798	142.649
B.	Firewall Programs at Baseline								
	Federal-aid: Ob. Limit	21.500	21.500	21.500	21.500	21.500	21.500	129.000	107.500
	NHTSA: Ob. Limit.	0.186	0.186	0.186	0.186	0.186	0.186	1.116	0.930
	MCSAP: On. Limit	0.085	0.085	0.085	0.085	0.085	0.085	0.510	0.425
	ARC (DOT): BA	-	0.300	0.300	0.300	0.300	0.300	1.500	1.500
	ARC (Energy & Water): BA)	-	0.102	0.102	0.102	0.102	0.102	0.510	0.510
	Subtotal	21.771	22.173	22.173	22.173	22.173	22.173	132.636	110.865
C.	Mandatory Components								
D.	Current Mand. Baseline: BA	0.739	0.739	0.739	0.739	0.739	0.739	4.434	3.695
E.	New Mand.BA (A-B+D) *	1.932	4.722	5.154	5.594	6.060	6.559	30.021	28.089
	Total Mand. BA (D+E)	2.671	5.461	5.893	6.333	6.799	7.298	34.455	31.784
F.	Total Guaranteed: Firewall + Mandatory	24.442	27.634	28.066	28.506	28.972	29.471	167.091	142.649
G.	Total CA - House Bill Assumptions	24.000	28.500	32.200	32.200	32.200	32.200	181.300	157.300
H.	Total CA - Senate Bill Assumptions	24.751	28.761	29.195	29.629	30.100	30.628	173.064	148.313

Revenues = Spending

* Indefinite amount, calculated annually. 1998 shows House assumptions.

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- As you know, last night we agreed with Sen. D'Amato and Sen. Domenici on a package of offsets to pay for the increased transit spending that they seek. In our view, the package equitably spreads the burden across all interested parties.

- As in every good compromise, the package contains some offsets that are neither the first choice of the Administration nor the first choice of the two Chairmen -- we agreed to some of their suggestions; they agreed to some of ours.

- We agreed to two provisions that could reduce the services provided by government mortgage insurers:

  -- increased fees for GNMA (Government National Mortgage Association) and

  -- ending the rebate of certain FHA mortgage insurance fees.

- In turn, the Chairmen agreed to increase the loan limit on FHA loans, and allow FHA to expand the services that it offers.

  -- Raising the FHA loan limit will expand credit and homeownership opportunities; it will not drain business from the private sector.

  -- As you know, private mortgage insurers have lower costs than does the FHA. Borrowers generally turn to FHA only when they have difficulty gaining credit from the private sector.

  -- Thus, increasing the loan limit will not significantly affect FHA's ability to compete with private mortgage insurers; it will only allow FHA to serve those who now cannot get ready access to private credit.

- Failing to increase the FHA loan limit would eliminate the one provision in the offset package that expands homeownership opportunities. We would be left with offsets that impose new costs on government insurers, and nothing that allows FHA to expand the services that it offers. The burden of the offsets would fall only on those who most need help to buy a new home.

- I want to stress that we looked long and hard at all other offsets, and were unable to find any others that would provide a balanced, equitable package.

- You know that we favor reducing the Social Services Block Grant, but only to pay for more effective programs that provide benefits to children and others in need. In my judgment, cutting the Social Services Block Grant to pay for this particular bill would be a serious mistake. Cutting SSBG now would leave us in the position of paying for highways and transit by cutting benefits to veterans and children.

- I urge you to allow the compromise to move forward.

AVAILABLE SSBG OFFSET

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 99 - 03
Social Services Block Grant	471	485	566	620	1,040	3,182
FHA Loan Limit				-133	(1,040)	(1,173)
Subtotal, offsets	471	485	566	487	0	2,009
Other Housing (GNMA and MI)		-137	-566	-487	0	(1,190)
Remaining offsets	471	348	0	0	0	819

CRS Report for Congress

Received through the CRS Web

ISTEA Reauthorization: Highway and Transit Legislative Proposals in the 105th Congress, 2nd Session

Updated April 6, 1998

John W. Fischer
Specialist in Transportation
Economics Division

ABSTRACT

Legislative proposals to reauthorize federal surface transportation programs formerly contained in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) are currently working their way through Congress. As amended, House and Senate bills now reflect greatly increased levels of funding for these programs. Each bill contains somewhat different structural elements to facilitate this additional spending. This report discusses the structure of the House and Senate proposals and provides an overview of issues that may come to the forefront during conference.

This report will be updated as action on legislation is completed. For the most current information about this legislation, especially concerning amendments, please consult the Legislative Information System (LIS) at http://www.congress.gov

ISTEA Reauthorization: Highway and Transit Legislative Proposals in the 105th Congress, 2nd Session

Summary

Congress was unable to complete action on a long-term reauthorization of federal surface transportation programs during the 1st Session of the 105th Congress. The authorization of these programs provided for by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (P.L. 102-240) expired on October 1, 1997. Legislation that would provide for reauthorization of these programs is now headed for conference committee consideration. The Senate completed floor consideration of its legislative vehicle, S. 1173, on March 12, 1998. Final Senate action occurred on April 1, 1998. The House completed floor action on its bill, H.R. 2400, on April 1, 1998.

The ISTEA programs are continuing to operate on the basis of limited interim financing enacted in the closing moments of the 1st Session. This financing expires on May 1, 1998.

The Building Efficient Surface Transportation and Equity Act of 1997 (BESTEA), H.R. 2400, is the proposal of the House Committee on Transportation and Infrastructure. The legislation is based on the premise that ISTEA provides a good structure for federal transportation programs, and that what is needed to make the federal program even better is more money, modernized formulas, and a few new programs to improve coverage. The new programs in the legislation e.g., a high cost interstate construction and improvement program; and a high risk road safety improvement program are designed to meet specific national needs that were difficult to address within the broad funding programs found in ISTEA.

The Intermodal Surface Transportation Efficiency Act of 1997 (ISTEA II), S.1173 on which the Senate completed action, is a blended bill that incorporates the essential structural elements of several legislative proposals introduced in the 1st Session. At the same time it retains some portions of ISTEA. It is a different bill from BESTEA in its structure, but contains several of the same policy goals. A principal goal of this legislation is its focus on enhancing state and local control over highway program spending by combining a significant number of separate programs.

The question before Congress then is not about whether it should be a participant in the transportation infrastructure business. Rather, the question is about the size and scope of the federal effort and how to pay for it. Because of concerns about the federal budget deficit, most of the discussion about ISTEA reauthorization, until very lately, has been focused on money. Program structure, which was changed dramatically by ISTEA in 1991, has been a secondary issue. As the respective bills move toward conference the structural differences between the two bills will become the primary focus. There are liable to be several contentious issues in conference. The most visible of these being the 1,500 plus, high priority projects in the House bill and the significantly higher levels of funding for transit in the Senate bill. Also at issue are House bill provisions that take the highway trust fund off-budget and requires bill conferees to agree on the budget offsets needed to allow increased spending.

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Congress was unable to complete action on a long-term reauthorization of federal surface transportation programs during the 1st Session of the 105th Congress. The authorization of these programs provided for by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (P.L. 102-240) expired on October 1, 1997. Legislation that would provide for reauthorization of these programs is now under consideration. The Senate completed floor consideration of its legislative vehicle, S. 1173, on March 12, 1998. The House completed floor action on it proposal, H.R. 2400, on April 1, 1998.

Presently, the ISTEA programs are continuing to operate on the basis of limited interim financing enacted in the closing moments of the 1st Session.[1] This financing expires on May 1, 1998. Without passage of new long-term and/or short-term legislation, the states will be unable to obligate funds for new projects supported by the federal programs after that date. The immediate effect of this situation will vary from state to state. Over the longer term, an extended interruption in the program during what would constitute the prime construction season in northern tier states is likely to have a significant effect on the continuity of surface transportation infrastructure programs.

The Senate completed consideration of a long-term reauthorization bill on March 12, 1998. As expected, most of the initial debate took place in the context of the debate over how much of a funding increase could be provided for the ISTEA programs in light of the need to pass an FY1999 congressional budget resolution that preserves deficit reduction targets agreed to in FY1998. During floor consideration Senate leadership reached an agreement on a new funding level for the bill that greatly expands the size of federal highway and transit programs.

A similar, but less lengthy debate occurred in the House. The House bill, H.R. 2400 provides funding at a level substantially above the amount agreed to in the Balanced Budget Act of 1998. Attempts on the floor to reduce the level of spending in the bill failed. As a result, the House bill provides funding at a level just slightly higher than that found in the Senate bill.

Proponents of increased federal surface transportation spending in the House and the Senate seem to have won the argument that transportation spending should increase over the levels envisioned in the Balanced Budget Act of 1997. Their

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[1] Surface Transportation Extension Act of 1997 (P.L. 105-130).

proposal, that increased spending be provided to correspond with increases in revenues directed to the highway trust fund, has won leadership support in both bodies. This is especially true in light of the recent redirection of a 4.3 cent federal fuels tax from deficit reduction to the highway trust fund (this change came about as a result of provisions in the Taxpayers Relief Act of 1997). Increased spending proponents are also expected to argue that newly projected budget surpluses will provide the needed budgetary room to allow a larger federal transportation program.

This view likely will be opposed by those who either want the projected surplus dedicated for other things, like a tax cut, or believe that discussion of a surplus is premature. From this perspective, fuel taxes and the transportation trust funds are part of the overall budget debate, and neither the revenue stream nor the trust fund should be allowed to operate separately from the overall federal budget.[2]

The modern federal-aid highway program that created the interstate highway system in 1956 has been reauthorized on a periodic basis. In each of these reauthorization cycles, including the cycle that led to ISTEA in 1991, most of the legislative attention was focused almost immediately on three pieces of legislation; an Administration bill, and the bills produced by the respective House and Senate authorizing committees. These bills normally coalesced during the year into a new federal-aid highway act. During the 1st Session, however, several comprehensive bills were introduced, each of which contained a competing idea about how federal transportation funds should be distributed. Some of these proposals had ideological roots. Other proposals could be viewed in the context of an ongoing struggle between states and/or regions for influence and funds. After considerable debate, the discussion about how to affect a long-term reauthorization is now focused on a single House and single Senate bill. Each of these bills incorporates some, but not all of the thematic elements of the bills introduced in the last session. A brief overview of the basic thematic elements of legislation introduced in the 1st Session is provided in the next section of this report.[3]

The remainder of this report focuses on the major programmatic elements of the principal House and Senate bills expected to serve as reauthorization vehicles during the remainder of the 2nd Session. The report looks at the policy objectives and outcomes sought by each initiative. A summary table showing proposed funding for major programs is included in the Appendix at the end of this report. A discussion of some of the major surface transportation policy issues that may arise during congressional debate is also included in the report. This report is not intended as a detailed section-by-section comparison of each legislative proposal. In addition, this

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[2] The issue of the budget status of the transportation trust funds is complex and of long standing. A more detailed discussion of this issue can be found in : U.S. Library of Congress. Congressional Research Service. *Transportation Trust Funds: Budgetary Treatment.* By John W. Fischer. CRS Report 98-63 E.

[3] For a detailed discussion of highway legislation introduced in the 1st Session see: U.S. Library of Congress. Congressional Research Service. *ISTEA Reauthorization: Highway Related Legislative Proposals in the 105th Congress.* By John W. Fischer. CRS Report 97-516 E.

report does not examine safety, motor carrier issues, research, and other technology provisions that have been attached to this legislation.[4]

Significant Legislative Proposals in the 1st Session

STEP 21, The ISTEA Integrity Restoration Act (H.R. 674, S. 335)

The ISTEA Integrity Restoration Act was the first ISTEA reauthorization bill introduced in the 105th Congress. This is the STEP 21 proposal (Streamlined Transportation Efficiency Program for the 21st Century), which was first introduced in the second session of the 104th Congress. STEP 21 is an idea that has been percolating in several State Departments of Transportation for a number of years. The basic premise of STEP 21 proponents is that ISTEA is too complex in its application, has outdated and inequitable distribution formulas, and is too stringent and costly in its administration. STEP 21, therefore, is aimed at program simplification and efficiency.

In the view of its supporters, STEP 21 is an equity bill. It guarantees that states receive a share of total highway funds equal to at least 95% of the states revenue contribution to the highway trust fund. In this regard, the two similar — but slightly different — STEP 21 bills (H.R. 674 and S. 335) overcome what many states believe was a failed promise in ISTEA that guaranteed each state would receive at least 90% of revenue contributions. In addition, the bills attempt to protect the interests of smaller states in terms of land area and/or population, by ensuring adequate funding is provided to meet their special needs.

NEXTEA, The National Economic Crossroads Transportation Efficiency Act (S. 468, H.R. 1268)

This is the Clinton Administration bill. It reflects the experience of the Department of Transportation (DOT) in administering ISTEA, as well as the policy perspectives of the Clinton Administration. DOT is of the opinion that ISTEA provided a good framework for the federal-aid highway program. As a result, the bill focus is on marginal changes, which are viewed as improvements to the existing program. Among these changes are a number of new, but relatively inexpensive, initiatives that are in line with previous Administration transportation budget proposals on items such as innovative financing mechanisms and welfare-to-work transportation assistance .

Funding for the federal-aid highway program is expanded over ISTEA levels, but much of the funding increase takes place during the last 3 years of the authorized

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[4] For a discussion of highway safety issues see: U.S. Library of Congress. Congressional Research Service. *Federal Traffic Safety Programs and Grants: Issues and Options for Reauthorization.* CRS Report 97-271 SPR. By Paul F. Rothberg and Brad A. Trullinger.

period. This legislation provides the lowest level of authorizing authority of any of the bills discussed in this report. This is in keeping with the Administration view that the federal-aid highway program has a role in the effort to balance the overall federal budget by FY2002 and should be subject to the same constraints as other federal spending activities.

STARS 2000, Surface Transportation Authorization and Regulatory Streamlining Act (S. 532)

STARS 2000 has an outward structure that appears similar to the STEP 21 initiative, but the bill is significantly different. STARS 2000 can be construed as an attempt to take a position somewhere between STEP 21 and the existing ISTEA format. The bill retains most ISTEA flexibility options and makes no changes in the existing planning environment. Elements of the legislation, however, are focused on providing enhanced state and local decision making, and at reducing the amount of federal regulation involved in the planning and construction process.

When introduced STARS 2000 provided the highest sustained annual authorization level for the federal-aid highway program of any legislation introduced to that point. It also had a provision that allowed annual funding levels to be raised in response to any upward adjustment in available funding from the highway trust fund. The bill accepted the position that states should receive an allocation equivalent to at least 95% of each state's contribution to the highway account of the highway trust fund.

This legislation is viewed by supporters of other legislation as having a rural and western tilt, i.e., those states showing the greatest funding increases in this bill are mostly in the west. Proponents of the legislation, however, counter this argument by pointing to the fact that the majority of states would get significantly greater funding as a result of this legislation, and that programs important to proponents of other legislation are included in this bill.

"ISTEA Works", The ISTEA Reauthorization Act of 1997 (S. 586)

This legislation starts with the premise that "ISTEA Works," which is also the name of the coalition that supports this legislation. In most respects, the bill follows the ISTEA framework closely and retains a 6-year authorization period. The legislation attempts to "modernize" funding formulas, further improve funding flexibility, broaden the intermodal focus of the bill to include funding for new activities, such as Amtrak, and maintains a strong connection to federal environmental programs. The guiding concept of the supporters of this approach is that federal highway monies should be directed to identified national transportation system "needs." To meet these needs the bill provides for a significant increase in highway funding.

Devolution, The Surface Transportation and Transit Empowerment Act (H.R. 3045, S. 1494)

This legislation is designed to transfer much of the spending and taxing authority in the federal program to the states. The legislation provides states with the opportunity and incentive to essentially opt out of the federal program for most, but not all of the programs in ISTEA. This is an evolutionary process as designed in the legislation. States could initially take their assigned highway and transit funds as block grants and could later opt to take over the program entirely. At this second stage, referred to in the legislation as tier II, the state would be given access to the revenue stream associated with the program. State participation and financing rates would be subject to determinations by the Department of Transportation, the Department of Treasury, and by further congressional action. In the view of this legislation's proponents the current federal program should be replaced by a state operated program. This is viewed by its proponents as a natural progression from the STEP 21 concept of guaranteeing each state a 95% share of its fuel tax revenues.

H.R. 2400, Building Efficiency Through Surface Transportation and Equity Act of 1997 (BESTEA)

Introduced September 4, 1997
Subcommittee mark-up completed September 10, 1997
Committee mark-up completed September 24, 1997, Bill held in Committee[5]
Committee mark-up completed March 24, 1998, bill reported
Floor action completed April 1, 1998

Policy Focus

BESTEA is the proposal of the House Committee on Transportation and Infrastructure. BESTEA, at its core, is an ISTEA derivative that incorporates features and policy ideas from NEXTEA and Step 21. The legislation is based on the premise that ISTEA provides a good structure for federal transportation programs, and that what is needed to make the federal program even better is more money, modernized formulas, and a few new programs to improve ISTEA coverage. The new programs in the legislation e.g., a high cost interstate construction and improvement program, and a high risk road safety improvement program are designed to meet specific national needs that were difficult to address within the broad funding programs found in ISTEA.

What makes BESTEA different from all the other reauthorization legislation introduced in the 1st Session of the 105th Congress is the amount of money it provides, $218.3 billion, over 6 years. Of the total, $179.5 billion is reserved for highway programs, ~~excluding~~ safety. The bill authorizes $24.6 billion in FY1998,

[5] At the time of its introduction BESTEA was a 3-year bill. During Committee mark-up a 6-year version of BESTEA was adopted. The bill was subject to amendment at Committee mark-up and during floor consideration.

$28.2 billion in FY1999, and 31.7 billion in each of the next 4 fiscal years. Average annual spending for highways under this bill stands at $29.9 billion. This is well above the level of spending proposed by other legislation discussed in this report. The legislation uses 5 years of budget authority assumed for this legislation in the Balanced Budget Act of 1997 (P.L. 105-33) in its first 3 years. Funding for the final 3-year period in the bill would hence be subject to further action on the congressional budget.

The funding levels in this bill for years after FY1998 are not accommodated within the program guidance in the Balanced Budget Act. The bill includes the provisions of H.R. 4, the Truth in Budgeting Act, which is opposed by the leadership of the House Committee on the Budget.[6] Concern about these 2 items was largely responsible for keeping the bill in Committee during the waning days of the 1st Session. Prior to floor consideration the House leadership reached a compromise on a number of these issues. As passed by the House, the bill includes modified off-budget provisions affecting only the highway trust fund and a provision requiring that budget offsets for additional spending in the bill be identified in conference.

As passed by the House the bill contains over 1,500 designated high priority projects with dedicated funding of $9.0 billion. The bill also contains designated new start transit projects and bus related projects at a similar funding level. The transit project funds, however, are taken from programs and are not a separate funding category. The text of the bill also includes a significant number of references to specific projects, highway corridors, and bridges.

Highway Program Framework

BESTEA is ISTEA with some modifications designed to address the concerns of the Clinton Administration expressed in NEXTEA and of supporters of the STEP 21 proposal. As introduced, the legislation modernizes the distribution formulas associated with the various highway programs and creates a new minimum allocation framework. This is accomplished by incorporating formula proposals found in NEXTEA and STEP 21. The legislation relies on these formula changes and on high proposed funding levels to guarantee that donor states receive significant increases in annual funding. The intent is to provide donor states with a 95% minimum allocation of funds from the program. This is not the same, however, as the minimum 95% return on contributions to the highway account of the highway trust fund contained in STEP-21. At the same time, the legislation seeks to protect the interests of donee states by retaining the overall ISTEA programmatic framework. One state, Massachusetts, would, however, receive less on an annual basis than it had in the last year of ISTEA. The decreased funding for the state is accounted for by the end of interstate construction and interstate substitution provisions of ISTEA that had provided the state with unusually high levels of funding. In markup a provision was added to ensure that no state fell below a minimum 90% return on its

[6] H.R. 4 moves the transportation trust funds off-budget. For a discussion of this issue see: U.S. Library of Congress. Congressional Research Service. *Transportation Trust Funds: the Off-Budget Debate Continues.* CRS Report 98-63. By John W. Fischer.

trust fund revenues after high priority projects and minimum allocation computations were completed.

BESTEA continues and expands the transferability of funds begun by ISTEA. The bill allows 50% of funds in almost all programs to be redesignated for use in other programs. There are two exceptions to this transferability provision. In the case of Congestion Mitigation and Air Quality Program (CMAQ) and transportation enhancements, transferability is limited to 50% of the increase in funds provided by BESTEA over FY1997 levels.

National Highway System (NHS). The NHS receives $35.2 billion during the 6-year authorization period. BESTEA adopts the state distribution formula found in H.R. 674 (STEP 21). This formula eliminates historic share and other ISTEA variables in favor of modernized components, including five weighted highway data variables. One-third of the formula is based on total diesel fuel use on highways in a state. The formula uses two rural variables, total rural lane miles in a state, and total rural vehicle miles in a state. Each of these variables is weighed as one-ninth of the formula process. Finally the formula uses two urban variables: total urban lane miles in a state and total urban vehicle miles in a state. Each of these variables is weighted at two-ninths in the formula process.

States with low population densities and/or small populations are subject to an additional step in the determination of their state share. The share for these states is first computed on the basis of the formula described above. A determination is then made as to what percentage of total NHS funds the state would receive by this method. This percentage is then compared with state percentages detailed in section 104 (h)(1). The state receives a share of total NHS funds equal to whichever percentage is greater.

Most other changes to the NHS program are of a technical nature. The bill calls for a study of intermodal freight connectors to be conducted by DOT and creates a contest for children under the age of 14 to design a logo for the NHS.

Surface Transportation Program (STP). The biggest change in the STP is in the distribution formula. After setting aside 2% of funding for Alaska, the bill divides the remaining funds on the following basis: state population as a percentage of total population (1/3), state contributions to the highway account of the highway trust fund as a percentage of total contributions (1/3), and state contributions to the highway account of the highway trust fund by commercial vehicles as a percentage of total contributions by commercial vehicles (1/3). To the extent that the bill uses population and gas tax variables, BESTEA adopts the NEXTEA formula concept. STP remains the highest funded program in the bill with a 6-year authorization of $39.7 billion, or an average of nearly $6.6 billion per year.

Programmatic changes to the STP are minimal. There is some expansion of project eligibility to include certain environmental restoration and pollution abatement activities. In addition, the use of certain de-icing compositions on bridges would be an eligible activity. Finally, the bill would change STP administrative requirements by putting the state program approval process on an annual basis.

Interstate Maintenance Program. The bill makes interstate reconstruction an eligible activity under this program. This represents a potentially major change for this program which has here-to-fore been focused on rehabilitation, restoration, and resurfacing. The authors of ISTEA had purposely left reconstruction out of this section because of concerns that some states would use the funds in this section for projects that would constitute new construction and that the maintenance needs of the interstates would suffer as a result. It appears, however, that this legislation views the addition of reconstruction as necessary to meet unmet needs for major capital maintenance on the interstate system that can only be met in the context of a broader interstate maintenance program.

The other major change proposed by BESTEA is in the distribution formula. The new formula is based on the following variables: state contributions to the highway account of the highway trust fund by commercial vehicles as a percentage of total contributions by commercial vehicles (1/3); total vehicle miles traveled on interstate routes in a state as a percentage of total vehicle miles traveled on the interstate system (1/3); and the total lane miles of interstate highway in a state as a percentage of total interstate lane miles. Funding for the program is set at $28.5 billion for 6 years.

Highway Bridge Program. The ISTEA bridge formula is retained. A state's apportionment can be reduced over time, however, if the state transfers bridge monies into other programs. BESTEA continues the existing off-system bridge set-aside. It also adds the use of certain de-icing compounds as an eligible use for program funds. Total funding for the program is almost $28.9 billion.

Congestion Mitigation and Air Quality Improvement Program (CMAQ). The bill increases funding for CMAQ over ISTEA levels. Average annual funding for this program is at a level of almost $1.7 billion. This compares with peak year funding of just over $1.0 billion under ISTEA. The distribution formula for CMAQ is drawn from the formula proposed in NEXTEA. The formula uses weighted nonattainment and maintenance area populations of each state as a percentage of national totals, plus some additional factors. Each state is guaranteed a minimum apportionment of ½ of 1% of total funding regardless of whether the state has air quality problems.

Programmatic changes to the bill are limited in number. A controversial provision allowing program funds to be used for projects benefitting single occupancy vehicles in certain circumstances was removed during subcommittee markup. Finally, the bill requires that the National Academy of Sciences conduct a study to determine the effectiveness of the CMAQ program.

High Cost Interstate System Reconstruction and Improvement Program. This is a new program designed to fund projects on the interstate system that are beyond the funding capability of a state, or group of states, using regular annual federal obligations. According to the Transportation and Infrastructure Committee, the types of activities that are envisioned as using funds from this section include projects such as the reconstruction of the Woodrow Wilson Bridge in Maryland and the District of Columbia, and the Stevenson Expressway in Chicago. The bill does not, however, name specific projects and instead creates a process whereby DOT would select projects. To be eligible for consideration a project must cost over $200 million or cost more than 50% of a state's total allocation from the federal-aid highway program. Almost $4.6 billion is provided for this program over the 6-year period. During the period FY1998 through FY2000, two-thirds of funds available for this program are to be distributed directly to the states using the same formula as that used for the interstate maintenance program.

High Risk Road Safety Improvement Program. This is a new 6-year, $5.75 billion program. The program defines high risk roads as those subject now, or in the foreseeable future, to significant numbers of severe motor vehicle crashes that incur fatalities or incapacitating injuries. The state distribution formula for funds from this program is based on three variables: total population of a state as a percentage of total population (1/3), a state's public road mileage as a percentage of total mileage (1/3), and total vehicle miles traveled on public roads in a state as a percentage of total vehicle miles traveled (1/3). States are required to use these funds in a way that targets those projects that can produce the greatest return in terms of accident reduction.

Equity Provisions. BESTEA reduces the existing multiple equity program framework to a single **minimum allocation** program. This program is funded at a level of almost $7.2 billion. As proposed in the bill, the program requires that a state's total apportionment of funds from designated highway programs "shall not be less than 95% of the percentage of estimated tax payments attributable to highway users in the state paid into the highway trust fund, other than the mass transit account, in the latest fiscal year for which data are available." ISTEA provided a guarantee of 90%, but because of annual limitations on obligations and the complexity of the equity provision framework this guarantee was often unmet in practice. It should be pointed out again that the 95% minimum allocation framework of BESTEA is not the same as the 95% return on payments to the highway account of the highway trust fund proposed in STEP 21.

High Priority Projects (Demonstration Projects). As amended in markup and on the floor the bill contains slightly more than 1,500 specifically designated high priority projects. The bill allocates an average of $1.5 billion annually for these projects. The bill makes projects a part of the state minimum allocation calculations. This means that state minimum share guarantees will not benefit/suffer from a state having a large number of projects vis-a-vis another state's share of projects. The congressionally directed projects, known as demonstration (demo) projects in ISTEA, are typically viewed as being among the most controversial elements of the highway program. These projects are not subject to any future limitation on obligations imposed during the appropriations process.

Other Features.

Coordinated Border Infrastructure and Safety Program. This provision expands on the trade corridor and border gateway pilot program proposed in NEXTEA. The program provides funds for projects designed to improve the flow of people and goods along the U.S. borders with Canada and Mexico. Eligible uses for program funds include construction, operations, planning, and coordination. The program also requires that some funds be reserved for state motor vehicle inspection facilities at borders. Funding for this program is set at $570.0 million over 6 years. Projects along the U.S.-Canadian border must receive at least 40% of available funding and projects along the U.S.-Mexico border must also receive at least 40%.

Appalachian Development Highway System. BESTEA, like NEXTEA, provides funding for the already existing Appalachian Development Highway System, also known as the Appalachian Roads Program, from the highway trust fund. This program is currently funded by U.S. Treasury general funds. The administration of the program will continue to reside with the Appalachian Regional Commission (ARC). Before the ARC can adopt program changes, however, it must notify the Secretary of Transportation. The bill also adds two Georgia counties to the defined Appalachian region.

The program is authorized to receive $2.25 billion for the 6-year period of the bill. In addition, this provision increases the federal matching share for ARP to 80% from the existing 70% level, and guarantees each state eligible for ARP funding at least $1.0 million in FY1998.

Woodrow Wilson Memorial Bridge. The bill requires that ownership of the Woodrow Wilson bridge be transferred to the states of Maryland and Virginia, and to the District of Columbia. The bill provides no funds for the reconstruction and/or replacement of this bridge. Material supplied by the Committee on Transportation and Infrastructure, however, suggests that this is the type of program that could receive funding from the high cost interstate system reconstruction and improvement program.

Federal Lands Highways Program. The legislation reestablishes the **forest highway** program that had been eliminated by ISTEA as a separate funding category. This change is also found in NEXTEA. The forest highway program and public lands highway programs would receive separate allocations under this legislation with different distribution methods. Forest highways would receive funds on the basis of the allocation formula that had existed prior to ISTEA. The legislation clarifies the use of federal lands funds for matching purposes with other highway programs. Average annual funding for the entire federal lands highways program is just over $488.5 million. This level is a bit higher than the allocation for this program in the last year of ISTEA.

This section also defines some specific activities on the part of DOT. These are: an access study for the John F. Kennedy Center for the Performing Arts; support for transportation research, collections, and exhibits at the Smithsonian Institution; and, assistance for the construction of a visitors center on the New River Parkway in West Virginia.

Corridor Planning and Development. This new program provides funds for the coordination, planning, design, and environmental review aspects of designated corridors of national significance. The corridors to be considered as part of the program include high priority corridors identified in ISTEA and new corridors that facilitate international trade, interregional trade and mobility, and service to areas underserved by the existing highway system. The program provides $1.25 billion over the 6-year period. Program participants are required to produce very detailed plans for corridor projects, including financing plans. Although there are designated corridor construction funds provided in this section, any funds remaining after all planning and design allocations have been made may be used for construction. An amendment to this provision in markup makes it clear that construction is an eligible use for funds under this program.

Programmatic Reforms and Streamlining. This separate title of BESTEA makes significant changes in the administration of the federal-aid highway program and potentially requires changes in Federal Highway Administration (FHWA) organization. The provisions of this title are designed to simplify and enhance the project design, construction, and approval process. A major feature of this section is a requirement that "project design, plans, specifications, estimates, awarding of contracts and inspection of projects" for non-NHS projects is assumed by the state. For NHS projects, including interstates, the state and the DOT are required to reach agreement about the level of federal oversight.

Another provision in this title seeks to establish a more coordinated environmental review process for project approval. In some instances, DOT is given the ability to exercise judgement when some other federal agency has failed to provide guidance on a projects within a specified period. The provision also allows DOT to create a pilot program in which some states would assume oversight of the environmental review process. The pilot program would be subject to DOT review and last 3 years.

This title provides the codification for fund transferability between programs mentioned earlier in the discussion of BESTEA. Another reform in the title is the requirement that a separate financial plan be created for all highway and transit projects costing over $1.0 billion. Finally, the title eliminates oversight of federal-aid highway funds by FHWA regional offices. Funding oversight is transferred to FHWA division offices, which are located in each state, or to FHWA headquarters.

There are a number of provisions mentioned above that are likely to be controversial. It is likely, for example, that the ability and inclination of a state to provide oversight of all aspects of project planning and inspection will be questioned. This is especially true in the environmental area, where environmental groups have usually supported a strong federal role in the oversight of federal spending.

Transit Program Framework

Transit program reauthorization is contained in Title III of the bill. The bill provides $36.7 billion for transit over a 6-year period. This level of funding represents an average $864.0 million increase in annual funding over the levels provided by ISTEA. The transit program in this title is essentially the existing ISTEA transit structure. The bill includes a number of elements suggested in NEXTEA and adds a modest number of new provisions and programs. An important change in program financing, which has more of an accounting impact than spending impact, is to move almost all of the existing transit programs costs funded by U.S. Treasury general funds to the transit account of the highway trust fund.

During committee markup the transit program was subject to only minor amendment. Total funding for the programs described below was not changed. Funding levels for individual activities within programs are also largely unaltered. The bill does direct the Secretary of Transportation to adjust funding for FY1998 so that the provisions of the bill are in accord with the funds provided by the interim funding authority under which the program is currently operating. The reported bill also contains a list of authorized new start projects and a list of specified bus and bus facilities projects to be funded by the major capital program.

Formula Grant Program. The major change in this legislation is the elimination of transit operating assistance as an eligible use of formula funds for urbanized areas with a population of over 200,000. Urbanized areas of less than 200,000 would be able to use any, or all, of their formula funds for operating assistance. To compensate — in part — for the elimination of operating assistance in urbanized areas over 200,000 in population, the bill includes a broadened definition of preventative maintenance as an eligible use for formula funding. This provision will allow transit operators in all urbanized areas to use their formula funds for activities such as: the improvement or upgrading of a transit vehicle; and, the repair or replacement of transit vehicle systems, subsystems and components. Total spending on all preventative maintenance and operating assistance in urbanized areas of less than 200,000 cannot exceed $400.0 million.

Another change to the formula program is the establishment of a **transit enhancement** program for urbanized areas of over 200,000. This provision would require that these areas dedicate 2% of their formula funding to enhancement activities. The definition of enhancement activities is essentially the same for this program as it is for the transportation enhancement program set-aside in the highway surface transportation program.

Major Capital Program. The bill retains the ISTEA framework for this program and renames the program, "capital program grants and loans". Funds continue to be split on the ISTEA basis of 40% new transit starts (new subways, light rail, etc.), 40% for fixed guideway modernization (existing rail systems), and 20% for bus capital projects. There are a some changes proposed for this program, however. Most of these are of a procedural nature, but there is one new funding initiative.

The new funding activity identified in this section is a **bus technology pilot program.** This new activity is assigned 10% of all bus discretionary funding. The purpose of this section is to demonstrate and test new clean fuel technologies that could reduce atmospheric pollution created by urban buses. The types of technologies eligible for funding are defined quite broadly. A sum of $4.86 million of the funds made available from this program are reserved for fuel cell powered buses or bus maintenance facilities.

A significant procedural change occurs in the new transit start funding category. The Federal Transit Administration (FTA) could not award any full funding grant agreement for a new transit start unless it received specific congressional authorization. The effect of this change is to essentially strip the FTA of its existing discretionary authority over the new start program and transfer this authority from the executive to the legislative branch. .

The legislation also limits the amount of funding available in the new starts program for activities other than final design and construction to 8%. The intent of this provision appears to be twofold. First, the change creates more tangible infrastructure for the available federal dollars. Second, and perhaps equally important, is that it provides a deterrent to spending significant program monies on the design of new start projects that might not actually reach the final design and construction stage as a result of funding and/or environmental problems.

A change to the fixed guideway modernization distribution formula gives newer fixed guideway transit systems access to some additional funding. Older systems do not receive less funding as a result of this provision, but receive less of increased funding made available by this legislation. This provision is viewed as a recognition of the long-term needs of all fixed guideway systems and starts to move the focus of the program away from its pre-ISTEA focus on older systems.

The bill authorizes $4.8 million annually from the fixed guideway modernization program for the Alaska Railroad. The existing program funds commuter rail activities in urban areas, but does not provide funding for intercity rail service. Hence, the provision of funding for the type of passenger rail service provided by the Alaska Railroad may be construed as an expansion in eligible activities within the transit program.

Access to Jobs Pilot Program. The legislation creates a new program to assist welfare recipients in their search for employment by creating transportation opportunities that will allow them to commute to jobs outside their immediate neighborhoods. This program, as a result of a floor amendment, receives an annual authorization of $150.0 million in the bill. Federal funding for the program requires a 50% state/local match, but federal funds provided by other federal programs, such as those funded by the Department of Health and Human Services, could be used to pay the state/local match. A total of 10 projects, in various size communities, would be funded by the bill.

Other Provisions. The legislation provides $5.0 million annually for a new **Joint Partnership** program designed to support consortia and other partnership arrangements that promote transit innovation. The FTA can enter into agreements as a full participant, but the federal share in any joint partnership resultant from this provision is limited to 50%.

Off-Budget Provisions

The legislation as amended contains provisions in Title VII that take the highway trust fund off-budget beginning in FY1999. This represents a change from provisions in the introduced bill that included all transportation trust funds. The off-budget provisions, which have been an important element of the Committee's agenda for several years, were agreed to in advance by the House Leadership.

The revenue title of this legislation will be added by the Committee on Ways and Means. Committee markup occurred on March 26, 1998. As part of the Leadership agreement the revenue title will include provisions that reduce the existing trust fund balances and create a new operating framework for the trust fund. The most important element of this framework is a provision that removes the obligation of the Treasury to pay interest on trust fund balances beginning in FY1999.

S. 1173, Intermodal Surface Transportation Efficiency Act II (ISTEA II)

Introduced September 12, 1997
Reported by Committee on Environment and Public Works, September 17, 1997
1st Session Senate Floor Debate, October 8, 20, 21, 22, 23, 24, and 29, 1997
2nd Session Floor Debate began February 26, 1998
Floor debate completed March 12, 1998, bill returned to Calender
Senate passed H.R. 2400 and inserted the text of S. 1173, April 2, 1998

Policy Focus

ISTEA II is a blended bill that tries to incorporate the essential structural elements of STEP 21 and STARS 2000. At the same time, it tries to retain some portions of ISTEA. As a result, the bill reflects the interests of the three previous bills referred to the Senate Committee on the Environment and Public Works that were summarized earlier in this report. It is also a different bill from BESTEA in its structure, but contains several of the policy goals found in that bill. The principal goal of this legislation appears to be an enhancement of state and local control over highway program spending through a heightened emphasis on the NHS and STP programs. What are viewed as essential ISTEA programs, such as CMAQ and transportation enhancements, are retained and enhanced. Safety is also viewed as an essential program element.[7] This is a 6-year bill providing a total authorization of $214.0 billion for highway, highway safety, and transit programs.

The Senate has now completed action on S. 1173, which it has passed as an amendment in the nature of a substitute to H.R. 2400. Because of the differing provisions of the bills a conference is required.

The bill was subject to significant amendment during floor consideration. Most of the important changes in the bill are financial rather than structural. The single largest change is in the amount of funding provided by the bill. Almost $26.0 billion has been added to the highway program which is now funded at a level of $171.0 billion. An additional $5.0 billion has also been added to the transit program which becomes a $41.3 billion program. With these additions, S. 1173 provides almost as

[7] Only a portion of highway safety is under the jurisdiction of the Committee that authored this legislation. Additional safety titles drafted by the Senate Committee on Commerce, Science, and Transportation were added to the bill during floor consideration.

much highway funding as H.R. 2400 and provides more transit funding than the House bill.

As introduced ISTEA II complied with the Balanced Budget Act of 1997. The amended version exceeds the discretionary caps in the balanced budget agreement. The additional funding for highways added on the floor equates to revenues expected from the 4.3 cent federal fuel tax that was transferred to the highway trust fund last year. Those funds had been designated for other discretionary activities. The Senate Budget Committee leadership has taken the position that it will find offsets in other federal programs to allow highway spending to increase to the authorized levels. These offsets are expected to be part of the Senate version of the FY1999 congressional budget resolution.

A stated goal of ISTEA II as introduced was a guarantee that each state would receive a level of funding equal to 90% of its contribution to the highway account of the highway trust fund. This is the same level envisioned, but never reached in ISTEA. To meet this guarantee, the introduced bill created an entirely new funding formula structure using simpler and more modernized variables. The formulas themselves, however, are complex and somewhat difficult to understand for those not familiar with various measures of highway and traffic activity. This is particularly true of the bill's two equity provisions.

As a result of floor action, the bill now guarantees each state a return of 91%. This increase is accomplished by the addition of new contract authority for the programs in the bill and by the addition of three new funding provisions that could be viewed as equity provisions.

The 91% guarantee provisions and the formulas contained in the bill are viewed by many as favoring southern and western states. The higher funding levels in the amended bill seem to have quelled criticism of the bill by northeastern states and in other states that benefitted from the ISTEA funding structure and felt they would have been disadvantaged by the bill's formula structure.

Highway Program Framework

The legislation adopts the simplified program design envisioned in STEP 21 and STARS 2000 — an NHS program and an STP program — combined with retention of CMAQ as a separate program. The bill uses set-asides in the two largest programs to retain a level of federal effort for activities such as interstate maintenance, and bridge maintenance and construction. The bill retains and expands on the program flexibility found in ISTEA. For example, rail passenger service, provided by AMTRAK or the states, becomes an eligible use for highway funding. In addition, the bill creates a number of specific funding programs for initiatives deemed to be important as part of the federal government's role in the provision of transportation infrastructure.

There are some elements of ISTEA II that are unique when compared with the other bills discussed in this report. Among these is an emphasis on innovative financing techniques using mechanisms such as: state infrastructure banks (SIBs), a new transportation finance and innovation program, and a value pricing initiative.

Another initiative in the bill not found in other legislation is a program for wetlands restoration.

As amended the bill provides increased funding for all of the programs discussed below. The bill does not always detail this increase on a program-by-program basis. Much of this additional funding is targeted at specific states in order to meet the 91% guarantee. These additional funding sources will be discussed in a separate section after the program framework is discussed. For some other programs, such as federal lands highways and Appalachian roads the increases are more easily identified and are incorporated into the program framework discussion. For the purposes of the discussion of programs beginning below this report uses preliminary FHWA data provided to the Senate Environment and Public Works Committee and the language of the bill itself.[8] As a result, the funding levels discussed below should be viewed as being approximate funding levels rather than absolute funding levels.

Interstate and National Highway System Program (INHS). This program is similar in scope to the NHS program in STEP 21 and STARS 2000 proposals. The level of program support, however, is more in keeping with STARS 2000. This is the largest program in ISTEA II. Inclusion of the interstate system in the program name can be construed as support for continuation of a commitment to the interstate system as a separate element of the federal-aid highway system. Unamended average annual funding for this program is slightly below $12.1 billion. Total funding before inclusion of any additional funding is over $72.5 billion for the 6-year period.

The INHS program contains two separate set-asides, **interstate maintenance** and **interstate bridge.** A separate funding authorization for each component is provided within the INHS. Unamended average annual funding for interstate maintenance is just over $4.7 billion. For interstate bridge the average unamended annual level of support is over $1.4 billion. On a combined basis these two components are approximately 50% of total INHS funding. There is an opportunity for significant transfers between these two components and the larger INHS program. These transfers, however, are predicated on a state's ability to demonstrate a continued commitment to interstate and bridge maintenance and improvement.

The legislation significantly broadens the range of eligible activities that can be funded by the INHS program. Among the additions are: funding for Amtrak and other publicly owned intercity rail capital projects; funding for publicly owned components of magnetic levitation (MAGLEV) transportation systems; funding for natural habitat and wetland mitigation (subject to some restrictions); intelligent transportation systems (ITS) capital projects; intracity or intercity rail and bus terminals; and, publicly owned freight transfer terminals (except those at airports and seaports). The bill also expands and/or clarifies use of INHS funds for related safety, planning, and research activities. A final, and unusual, provision allows INHS funds to be spent on airports and seaports in U.S. Territories.

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[8] http:www.senate.gov/~epw/det-avg.htm

The INHS state distribution formula structure requires multiple computations for the two components and for the remainder of the program. The formula for the interstate maintenance component is a straight-forward distribution based 50% on the percentage of interstate lane miles in a state as a percentage of total interstate lane mileage, and 50% on total vehicle miles traveled (VMT) on a state's portion of the interstate system as a percentage of total interstate VMT. The interstate bridge component has an equally straight forward distribution formula based entirely on the total square footage of structurally deficient and functionally obsolete interstate bridges in a state as a percentage of the same measure for all interstate bridges. Remaining INHS funds are distributed using a somewhat more complicated set of variables. There are 5 weighted variables in this calculation; state arterial lane miles (excluding interstates)(20%); state arterial highway VMT (excluding interstates) (29%); the square footage of state structurally deficient and functionally obsolete bridges (excluding interstates)(18%); diesel fuel used on highways in a state (24%); and, a computation based on dividing the total lane miles of principal arterials in a state by state population as a percentage of the same computation for all arterials in all states. Finally, the INHS program is subject to a **minimum apportionment** that guarantees each state at least 0.5% of total program funding.

Surface Transportation Program (STP). The STP is the second largest program in ISTEA II. Average annual unamended authorizations from the program are at a level of $7.15 billion. The STP continues the set-asides found in ISTEA for **transportation enhancements,** urbanized areas, and safety. The set-aside for transportation enhancements is reduced to 8% of total STP funding from the 10% ISTEA level. Because STP is a larger program in ISTEA II, funding for transportation enhancements is actually at a higher level than it was under ISTEA. In addition, the bill provides for innovative financing of transportation enhancement projects. This provision essentially allows new funding sources for the non-federal share of project costs. There is also some expansion of project eligibility for the overall STP that is largely comparable to the expansion detailed above in the INHS program.

The state distribution formula for the STP uses 4 variables: total lane miles on the federal-aid system in a state (20%); total state federal-aid system VMT (30%); total square footage of structurally deficient and functionally obsolete bridges on federal-aid highways within a state (25%); and, state payments into the highway account of the highway trust fund (25%)(for the purposes of this computation the funds associated with the recent transfer of 4.3 cents in fuel taxes as part of the Taxpayer Relief Act of 1997 do not apply.). All states are guaranteed a **minimum apportionment** of at least 0.5% of total program funding.

Congestion Mitigation and Air Quality (CMAQ). The CMAQ program in ISTEA II is a continuation of the ISTEA program with some minor changes. Principal among these is a change in the state distribution formula to adjust for a state's carbon monoxide nonattainment areas and carbon monoxide maintenance areas. States are also given more flexibility in the use of CMAQ funds if they can show that they are providing a level of effort consistent with their respective clean air requirements. Unamended average annual funding for this program is set at just under $1.18 billion. The program continues to provide a **minimum apportionment**

of at least 0.5% for all states. States without clean air problem areas can spend available funds on any activity eligible under the STP.

Equity Adjustment. The legislation creates a 2 step equity adjusted structure consisting of an **ISTEA Transition** program and a **Minimum Guarantee** program. The determination of how much a state may receive as a result of each of these programs uses a complex set of variables. Computations are sequential and interdependent. The bill does not provide specific funding for these programs. Instead these programs are assigned the difference between total obligations in the legislation and those obligations assigned to specific programs. An analysis of ISTEA II by the FHWA made prior to Senate floor consideration of the bill indicates that ISTEA transition program funding is slightly more than $830.0 million on an annual basis and the minimum guarantee program provides just over $1.3 billion in annual funding.[9]

Additional Funding. As previously mentioned the Senate added significant new funding for all of the highway programs by amendment during floor debate, almost $26.0 billion over 6-years. The distribution of these funds took several forms as will be discussed below. The vast majority of these funds are available in the period FY1999 - FY2003. A primary purpose of this structure is to insure the 91% funding guarantee. These programs provide additional funding in the same manner as equity adjustment funds. With the exception of the high-density program these funds are not directed at any specific type of activity.

Added Contract Authority. The bill adds $18.9 billion in new contract authority for the highway program framework, or an annual average of almost $3.2 billion. Distribution of these funds is accomplished in a manner similar to distributions in the highway program framework. These are apportioned funds that will be distributed to states annually on a program-by-program basis.

High-Density Program. This provision creates a new program for states with "higher than average population densities". This is a $1.8 billion 6-year program that is aimed primarily at providing additional assistance to 9 states. Other states my be eligible for discretionary funds from this program in certain circumstances. Funds are distributed on the basis of a formula that uses a number of variables including, population density, total vehicle miles on each states federal-aid highway system, total federal-aid lane miles in urban areas, and total federal-aid lane miles in each state. In addition, the formula accounts for each states assistance level in the highway framework. States submit proposals for projects in high density areas aimed at improving mobility. Each of the states in the program receive an annual minimum of $36.0 million from this program. No state may receive more than 15% of annual program funding.

Bonus Program. Eighteen states receive specific annual levels of assistance from this program. These funds are available for use on any activity identified in the

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[9] The table presenting this FHWA analysis can be found at www.senate.gov/-epw/ita-dan.htm

highway program framework and are treated as additional contract authority. The total authorization for this program is just over $1.9 billion for 6-years.

Further Assistance. Seven states share an annual authorization of $70.0 million for the period FY1999 - FY2003. These funds are also treated as additional contract authority.

Innovative Finance. This bill emphasizes financial innovation as a means of leveraging federal funds in private sector financial markets in a way that seeks to expand total transportation infrastructure funding. The bill devotes an entire subtitle to this initiative. First, it continues and codifies the existing **state infrastructure bank (SIB) program.** It does not provide specific funding for this initiative, but allows states to deposit other program funds in this activity. Second, it provides a new **infrastructure finance and innovation program** with average annual funding of just over $83.3 million. DOT is directed to operate this program in a way that could leverage up to $1.2 billion annually beginning in FY1998 and rising over time to an annual total of $2.0 billion by FY2003. Finally, the bill creates a **value pricing pilot program** as a successor to the congestion pricing provisions in ISTEA. This $8.0 million per year program will allow for up to 15 projects to demonstrate the potential for using value pricing as a way to fund new infrastructure. The number of toll projects in the pilot program is limited to 3. The range of eligible activities that can receive federal assistance is significantly expanded.

Magnetic Levitation (MAGLEV) Transportation Technology Deployment Program. A significant MAGLEV program was a part of ISTEA. For a variety of reasons the funds authorized for the ISTEA MAGLEV program were never appropriated. The ISTEA II program described in this section may overcome some of the difficulties encountered in the ISTEA program and move MAGLEV from a research subject to a working technology. The program provides $980.0 million for MAGLEV capital projects over the 6-year life of the bill. These funds would be provided at a 2/3 federal, 1/3 state/local/other matching ratio. The program is back loaded and provides only limited funding ($30.0 million) during its first two years. This two year period is designed to allow project sponsors to do planning and line up funding. As written, this provision allows federal spending for a wide range of capital activities related to the creation of a working MAGLEV project. The bill also provides that non-U.S. sponsors may participate in a project funded by the bill and that non-U.S. technology can be used in these projects under certain circumstances.

Federal Lands Highway Program. This provision continues the federal lands highway program found in ISTEA. In addition, the program retains the three subprogram structure found in ISTEA. Most of the language in the bill reauthorizing this proposal can be characterized as being clarifying in intent. For example, the bill clarifies the treatment of the federal lands programs as part of the statewide planning process. Further, the legislation clarifies the role and participation of federal land management agencies in the funding and implementation of federal lands projects. This program received a major funding increase during floor consideration. Average annual funding for this program would be authorized at a level of $603.7 million which is significantly above the ISTEA level.

Cooperative Federal Lands Transportation Program. The legislation adopts this program using the same basic framework that was proposed in STARS 2000. Annual funding for the program, $74.0 million, is well below the level envisioned in the earlier legislation. There is a special provision in this section that requires a state with a national park of more than 3,000 square miles in land area, and more than 2.5 million annual visitors, to use at least one-half of its program funds for transportation projects affecting the park.

Appalachian Development Highway System. The bill moves the existing Appalachian Roads Program into the federal-aid highway program framework in the same manner as NEXTEA and BESTEA. The major difference between this provision and BESTEA is the level of funding. As amended, ISTEA II turns this into a significant highway building activity. The amendment approved increased annual average funding from $50.0 million to $365.0 million. Additional amendments approved by the Senate increased the number of counties in the defined Appalachian region, making them eligible for Appalachian roads program assistance.

Trade Corridor and Border Crossing Planning. Like NEXTEA and BESTEA this legislation focuses assistance on growing infrastructure problems at U.S. borders. The bill focuses on creating a coordinated planning framework for efforts to improve transportation in border regions. Program funds can also be used for border capital projects. Up to $10.0 million of program funds can be used for "the construction of transportation infrastructure necessary for law enforcement in border states". An amendment added on the floor allows use of these funds at airports and seaports affected by increased trade with Mexico and Canada. Average annual funding for the program as amended is authorized at a level of $204.4 million.

Other Provisions.

Woodrow Wilson Memorial Bridge. The legislation requires that DOT enter into an agreement with any "capital region jurisdiction" or "authority" that is willing to accept ownership of the bridge for the purpose of enabling its replacement. The provision provides $900.0 million over 6 years to facilitate this project. Funds are provided for all aspects of the bridge project, but the stated priority use of the funds is actual construction. The level of funding for this project is well above that found in any other bill discussed in this report.

Wetland Restoration Pilot Program. This program is designed to offset the loss of wetlands caused by projects carried out as part of the federal-aid highway program. The program creates a process whereby states can apply for federal assistance based on several selection criteria detailed in the legislation. Average annual funding for this activity is set at $16.7 million. Wetland mitigation is a requirement in new federal-aid highway projects. This program represents a new direction for environmental remediation as a part of the federal-aid program because it focuses on problems created by the program in the past.

Historic Covered Bridge Preservation. An amendment adopted during floor consideration creates a new annual $10 million program for the preservation of covered bridges. Funding is provided for FY1999 - FY2003. Most of the emphasis of this program is on the identification and cataloging of historic covered bridges.

By definition these bridges must be at least 50 years old. The program allows some funding to be used for the preservation and/or rehabilitation of these bridges.

Studies and Reports. The bill requires a number of reports on the effectiveness of the federal-aid highway program and on transportation system needs. Most of these studies are to be preformed by the General Accounting Office (GAO). Studies required by this section include: an evaluation of the highway economic requirement system used by DOT in assessing transportation system needs, a study of state investment plans, and a report on the international roughness index which is used as a measure of pavement quality.

Planning. The bill as introduced provides for a more detailed planning environment than that created by ISTEA. Many of the planning requirements in this section, however, are in the form of recommendations. A significant change added on the floor is the elimination of a requirement for stand-alone major investment studies (MIS) beginning six months after enactment of this provision. Another amendment added on the floor gives local governments a greater say in determining whether abandoned rail right-of-ways can be used as recreational trails.

Program Streamlining. The bill contains a number of elements that can be construed as program streamlining. These provisions do not appear to make as many changes as proposed in BESTEA, but are nonetheless potentially very significant. Among the proposed changes is the possible transfer of almost all NHS project oversight duties to a state that reaches an agreement on project management with DOT. A similar framework can also be requested for state oversight of non-NHS projects. Other provisions of the bill change reporting periods for required state reports, allow design-build contracting in certain instances, and encourage project design flexibility.

Demonstration Projects. There are no demonstration projects in S. 1173. A floor amendment to the bill, aimed at staking out a Senate position during a conference with the House, requires that demonstration projects be subject to any subsequent limitation on obligations placed on the highway program. In addition, the amendment limits the amount of funds that a state can allocate to demonstration programs by use of a formula. This represents a change from how demonstration projects were treated in ISTEA. The provision is intended as a statement on the part of the Senate that it does not want demonstration projects to receive special treatment for budget and minimum allocation purposes.

Transit Program Framework[10]

The Senate Banking, Housing, and Urban Development Committee has created a transit program reauthorization vehicle that differs little from the existing ISTEA transit framework. The legislation as reported creates few new programs. Almost all

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[10] Transit provisions were initially found in S. 1271, The Federal Transit Act of 1997. Full Committee mark-up of this legislation occurred on October 7, 1997. The provisions of this bill were incorporated into S. 1173 as a floor amendment and are now the transit title of the legislation.

other changes proposed by the legislation could be viewed as being of a "perfecting" nature.

As introduced, the bill stayed within the Balanced Budget Act guidelines. Total funding in the bill before floor consideration was set at $36.3 billion over 6 years. Average annual funding prior to floor amendment was just under $6.1 billion, which is slightly less than the amount proposed for transit in BESTEA.

During floor consideration the transit title was subject to a number of amendments. The most important of these is a funding increase of $5.0 billion for the period FY1999-FY2003. These funds are directed to specific programs. The majority of these funds are assigned to capital programs. These funds are provided from U.S. Treasury general funds and as a result are subject to later appropriation. The discussion that follows includes the additional funds provided by this amendment. The remaining amendments to the transit title are mostly of a perfecting nature and will also be part of the program descriptions that follow.

Formula Grant Program. The principal change in the formula grant program is a redefinition of the term "capital project" to include preventive maintenance and intelligent transportation systems (ITS). This redefinition gives transit operators considerable new flexibility in decisions on how to use their available federal funding. The bill places some limits on what activities are included in the preventive maintenance definition. A floor amendment expands the definition of preventive maintenance for para-transit operators. This provision is further viewed as an attempt to compensate transit operators in urbanized areas of over 200,000 in population for the loss of operating assistance funds during the last few appropriations cycles. Funding for the overall formula grant program, which includes the **urban formula grants program, the rural formula grants program, and the elderly and disabled program** is increased to an average annual level of $3.37 billion.

Part and parcel to the preventive maintenance provision is the absence in this section of a designated operating assistance component for urbanized areas of over 200,000 population. Operating assistance for large urbanized areas has been a component of every transit program reauthorization since 1974. Operating assistance for urbanized areas with populations of between 50,000 and 200,000 is not precluded, in the sense that transit operators may use any or all of their formula distribution for operating purposes.

All of the programs in this category received additional funding as a result of the amendment boosting total transit funding. For the **rural formula grants** program the increase is major. An amendment to the additional funding amendment for transit dedicates $100.0 million per year to this program. This is a significant program increase and turns an average $178.8 million per year program into a $248.2 million per year program.

Major Capital Programs. The bill in its unamended form retained the ISTEA funding split of 40%, 40%, 20% for new transit starts (new subways, light rail, etc.), fixed guideway modernization (existing subway and light rail systems), and bus capital projects respectively. There are two modest, but nonetheless significant provisions affecting these programs. The first of these is a limitation of 8% on the amount of new transit start funding that can be used for other than final design and construction. The obvious intent of this section is to put a limit on how much of available funding is available for preconstruction activities. The second new provision is a change in distribution formula for fixed guideway modernization. This provision reserves an amount equivalent to FY1997 funding, $760.0 million for distribution on the same basis as accomplished under ISTEA. The ISTEA fixed guideway modernization program is viewed as having a heavy bias toward funding projects on older fixed rail systems. Funds available to the program above this level are distributed in a way that increases the relative amount of funding available for newer fixed guideway systems. Average annual authorizations for this program as amended are set at $1,301.5 million.

The **new start** program received the largest single share of the additional funding provided for transit. The program receives an additional $470.0 million per year for each year in the FY1999 - FY2003 period. This creates a total annual average program of $1.3 billion during the 6-year authorization period. Another amendment added on the floor, reserves not less than 2.8% of new start funding for a reauthorized **ferry boat systems** program. The bus capital program also received additional funding and receives a $521.6 billion average annual authorization.

An additional floor amendment allows capital assistance from the mass transit account to be used for intercity passenger rail service in any state that does not have Amtrak service. This would constitute a new use for capital program monies.

Job Access Grants and Reverse Commute Grants. The legislation provides $250.0 million per year for a new grant program aimed at giving welfare recipients and others better access to jobs. During floor consideration a **reverse commute program** aimed at assisting urban dwellers commute to jobs in suburban areas was created. The reverse commute program receives $100.0 million per year from total program funds. These funds are available for distribution on a formula basis to urbanized areas on the basis of population size. This program is voluntary and provides 50% federal matching funds. Federal funds available from other agencies can, however, be used as part of the state and local match. This provision corresponds to a Clinton Administration priority and is viewed by supporters as a necessary compliment to recently enacted federal welfare reform.

Clean Fuels Formula Grant Program. The bill creates a new program with an annual authorization of $200.0 million to encourage transit's use of clean fuel technologies[11]. The program allows a wide range of activities which can be viewed as contributing to compliance with federal clean air requirements. The program provides for the purchase of buses, related equipment, construction of fueling facilities, and other infrastructure to support the initiative. Technologies supported by this program include, but are not limited to: liquified natural gas (LNG), compressed natural gas (CNG), biodiesel fuels, alcohol fuels, electric vehicles, fuel cell vehicles, and hybrid vehicles. Funds are available on a formula basis to

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[11] The authorization for this program is provided by a take down of up to $100.0 million on an annual basis from the formula grant program and the major capital program.

urbanized areas of various sizes. A maximum of $25.0 million is available on an annual basis for urbanized areas of over 1 million in population. The maximum for urbanized areas of less than 1 million in population is $15.0 million.

Other Provisions.

Planning. The provisions of this section are similar to those proposed in the Highway framework.

Joint Partnership. The bill creates a new "joint partnership program for deployment of innovation". This program allows the Federal Transit Administration (FTA) to join with private and public entities in an attempt to bring the results of major research to market. As envisioned the program would make FTA a partner in these joint ventures. The federal share of any partnership is limited to 50% and any revenues resultant from these partnerships is to be credited to the mass transit account of the highway trust fund.

Leading Issues

Congress has been in the road building business for over 200 years. Transportation is not usually viewed as a partisan issue. To repeat the old saw, there is no such thing as a democratic or republican bridge. As a result, the political dynamics of surface transportation reauthorization are very different from those associated with issues that have partisan overtones. In addition, there are highways, highway users, and highway contractors in all congressional districts. This creates a built-in clientele for highway construction, which is a situation that does not exist for other major transportation activities such as ports and airports.

The question before Congress then is not about whether it should be a participant in the transportation infrastructure business. Rather, the question is about the size and scope of the federal effort and how to pay for it. Because of concerns about the federal budget deficit, most of the discussion about ISTEA reauthorization, until very lately, has been focused on money. Program structure, which was changed dramatically by ISTEA in 1991, has been a secondary issue. As the respective bills move toward conference the structural differences between the two bills will become the primary focus. There are likely to be several contentious issues in conference. The most visible of these being the 1,500 plus, high priority projects in the House bill and the significantly higher levels of funding for transit in the Senate bill. Also at issue are House bill provisions that take the highway trust fund off-budget and requires bill conferees to agree on the budget offsets needed to allow increased spending.

Funding Levels

Every reauthorization of the federal-aid highway program since 1956 has expanded the program in either scope or size, or both. Prior to the beginning of the 105th Congress, there was an expectation that the drive to balance the federal budget might end this trend. Based on legislation introduced in the 105th Congress to date, however, it would appear that program proponents expect growth in the program to continue, and, at a dramatically higher level of funding. The belief that higher funding levels can and should be made available has been further enhanced by Congressional Budget Office forecasts of a possible budget surplus in the years ahead.

The federal-aid highway program, and all other transportation programs reauthorized by this act, are part of the discretionary portion of the federal budget. Under current budget rules, additional spending for most items can only be accommodated by cuts in other discretionary categories and/or identified increases in federal revenues. Proponents of higher spending, which includes the proponents of the bills discussed in this report, are faced with the problem of convincing the respective House and Senate Budget Committees that additional funding for highways can be approved in accordance with the Balanced Budget Act of 1997. Revision of the discretionary caps in the budget can only be accomplished in the FY1999 congressional budget resolution.

At the time of this writing, the Senate has substantially increased funding for the highway program. The Senate Budget Committee in its proposal for the FY1999 budget resolution has identified a number of offsets for the additional highway spending. These same offsets were proposed by the Clinton Administration as part of its budget submission. The Administration, however, intended to use these offsets to fund new education and other social programs. The House, based on a Leadership agreement reflected in the bill, has moved the issue of offsets to the conference committee. While the Administration has not yet threatened a veto of the highway bill because of these offsets, it has expressed its serious concern about these decisions vis-a-vis the understandings included in the Balanced Budget Act of 1997.

Some observers hoped that the possible debate over taking the transportation trust funds off-budget or identifying some other possible trust fund budget treatments, could be obviated if Congress provides for a large increase in highway spending. This apparently will not be the case. H.R. 2400 as passed contains provisions that will take the highway trust fund off-budget. The House proposal does make some changes in the way that off-budget treatment would be provided. It is unclear, however, that these provisions will be acceptable in the Senate, where there is no comparable provision in its legislation, or to the Clinton Administration which has opposed the off-budget initiative in the past.

Formulas, Equity, and the Donor/Donee Issue

Rapidly developing states and rural states have traditionally favored greater state control over program decisions. States with aging infrastructure and significant urban populations have tended to favor the more structured, yet flexible approach embodied in ISTEA. The donor/donee argument also plays a role in the choice of program structure, with donor states typically favoring a less structured program and donee states favoring the more formal structure.

Formulas are the crux of the equity debate and have always been one of the most controversial elements of the federal-aid highway program. Based on the formula proposals embodied in the bills discussed in this report, a continuation of this controversy is likely. Each of the bills has chosen its own formulas and formula variables. These choices reflect the philosophical position of the two bills. The Senate bill appears to be closer in program structure to proposals favored by donor states. The House bill, however, is also attractive to donors in terms of how its dollars are distributed. Donee's are also likely to be torn between features of each bill.

A related issue in the formula debate is the data behind the variables. There are well known questions, for example, about the absolute accuracy of how federal fuel tax contributions are assigned to states, because of where and how the data are collected. These kinds of issues might also be raised about other variables suggested in bills introduced to date. In a $29.0 billion federal-aid highway program, a tenth of a percent change in a distribution scheme equates to a $29.0 million dollar swing in funding. Small changes in the data embodied in formulas, therefore, have the potential to make dramatic changes in funding outcomes.

Some have suggested during the reauthorization debate that money solves all formula problems. What this means, is that a large increase in program authorizations, giving all states significant new funding authority, makes a lot of the debate about program structure secondary. As a result, it becomes possible for proponents of different structural positions to compromise on programs and formulas. Whether this scenario is true or not remains to be seen.

High Priority Projects (Demonstration Projects)

ISTEA contained 539 designated highway projects. These "demonstration projects" were viewed as essential expressions of congressional priorities by supporters and as pork barrel items by opponents. Typically, projects are a House priority. The Senate just as typically opposes them preferring instead to focus on formulas and leave the project selection process to the states. As a result of these differing approaches, the issue of projects almost always becomes an important element at the conference committee stage.

The House bill as passed contains just over 1,500 projects of all types in the highway title. A total of $9.0 billion is specifically authorized for highway projects alone. The Senate bill as expected has a minimum of references to specific projects. In 1991, the Senate acquiesced to the demonstration project provisions in conference and added some projects of its own at that time. Provisions in both House and Senate bills that make demonstration projects part of minimum allocation computations may, or may not, favor the relative view of demonstration projects in either body. The Senate is likely to strongly object to the House's proposal to place demonstration projects outside any future limitation on obligations contained in appropriations legislation. The Senate bill has a provision requiring that projects be subject to obligation limitations.

The Clinton Administration has expressed concern about the demonstration project provisions in the House bill, but again as is the case in the off-budget issue, has not yet threatened a veto. An added element in this year's debate is the possibility that the presidential line item veto could be used on high priority projects.

It remains to be seen, however, whether the line item veto will still be in place at the time this legislation is enacted.[12]

Transit

Transit funding has not been a controversial element in the ongoing reauthorization debate. This situation might change during floor consideration of this legislation, however. Most of the changes in the transit program, with a couple of exceptions, are in keeping with the general policy interests of the transit industry and the Clinton Administration.

As expected, one issue did generate controversy during Senate floor consideration. This is the equity issue, long a part of the highway debate, but a new issue for the transit program. Equity, that is a federal program contribution for each state, has not been a component of the transit program. Some Senators introduced the equity issue during debate about the Senate's additional transit funding amendment and basically threatened to vote against the amendment unless a transit minimum allocation scheme of some sort was created. In the view of equity proponents such a scheme would insure that states without significant transit operations had access to some of the funding provided to the mass transit account resultant from fuel taxes collected in the state. The Senate largely side-stepped the issue for the moment by adopting a compromise position and increasing funding for the existing rural formula grants program. A minimum allocation provision is not included in the passed version of H.R. 2400.

A minium allocation scheme would represent a major change in the structure of the transit program which has always emphasized aid to urban transit systems as its principal goal. Transit supporters believe minimum allocation would dilute the transit program at the expense of the nation's transit systems. It is their view that transit needs are just as great as highway needs and that any dilution of available transit funding could leave the documented needs of urbanized areas unmet. At the same time, they are concerned that this proposal will upset the delicate balance between highway and transit interests that has been forged since highway and transit legislation were combined in 1973.

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[12] U.S. Library of Congress. Congressional Research Service. *Line Item Veto Act of 1996: Impact on Authorizing Committees.* By Louis Fisher. CRS Report 98-12 GOV.

Table 1: Federal-aid Highway and Transit Program Legislation: Average Annual Program Authorizations ($ millions)[a]

Highway Programs	P.L. 102-240 (ISTEA)(Average Annual)	H.R. 2400 (BESTEA)(Estimated Average Annual)	S. 1173 (ISTEA II)(Estimated Average Annual)
National Highway System (NHS)	3,500.0	5,874.2	12,090.0[b]
Interstate maintenance	2,833.3	4,751.2	[c]
High Cost Interstate Construction & Improvement	—	772.0	—
Surface Transportation Program (STP)	3,983.3	6,621.5	7,155.0
Transportation Enhancements[d]	398.3	662.2	572.4
Safety[e]	398.3	662.2	715.5
High Risk Road Safety Improvement	—	958.3	—
Highway Infrastructure Safety Program	—	—	—
CMAQ	1,000.0	1,663.0	1,175.5
Bridge	2,683.3	4,465.2	[f]
Interstate reimbursement	[g]	—	—
SIB & credit enhancements	—	—	[h]
Appalachian Roads	—	375.0	365.0
Equity adjustments	2,751.8	1,354.1	[i]
Additional Funding Provisions	—	—	—
New Contract Authority	—	—	3,156.0
High-Density Program	—	—	300.0
Bonus Program	—	—	318.0
Additional Funding	—	—	58.3
Border Infrastructure & Safety	—	95.0	204.4[j]
Corridor Planning & Development	—	208.3	—
Federal lands total	443.3	488.6	603.7
Indian roads	185.7	207.0	241.7
Public lands highways	166.7	59.7	213.7
Park roads & parkways	81.0	94.6	148.3
Forest highways	[k]	127.3	—
Cooperative federal lands	—	—	74.0
Scenic byways	8.3	30.0	19.3
Recreational trails	30.0	45.0	21.8
High Priority Projects (demo projects)	1,038.1	1512.5	—
Total Highways	20,135.2	29,870.0	27,427.2[l]

Transit Programs	P.L. 102-240 (ISTEA)(Average Annual)	H.R. 2400 (BESTEA)(Estimated Average Annual)	S. 1271 (ISTEA II)(Estimated Average Annual)
Formula Grant Programs	2,900.1	3,413.4	3,370.0
Urban Formula Grants (Section 5307)	2,682.6	3,148.2	3,034.5
Rural Formula Grants (Section 5311)	156.1	183.3	248.2
Elderly and Disabled (Section 5310)	71.4	81.9	87.3
Major Capital Programs (Discretionary) (Section 5309)	2,070.4	2,510.2	2,816.2
New Starts	828.1	1,004.1	1,301.5
Fixed Guideway Modernization	828.1	1,004.1	993.2
Bus Capital	414.1	502.0	521.6
Transit Planning and Research	157.5	96.6	181.5
Access to Jobs and Reverse Commute	—	150.0	250.0
Clean Fuel Program	—	—	*(200.0)*[m]
University Transportation Centers	7.0	6.0	6.0
FTA Administrative Costs	50.7	50.7	58.1
Total Transit	5,249.8	6,221.0	6,881.8

[a] Table shows authorizations as found in appropriate legislation. Mandatory take-downs for administration and other activities are not shown. Each bill provides funds for U.S. Territories, not reflected in the table. Totals may not agree due to rounding and funding for programs not displayed in the table.

[b] This program is renamed the Interstate and National Highway System (INHS).

[c] The interstate maintenance program is a set-asides within INHS funded at $4,701.8 million.

[d] Transportation enhancements are percentage set-asides in ISTEA and BESTEA.

[e] Safety is a percentage set-aside in ISTEA and BESTEA.

[f] The interstate bridge program is a set-aside within INHS funded at $1,431.2 million.

[g] Interstate reimbursement was an equity adjustment in ISTEA. The Act provided $2.0 billion in FY1996 and FY1997.

[h] The bill allows other program funds to be used for SIBs and creates a new infrastructure finance and innovation program funded at an average annual level of $83.3 million.

[i] The bill does not provide a specific authorization for equity programs which are formula driven. FHWA estimates are that transition program funding is slightly more than $830.0 million on an annual basis and that the minimum guarantee program will provide just over $1.3 billion on an annual basis.

[j] This is the total of 3 programs in the legislation dealing with trade corridor and border infrastructure.

[k] ISTEA made forest highways a subsection of the public lands highway program.

[l] Total includes several large programs not shown in the table such as: MAGLEV, intelligent transportation systems funding, Woodrow Wilson bridge replacement, highway safety, and research and development funds.

[m] There is no separate authorization for the Clean Fuels Program. Funds authorized for this program may be derived from formula grants, major capital grants, or a combination of the two programs.

Table 2: Comparison of Average Annual Apportionments for ISTEA, BESTEA (6 years), and ISTEA II (as Amended)

(Dollars in Thousands)

	ISTEA		BESTEA (6 year Avg.)		ISTEA II (as Amended)	
State	$	%	$	%	$	%
Alabama	330,307	1.8059%	552,243	1.9970%	504,020	1.9970%
Alaska	212,564	1.1622%	281,551	1.0181%	312,965	1.2400%
Arizona	255,527	1.3971%	429,482	1.5531%	391,979	1.5531%
Arkansas	263,084	1.4384%	359,591	1.3003%	335,680	1.3300%
California	1,672,645	9.1451%	2,541,688	9.1911%	2,309,150	9.1491%
Colorado	201,166	1.0999%	337,687	1.2211%	321,846	1.2752%
Connecticut	353,399	1.9322%	353,978	1.2800%	433,175	1.7163%
Delaware	72,873	0.3984%	103,461	0.3741%	118,624	0.4700%
Dist. of Col.	92,211	0.5042%	110,128	0.3982%	114,054	0.4519%
Florida	763,285	4.1732%	1,273,337	4.6046%	1,162,146	4.6046%
Georgia	538,293	2.9431%	969,485	3.5058%	884,828	3.5058%
Hawaii	126,673	0.6926%	138,892	0.5023%	150,834	0.5976%
Idaho	125,172	0.6844%	164,528	0.5950%	206,960	0.8200%
Illinois	684,218	3.7409%	1,074,358	3.8850%	839,603	3.3266%
Indiana	409,053	2.2365%	672,632	2.4323%	613,897	2.4323%
Iowa	220,964	1.2081%	343,996	1.2439%	333,054	1.3196%
Kansas	210,317	1.1499%	330,747	1.1960%	330,469	1.3094%
Kentucky	282,429	1.5442%	479,719	1.7347%	437,829	1.7347%
Louisiana	264,360	1.4454%	450,465	1.6289%	447,965	1.7749%
Maine	117,841	0.6443%	138,340	0.5003%	144,825	0.5738%
Maryland	307,274	1.6800%	416,703	1.5069%	380,316	1.5069%
Massachusetts	830,961	4.5432%	590,651	2.1359%	448,470	1.7769%
Michigan	515,698	2.8196%	872,386	3.1547%	796,208	3.1547%
Minnesota	281,012	1.5364%	423,153	1.5302%	377,304	1.4949%
Mississippi	202,580	1.1076%	329,884	1.1929%	318,328	1.2613%
Missouri	404,874	2.2136%	662,521	2.3958%	600,576	2.3795%
Montana	161,873	0.8850%	179,248	0.6482%	267,534	1.0600%
Nebraska	142,455	0.7789%	226,919	0.8206%	211,924	0.8397%

Nevada	117,453	0.6422%	159,163	0.5756%	184,245	0.7300%
New Hampshire	88,538	0.4841%	122,218	0.4420%	131,243	0.5200%
New Jersey	521,721	2.8525%	764,973	2.7662%	608,262	2.4100%
New Mexico	178,644	0.9767%	251,070	0.9079%	265,010	1.0500%
New York	1,002,986	5.4838%	1,480,162	5.3525%	1,287,445	5.1010%
North Carolina	479,459	2.6214%	781,576	2.8263%	713,327	2.8263%
North Dakota	116,407	0.6364%	129,049	0.4667%	184,245	0.7300%
Ohio	656,437	3.5890%	1,043,757	3.7744%	868,982	3.4430%
Oklahoma	260,176	1.4225%	419,602	1.5173%	397,747	1.5759%
Oregon	213,094	1.1651%	337,180	1.2193%	325,000	1.2877%
Pennsylvania	890,935	4.8711%	1,422,897	5.1454%	956,091	3.7881%
Rhode Island	106,168	0.5805%	116,072	0.4197%	146,387	0.5800%
South Carolina	232,381	1.2705%	439,396	1.5889%	401,027	1.5889%
South Dakota	119,605	0.6539%	144,907	0.5240%	196,865	0.7800%
Tennessee	365,874	2.0004%	632,637	2.2877%	571,203	2.2632%
Texas	1,169,888	6.3963%	1,903,745	6.8842%	1,737,506	6.8842%
Utah	130,229	0.7120%	227,456	0.8225%	217,639	0.8623%
Vermont	79,601	0.4352%	106,128	0.3838%	118,624	0.4700%
Virginia	415,589	2.2722%	707,763	2.5594%	645,959	2.5594%
Washington	341,531	1.8673%	524,833	1.8979%	463,929	1.8381%
West Virginia	210,050	1.1484%	311,790	1.1275%	257,663	1.0209%
Wisconsin	351,947	1.9243%	565,178	2.0438%	458,480	1.8165%
Wyoming	115,254	0.6301%	148,408	0.5367%	191,817	0.7600%
Puerto Rico	82,980	0.4537%	106,128	0.3838%	115,814	0.4589%
Total	18,290,053	100.0000%	27,653,862	100.0000%	25,239,073	100.0000%

Note: ISTEA Average includes all apportioned funds AND Demos.
All other Averages include all apportioned funds, EXCEPT Demos and Federal Lands.
BESTEA Average is based on Full Committee Estimate, 2-24-98, 8:00am.

Source: United States Department of Transportation, Federal Highway Administration

Transportation Trust Funds: Budgetary Treatment

Updated April 6, 1998

John W. Fischer
Specialist in Transportation
Economics Division

ABSTRACT

This report addresses issues associated with the purpose and use of transportation trust funds. Understanding how the trust funds operate and how they relate to the federal unified budget is, in reality, complex and difficult. As a result, there is considerable latitude for differing views as to whether the trust funds are meeting their intended goals. This report explores these differing views in the context of legislation that would change the budgetary treatment of transportation trust funds.

This report will be updated as action on legislation is completed. The budget treatment issue has now become part of the debate about reauthorization of federal surface transportation programs. For the most current information on surface transportation reauthorization see: U.S. Library. of Congress. Congressional Research Service. *ISTEA Reauthorization: Highway and Transit Legislative Proposals in the 105th Congress, 2nd Session.* CRS Report 98-221. by John W. Fischer.

Transportation Trust Funds: Budgetary Treatment

Summary

Some Members of Congress believe that the transportation trust funds should be viewed independently of other federal programs, and that federal transportation program spending should closely track revenues collected for the funds. Other Members of Congress believe that the transportation trust funds must be viewed as components of the entire federal budget and not as a separate element of the budget.

Supporters of changing the budget treatment of trust funds, and especially those in favor of moving the trust funds off-budget, state that such a change would create the equivalent of a fire wall around federal transportation programs similar to, but not the same as, the one that exists for the Social Security program. They believe that this mechanism would provide an incentive for budget discipline and reserve the full value of user-fee-funded programs for their mandated purposes. Most importantly, this action would fulfill what they view as a "contract" between the taxpayer and the federal government to spend what are essentially viewed by supporters as user fees.

The basic argument of those opposed to changing the treatment of trust funds is the need to maintain the accountability and integrity of the unified federal budget. They assert that the "surpluses" in the transportation trust funds do not exist because the federal government underspends on transportation programs. Transportation spending increased significantly until FY1995 - FY1996 and then increased slightly in FY1997. In FY1998, transportation spending is again appropriated at an increased level. To opponents of changing the treatment of trust funds, this situation demonstrates that special budget treatment of trust funds is not needed to facilitate necessary federal expenditures on transportation programs.

The 1st Session of the 105th Congress ended without floor action on legislation that would change the budgetary treatment of transportation trust funds. Legislation giving the transportation trust funds off-budget status was introduced in the House early in the 105th Congress. The Truth in Budgeting Act, H.R. 4, attracted wide support in the House and had 242 cosponsors listed as of September 4, 1997. In addition, the provisions of H.R. 4 were incorporated in H.R. 2400, the Building Efficient Surface Transportation and Equity Act of 1997, (BESTEA) as Title VII. In committee markup on March 24, 1998, this title has been modified to take only the highway trust fund off-budget. Floor action on this legislation occurred on April 1, 1998.

The Senate did not consider off-budget legislation in the 1st Session. Instead, legislation that could be viewed as a counterproposal to the off-budget initiative has been introduced. S. 404, the Highway Trust Fund Integrity Act of 1997, proposes the creation of a "revenue constrained fund" within the federal budget that would have some, but not all, of the same spending results as the off-budget bill. The Senate did not consider the budgetary treatment of trust funds during its recently completed floor action on S. 1173, the Intermodal Surface Transportation Efficiency Act of 1997 (ISTEA II), which provides for the long term reauthorization of surface transportation programs. It is likely that the budgetary treatment of trust funds will become an issue in conference on surface transportation legislation.

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The 1st Session of the 105th Congress ended without floor action on legislation that would change the budgetary treatment of transportation trust funds. Legislation giving the transportation trust funds off-budget status was introduced in the House early in the 105th Congress.[1] The Truth in Budgeting Act, H.R. 4, attracted wide support in the House and had 242 cosponsors listed as of September 4, 1997. In addition, the provisions of H.R. 4 were incorporated in H.R. 2400, the Building Efficient Surface Transportation and Equity Act of 1997 (BESTEA), as Title VII. This legislation, which is designed to reauthorize federal surface transportation programs was marked-up in the Committee on Transportation and Infrastructure on September 24, 1997, but was not reported at that time. In committee markup on March 24, 1998, this title has been modified to take only the highway trust fund off-budget. Floor action occurred on April 1, 1998.

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The activity in the 105th Congress on this issue builds on the relative success of off-budget legislation in the 104th Congress. The 104th Congress was something of a milestone for supporters of the off-budget concept because it was the first time that either body of Congress had voted in favor of giving the trust funds off-budget status. The 104th Congress concluded without Senate action on off-budget legislation.

Prior to the 104th Congress this issue was last addressed by the Senate in 1991 and by the Congress as a whole in the 1980s. All of the attempts to move the transportation trust funds off-budget in the 1980s failed, in one case by a very narrow margin. The issue pits those who believe that trust fund revenues should be reserved

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[1]This report discusses major issues relating to proposals to change the budget treatment of transportation trust funds. It will be updated as issues develop and new legislation is introduced. For the most current information about pending legislation, please consult the Legislative Information System (LIS) at http://www.congress.gov.

only for spending on specific programs, against those who believe that trust fund revenues should remain an intrinsic part of the unified federal budget.

The philosophical issues surrounding the transportation trust fund debate are often viewed as being straightforward and relatively easy to understand. Understanding how the trust funds operate and how they relate to the federal unified budget is, in reality, complex and difficult. As a result, there is considerable latitude for differing views as to whether the trust funds are meeting their intended goals. In addition, there is also considerable room for debate about how much spending the trust funds can support.

Trust Fund Origins

Two major transportation trust funds exist: the highway trust fund and the airport and airway trust fund. The highway trust fund consists of two separate accounts — highways and transit — which are sometimes mistakenly referred to as separate trust funds. In practice, the highway account and the transit account are discussed as though they were separate entities, with the highway trust fund being synonymous with the highway account. There are other smaller transportation trust funds, but they generally are not the focus of the budget treatment debate. These include the inland waterways trust fund, the harbor maintenance trust fund, and the national recreational trails trust fund. The national recreational trails trust fund is actually a set-aside within the highway trust fund and would be affected by any decision to change the budget treatment of the highway trust fund.

The oldest and largest of the trust funds is the highway trust fund. This fund was created by a separate revenue title in the Federal-Aid Highway Act of 1956 (1956 Act) (P.L. 84-627). The 1956 Act provided funding for construction of the now virtually complete Dwight D. Eisenhower Interstate Highway System. In addition, the 1956 Act provided some funding for other federal highway programs. The highway trust fund was established as a way to provide funding for capital construction, and this remains its principal focus.

In light of the current budgetary climate, it is interesting to note that the Eisenhower Administration did not originally propose the trust fund "pay-as-you-go" financing system established in the 1956 Act. The Administration, concerned about increasing federal spending, instead proposed the creation of a Federal Highway Corporation with bonding authority; it was to receive a specific portion of the federal gasoline tax to fund its activities. The Administration viewed this mechanism as preferable to incurring an increase in general revenue spending.

Over the last 40 years, the highway trust fund and the federal program it supports have been changed numerous times.[2] In almost every instance, Congress has chosen to expand the scope of the federal highway program. At various times

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[2]For a more detailed history of the trust fund see: U.S. Library of Congress. Congressional Research Service. *Federal Excise Taxes on Gasoline and the Highway Trust Fund: A Short History.* CRS Report 97-853E. by Louis Alan Talley.

over the same period Congress has also chosen concomitantly to increase the revenue stream into the trust fund by raising federal excise taxes on motor fuels. The most recent change in the structure of the federal highway program occurred with enactment of the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) (ISTEA). ISTEA also reauthorized the trust fund revenue title. The last change in the levels of revenue dedicated to the trust fund occurred in 1990, as part of the Omnibus Budget Reconciliation Act of 1990 (OBRA90) (P.L. 101-508).[3]

The second transportation trust fund to be established, the airport and airway trust fund, was created by the revenue title of the Airport and Airway Development Act of 1970 (P.L. 91-258). The "aviation trust fund," as it is also known, was established to provide funding for capital improvements to the Nation's airport and airway system. The scope of the aviation trust fund, like the highway trust fund, has been expanded over time. The most recent reauthorization of aviation programs occurred with passage of Federal Aviation Administration Authorization Act of 1996 (P.L. 104-264). The most recent change in the levels of revenue dedicated to the trust fund occurred as part of the Taxpayers Relief Act of 1996 (P.L. 105-34).

The transit account, created by the Surface Transportation Assistance Act of 1982 (P.L. 97-424), represented the provisional culmination of a long-term congressional debate about the position of transit as part of the national transportation system. The transit account gave the transit industry a consistent federal funding source for capital spending on new and rehabilitated infrastructure and for other purposes.

Revenue sources differ for the various trust funds. The highway trust fund is financed by sales taxes on tires, trucks, buses, and trailers as well as truck usage taxes, but approximately 90% of trust fund revenue comes from excise taxes on motor fuels.[4] The majority of the motor fuel revenue dedicated to the trust fund is derived from an 18.4 cents per gallon tax on gasoline. Of this, 18.3 cents is dedicated directly to the highway trust fund. The transit account receives an allocation equivalent to the revenue generated by 2.85 cents of the tax on motor fuels dedicated to the highway trust fund. The remaining 0.1 cents goes into the leaking underground storage tank (LUST) trust fund. In addition, the fund receives interest on the balances of the fund held in the U.S. Treasury securities.

The aviation trust fund normally receives the vast majority of its funding from a percentage tax on domestic airline tickets (9% in FY1998, dropping to 8.0% in FY1999, and 7.5% in FY2000) and a flight segment tax ($1.00 per segment in FY1998. This tax rises gradually to $3.00 in FY2003, and is thereafter subject to indexation for inflation). Additional funding is obtained from taxes on aviation fuels,

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[3]Federal fuel taxes were raised 4.3 cents by the Omnibus Budget Reconciliation Act of 1993 (OBRA93)(P.L. 103-66). This permanent tax was originally levied for deficit reduction purposes and was deposited in the Treasury's general funds account. As will be discussed later in this report, these revenues are now being deposited in the highway trust fund.

[4]For a discussion of federal transportation fuel taxes see: U.S. Library of Congress. Congressional Research Service. *Transportation Fuel Taxes: What the Taxpayer Relief Act Has Wrought.* CRS Report 97-824E, by Bernard A. Gelb.

cargo waybills, and international departures and arrivals. The aviation trust fund also receives interest on the balances of the fund held in U.S. Treasury securities.

The Genesis of the Off-Budget Debate

Two philosophically different views about how trust funds relate to the budget frame the current debate. According to off-budget proponents, the trust fund mechanism represents a contract with the taxpayers to spend revenues on the specific activities identified as the purpose of the trust fund. In the view of those who support the unified budget approach, a dollar of federal revenue is a dollar of federal revenue. Spending decisions, therefore, need to be in the context of national rather than programmatic requirements.

In straightforward terms, the debate about the budget status of the transportation trust funds is about the allocation and control of federal spending. The transportation trust funds have enjoyed consistent congressional support as the principal funding sources for highway, transit, and aviation activities. There are, however, two longstanding issues — balance and appropriate use — that have periodically arisen over whether this funding mechanism is succeeding in meeting its stated objective.

The balance issue is the most visible of the two and drives the budget treatment debate to a large extent. By far the most contentious disagreement over trust fund spending arises because actual federal spending for trust fund programs often does not match program spending levels set in authorizing legislation. The disagreement over spending levels usually reflects the differing priorities that congressional committees face. For example, the authorizing committees with authority over transportation programs often support full funding for these programs. Budget and appropriations committees, by contrast, often view transportation spending as competing with other federal needs within a broader context of fiscal policy.

Transportation programs have been subject to obligation limitations or ceilings (usually in appropriations legislation) with a resultant decrease in transportation program spending vis-a-vis authorized levels. The obligation limitation mechanism allows Congress to control outlays for programs operating with contract authority. The obligation limitation does not, however, represent a permanent cutback in funding, as these funds are retained as unobligated balances for later use. Higher obligation levels could, therefore, be required in future years to facilitate spending down unobligated balances should Congress deem this desirable.

The appropriate use issue is rooted in an ideological debate over the intended use of trust fund revenues. One school of thought advocates that trust funds should only be expended for capital transportation projects. Another school believes trust funds should pay, at least in part, for the administrative costs of providing transportation services. Use of trust funds to pay for transit operating expenses, for example, is viewed by some as outside the intended scope of the trust fund mandate. Perhaps the longest running dispute of this type involves the level of the trust fund contribution to the operation and maintenance expenses of the Federal Aviation

Administration (FAA). This dispute, apparently settled for the moment, dates back to the Nixon Administration.

Understanding Trust Fund Balances

Unexpended balances exist in both the highway and aviation trust funds. The significance of these balances and the reasons for them differ. A complete understanding of these balances is difficult, in part because of the complexity of trust fund accounting and because of the policy framework in which these funds have existed.[5]

The Highway Trust Fund

The trust fund, and the programs operating out of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) that it supports, must be periodically reauthorized by Congress. The ISTEA provided this authority through FY1997. At the beginning of FY1998 these programs are continuing to operate as a result of a short term authorization approved near the end of the 1st Session of the 105th Congress.

At the end of FY1996, as shown in appendix table 1, the highway account of the highway trust fund had an unexpended balance of $12.1 billion. The transit account, as shown in appendix table 2, had an unexpended balance of $9.5 billion for the same period. It should be understood, however, that there are future commitments against these balances. Hence, they do not represent cash balances available for immediate use. A reason for this is that highway programs operate with contract authority rather than budget authority.

Contract authority is tantamount to, but does not actually involve, entering into a contract to pay for a project at some future date. Under this arrangement, specified in Title 23 USC, authorized funds are automatically made available to the states at the beginning of each fiscal year and may be obligated without appropriations legislation. Appropriations are still required, however, to make outlays at some future date to cover these obligations. States, therefore, may obligate more funds than they actually could outlay at that time, although this does not appear to have drawn down the trust fund balance. For budgetary reasons, Congress routinely limits how much may be obligated in appropriations acts, which does not eliminate these funds, but only delays the timing of their actual use.

Highway and transit grant programs work on a reimbursable basis: states pay for projects up front and federal outlays are made to them only when work is completed and vouchers are presented to the U.S. Department of Transportation (DOT), perhaps months or even years after the project has begun. Work in progress is represented in the trust fund as obligated funds and although they are considered "used" and remain as commitments against the trust fund balances, they are not subtracted from

[5]Detailed financial information about the trust funds is found in the appendix at the end of this report.

balances. Trust fund balances, therefore, appear high in part because funds sufficient to cover actual and expected future commitments must remain available.

Both the highway and transit accounts have substantial short- and long-term commitments. These include payments that will be made in the current fiscal year as projects are completed and, to a much greater extent, outstanding obligations to be made at some unspecified future date. Additionally, there are unobligated amounts that are still dedicated to highway and transit projects, but have not been committed to specific projects.

In FY1994, for example, the highway account showed future commitments of $42.6 billion. If these commitments had been charged against the balance in the highway account at that time, it actually would have shown a deficit. To guarantee the ability to make good on these commitments, Congress, through the Byrd amendment to the Federal-Aid Highway Act of 1956, as amended, restricted the growth of these commitments to a level not to exceed the current year's unexpended balance plus projected income for the following two fiscal years. The Byrd amendment is an automatic device that requires no additional congressional action to implement.

To develop a more meaningful account balance, it is necessary to calculate what would be available at the end of a fiscal year, including expected future revenues and unpaid commitments. The resulting figure is often referred to as the "surplus." Obviously, this process is very sensitive to both expenditure and revenue estimates. In addition, the figure adjusted for the Byrd amendment can be either higher or lower than the unadjusted number, depending on the level of commitments against the unexpended balance and whether the adjustment includes expected interest earnings or changes in anticipated excise tax collections.

Whether this ending balance is a "true" surplus is subject to debate. Although this figure represents uncommitted funds that theoretically could be used for highway projects, the FHWA has argued that maintaining a safe "cushion" of between $1-3 billion is necessary for the highway account to ensure adequate liquidity against changing revenue projections or unanticipated problems. Equally important, these funds are not lost to the states (unless they lapse), but remain in each of their accounts as unobligated balances. To date, no federal transportation funds have ever lapsed because of a limitation placed on obligation levels. Based on projections by the Congressional Budget Office, it would appear that the trust fund could support additional spending on highway and transit programs over the next few years, without creating conflict with the above-mentioned criteria.

A similar procedure can be used to calculate an available spending balance for the transit account. A mechanism similar to the Byrd amendment, but requiring only one additional year's revenue in the calculation, limits commitments from the transit account. The idea of maintaining a safe "cushion" would be equally valid for the transit account, reducing the amount of funds conceivably available for a one-time increase in obligations.

In part because of its effect on the federal deficit, Presidents have often discouraged increased program spending by requesting obligation limitations. If more trust fund money were used, the federal government would have to either decrease spending on other programs, raise taxes, or increase borrowing to prevent an increase in the deficit. This suggests that although surplus balances in the highway trust fund do exist and at times may be either larger or smaller than generally thought, they exist at least partially because of budgetary considerations.

The Airport and Airway Trust Fund

Balances in the aviation trust fund are more difficult to understand against the backdrop of legislative provisions mandating certain spending priorities and recent events that allowed the fund to lapse for extended periods of time. Nonetheless, it is clear that the aviation trust fund maintained a sizable balance for much of its existence. As shown in appendix table 3, the aviation trust fund had an unexpended balance of $11.4 billion at the end of FY1995. After accounting for commitments against the unexpended balance, the fund showed an uncommitted balance, or "surplus," of $5.1 billion. At the end of FY1996, the unexpended balance had dropped to $2.5 billion and the uncommitted balance had dropped to $2.3 billion. This dramatic one-year change was due to a confluence of events beginning in 1996 which severely affected fund revenues without a concomitant change in federal program spending. This situation will be described in more detail subsequently, but it is indicative of the peculiarities that have been associated with the history of this trust fund. Another example, was the legal restriction placed on use of the fund to pay FAA operational expenses in the 1980s, but since dropped, that had a significant effect on the fund balances.

During the 1980s, restrictions on the use of the aviation trust fund monies were legislated by the authorizing committees because of policy differences with the executive branch and the appropriations and budget committees in Congress. These restrictions included mechanisms that automatically limited the availability of trust fund monies in certain instances under the guises of a "cap" and a "penalty clause." The major disagreements centered on how much of the trust fund should support FAA operations vis-a-vis Treasury general funds.. The net result of these restrictions was a several year increase in an already uneven relationship between fund revenues and spending and a concomitant build up in the unexpended balance in the fund.

Another reason the aviation trust fund balance grew in the 1980s was related to delays and problems in implementing the FAA's National Airspace System (NAS) Plan, now known as the Capital Investment Plan (CIP). It entails installation of a complex advanced automation system (AAS) and other equipment related to air traffic control. The AAS integrates considerable new capital investment in computers, radar, and weather monitoring equipment required for managing the explosive growth in air traffic that took place over the last decade. As the NAS implementation plan continued to slip, primarily for technical and procurement reasons, trust fund revenues accumulated faster than they were spent. This action accelerated the surplus buildup, which increased even faster as interest accrued on the balance. In recent years, supporters of the off-budget position have also argued that airport improvement program spending, at below authorized levels, was responsible for additional growth in the surplus

All of the previous problems associated with the balances in the aviation trust fund pale in importance in view of unexpected events affecting the trust fund that occurred initially in 1996 and reoccurred in early 1997. On January 1, 1996, and again on January 1, 1997, authority to collect taxes for the aviation trust fund expired. The first expiration lasted almost 8 months and cost the trust fund approximately $4.0 billion in revenues. The second expiration was much briefer, about two months, costing the trust fund an additional $1 billion. To a significant extent the "surplus" in the aviation trust fund was greatly diminished by these events. The taxes would have expired again on September 30, 1997, without further reauthorization.

After a spring and summer of uncertainty, the aviation tax reauthorization unexpectedly became part of the revenue debate about the balanced budget. The result of this debate was the Taxpayer Relief Act of 1997 (P.L. 105-34) which imposed a new system of aviation taxation effective October 1, 1997. The new system is a compromise that tries to accommodate a demand by some parts of the industry for a tax system related to aviation activity (in this case flight segments were used), but at the same time maintain the strength of the old system by retaining a somewhat reduced ticket tax.. The new taxes will raise an additional $3 billion during the next 5 years, over what might have been expected if the old system had been reauthorized without change

The 4.3 Cents Dilemma

The Taxpayer Relief Act of 1997 made another major change in the revenue stream for the transportation trust funds. Prior to October 1, 1997, 4.3 cents of the fuel tax had been deposited in the Treasury general fund for deficit reduction. Transportation interest groups have long argued that it was inappropriate to use fuel taxes for deficit reduction, arguing instead that all fuel taxes be reserved for transportation purposes. Congress had not accepted this logic when the 4.3 cent charge was enacted as part of OBRA93. During consideration of the Taxpayer Relief Act of 1997, however, the Senate added a provision, later accepted in conference, that redirected the 4.3 cent tax to the highway trust fund or the airport and airway trust fund in most instances. For those funds designated for the highway trust fund there was a further split that provides 3.45 cents to the highway account and reserves the remaining 0.85 cents for the transit account.

This change provides the trust funds, and especially the highway trust fund, with a dramatically increased revenue base. A 1.0 cent increase in the federal fuel tax is generally viewed as providing something over $1.2 billion in new revenue for the highway trust fund. As a result, the highway trust fund could receive over $5.0 billion in additional revenue during FY1998.[6] Growth also occurs in the airport and airway trust fund as a result of the redirection of the 4.3 cents associated with

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[6]There are several estimates that indicate that the actual increase in revenue could equate to as much as $6.2 billion per year depending on increased fuel use associated with economic growth and the increasing popularity of sport-utility vehicles.

aviation fuel use, but the growth is not as dramatic, given the context of the new overall aviation taxing structure discussed in the previous section of this report.

The redirection of the 4.3 cent tax was not accompanied by an increase in transportation spending authority as part of the balanced budget agreement. Hence, while these funds will be assigned to the trust funds, and will count toward the balance in the fund for the purpose of determining interest payments, the funds are not available for transportation activities. Instead, the balanced budget agreement continues to assign spending of these revenues without regard to their changed actuarial placement. The net result of this situation is the likelihood of significant growth in the unexpended balance of all affected transportation trust funds. The highway trust fund will be particularly affected by this situation.

This situation has incensed supporters of increased spending for federal transportation who, as previously mentioned, believe that trust fund revenues and transportation program spending should be linked. Supporters of this position, and this includes some Members of Congress, have vowed to make increased transportation spending, linked to the 4.3 cent revenue stream, a major component of the FY1999 budget agreement debate.

It appears that the supporters of spending the 4.3 cent revenue stream have won their case, at least for the moment. H.R. 2400 and S. 1173 both rely on the additional funding provided by this revenue stream to pay for the large increases in transportation spending found in each of these bills. What remains to be determined is how this increases will be accommodated by offsets and other actions in the FY1999 congressional budget agreement.

Budget Treatment of Transportation Trust Funds

Only the highway trust fund predates the adaptation of the unified budget concept that began in FY1969. Prior to the unified budget, the federal government operated with essentially three budgets: administrative, consolidated cash, and national income accounts. All federal trust fund activities were accounted for in the consolidated cash budget and the national income accounts budget.

The adoption of the unified budget made all trust fund receipts and expenditures part of the annual budget process on an actuarial basis. In making its decision to include trust funds in the unified budget, Congress apparently relied on the recommendations of President Johnson's Commission on Budget Concepts. The Commission identified several major justifications for the inclusion of all trust funds in the budget including: Congress' ongoing responsibility to establish taxes for and benefits to be derived from trust funds; the possible "incentive to finagle budget totals by inventing new trust fund expenditures, ... outside the budget;" and the possibility that trust funds outside the budget "distort priorities of social choice and lead to bad program decisions."[7] The Commission recognized that arguments could be made to support the exclusion of trust funds from the budget. However, it argued successfully that better budget accountability necessitated that trust funds be examined as part of the overall budget.

Comparisons with the Social Security Trust Fund

Those who seek to move the transportation trust funds off-budget frequently refer to the off-budget status of the social security trust fund as a potential model. As a result of OBRA90, the social security trust fund was specifically excluded from budget calculations for the unified federal budget. The legislation did not, however, remove the costs of administering the social security program from the budget. This is worth noting because all of the administrative expenses of the FHWA and a large portion of the FAA's operating and maintenance expenses are derived from the trust funds.

A further, and very important, difference from the transportation trust funds is the social security system's permanent appropriation. This allows the Social Security Administration to distribute funds on a formula basis without any congressional action. Although Congress can, and does, revisit the issue of social security spending from time to time, there is no annual appropriations process or periodic authorization process as there is for transportation programs.

Finally, the total federal deficit is the difference between all federal revenues and outlays including both on-budget and off-budget accounts. The outlays and revenues of the social security system are part of this computation.

The Arguments For and Against Changing the Budget Treatment of Trust Funds (i.e. Off-Budget)

The budget status of the transportation trust funds is at its root a discussion about money and who should have the authority to spend it. What follows is a synopsis of the major arguments that have been put forward to support and oppose taking the trust funds off-budget.[8]

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[7]Tax Institute. *Federal Trust Funds: Budgetary and Other Implications.* New York, 1970. p. 20

[8]For a discussion of the proponents positions on the off-budget debate see: Shuster, Bud. Money to Get America Moving. *Washington Post.* September 15, 1997 (also available at www.house.gov/transportation/bestea/shuster.htm) and Young, J.T. Phantom Highway Surplus. *Journal of Commerce.* November 5, 1997. p. 7A

Arguments for Changing the Budget Treatment of Trust Funds (i.e. Off-Budget)

- The transportation trust funds represent a contract with the Nation's taxpayers. Motorists, airline passengers, and others are paying user fees with the expectation that these fees will be utilized for the programs with which they are associated. If the trust funds are not going to be used for their stated purposes, the excise taxes that fund them should be eliminated.

- According to the Federal Highway Administration and others, there are significant infrastructure needs nationwide that are not being met. If the trust funds were made available by changing the budget treatment of trust funds, they could support needed additional federal transportation spending. Prior to the increase in revenues to the highway fund discussed earlier, proponents have sometimes identified the possible additional spending as being up to $2 billion annually on highways and transit, and $1 billion annually on aviation. Given the new revenues to the fund these estimates are now likely to be much higher.

- Inclusion of the trust funds in the unified budget subjects their outlays to the budget process, thereby making them liable to legislated spending limitations, which are not based on an analysis of national transportation spending needs.

- Using the trust fund balances to help mask the size of the overall federal deficit perverts the unified budget process by giving a false impression of the magnitude of the deficit and thereby distorts the overall budget process.

- Taking the transportation trust funds off-budget, or otherwise changing their budget treatment, would not encourage others to seek changes to additional trust funds. This is because transportation trust funds differ from other trust funds by being user-fee financed, having a self-regulating deficit precluding mechanism in the form of the Byrd amendment, and by funding long-term programs.

- Proponents of the off-budget position reject the argument that trust fund surpluses are the result of intergovernmental transfers resultant from the payment of interest on balances in the fund. They argue that interest payments are a fair mechanism for compensating the funds for their temporary use to fund other federal activities. In addition, the regulations requiring interest payments predate the transportation trust funds and are applied to all trust funds.

- Taking the trust funds off-budget would eliminate the temptation they present to those seeking funding sources for other projects.

Arguments Against Changing the Budget Treatment of Trust Funds (i.e. Off-Budget)

- The unified budget is an essential tool for understanding how the federal government collects and spends **all** of its funds. Any federal activity affects the economy as a whole. Attempts to isolate specific activities, such as transportation, from view could distort overall federal economic policy formulation.

- Many of the "surpluses" in the transportation trust funds are derived, at least in part, from intergovernmental transfers, in large part as a result of interest paid by the treasury on trust fund balances. These payments could be viewed as subsidies to transportation at the expense of other federal programs. As a result, the surpluses have often distorted the trust fund balances in the same way that off-budget advocates claim that the surpluses distort the federal deficit.

- When viewed from a historical perspective, outlays from the trust funds have exceeded revenues into the funds in many years, particularly in the 1980s and well into the 1990s. This is only possible because of the aforementioned intergovernmental transfers and the compounding of the interest payments. This is particularly true for the highway trust fund. This situation shows that the federal government's transportation program spending in recent times is in line with, or exceeds, what the trust funds should provide by way of outlays.

- Changing the budget treatment of transportation trust funds could encourage the advocates of other federal spending programs to seek similar status. If a significant number of these requests were granted the unified budget process would cease to afford Congress the ability to determine national priorities on a recurring basis.

- Off-budget programs with automatic spending authority dilute the control of Congress over policy decisions. Such a situation is at odds with the constitutional mandate for Congress to approve all federal spending.

- Off-budget status for specific transportation activities, such as highways, could decimate funding for non-trust fund federal transportation programs that would have to take the brunt of any deficit reduction efforts because they are all part of the same budget function area (function 400).

- The unified budget does not prevent Congress from spending more on transportation if it so chooses. In fact, transportation spending has risen significantly over the last four decades.

The Off-Budget Debate in the 104th Congress

On February 7, 1995, Representative Shuster, Chairman of the House Committee on Transportation and Infrastructure, with cosponsorship from committee majority and minority leadership, introduced H.R. 842, the "Truth in Budgeting Act." The bill as introduced would have afforded the highway, aviation, inland waterways, and harbor maintenance trust funds off-budget status.

The proposed legislation enforced the off-budget status of the trust funds by prohibiting their inclusion in the budget of the United States and the congressional budget, and by exempting the trust funds from any general budget limitations. The bill detailed specific safeguards against deficit spending from the various trust funds and a process for determining the availability of funds for additional spending from the trust funds. The legislation did not call for a permanent appropriation, leaving the role of appropriation committees unchanged. On May 3, 1995, the House Committee on Transportation and Infrastructure reported H.R. 842 to the House. The legislation passed in committee on a unanimous voice vote without amendment.

The principal supporters of this legislation in the House were the aforementioned Chairman and leadership of the Committee on Transportation and Infrastructure. In addition, the legislation had the strong support of Representative Clinger, then Chairman of the House Committee on Government Reform and Oversight. The off-budget argument also had the ardent and active support of most transportation and construction trade interest groups. It also had the support of many business groups, such as the U.S. Chamber of Commerce. These organizations banded together in "The Alliance for Truth in Transportation Budgeting." This organization conducted a very visible effort in support of H.R. 842.

Opposition to the legislation in the House came largely from Members of the Budget and Appropriations Committees. The Chairman of the Subcommittee on Transportation of the House Committee on Appropriations, Representative Wolf, opposed taking the trust funds off-budget. Budget Committee Chairman Kasich also opposed to the legislation.

The Clinton Administration similarly took a strong stand against H.R. 842. In a March 27, 1995 letter to the Chairman and Ranking Members of the principal committees considering this legislation, the then Director of the Office of Management and Budget, Alice Rivlin, took a strong stand against efforts to move the trust funds off-budget. The letter detailed the Administration's objections to the legislation and discussed what it viewed as serious budgetary problems with the off-budget initiative. Opposition to this legislation outside of Congress and the Administration also exists.

The budget resolutions passed by Congress for FY1996 and FY1997 continued to treat the transportation trust funds as part of the unified budget. Both proposals required significant decreases in transportation program spending over the next 7 years as part of an overall federal deficit reduction program. As a result of these recommendations it is likely that all federal transportation programs supported either by the trust funds or by general funds would be subject to reduced funding.

Representative Shuster attempted to bring up the off-budget issue as part of the floor debate on the FY1996 House budget resolution. The Rules Committee, however, did not allow this issue to be brought to the floor at that time. Instead, Speaker Gingrich announced the formation of a Speaker's Task Force on Transportation in mid-1995 to address this issue and make a recommendation to the House on how transportation funding issues, including the off-budget issue should be addressed. The task force was to be chaired by the Speaker and included Representatives Shuster, Livingston, Wolf, Kasich, Molinari, Franks (NJ) and Hobson. No deadline for a task force recommendation was established. During the remainder of the 104th Congress, the task force met intermittently and has disbanded without putting forth any specific recommendations.

Pending the task force's recommendations there was little congressional attention to the off-budget issue during the summer of 1995. This situation changed briefly in September 1995, however. The House Committee on Transportation and Infrastructure reported H.R. 2274, the National Highway System Designation Act of 1995, which incorporated the provisions of H.R. 842. By agreement with the House leadership, the bill was stripped of its off-budget provisions during consideration by the Rules Committee. In return for dropping these provisions, proponents of H.R. 842 apparently were promised a floor debate and vote on the issue before the end of the first session of the 104th Congress. The crowded legislative calendar at the end of the first session precluded this debate.

House Floor consideration of H.R. 842 occurred on April 17, 1996. Several amendments were considered and all but two were defeated. The two amendments that were approved were both introduced by the sponsors of H.R. 842 and could be viewed as perfecting amendments. The amendments insured that future transportation program spending would be subject to the presidential line-item veto and required that the annual interest level accruing to the transportation trust funds not exceed the level accruing to other federal trust funds.

Final passage of H.R. 842 came on a vote of 284 to 143, with 5 Members not voting. This represented a much larger margin of success than many observers had forecast prior to the vote. Supporters of the legislation hoped that this high level of support would provide the bill with the momentum needed to bring about Senate action.

Interest in the off-budget debate in the Senate, however, could be viewed as tepid. Senators Lott and Baucus introduced legislation, S. 729, that would have the same effect as the H.R. 842. Lobbying efforts supporting the Senate legislation intensified following House passage of the legislation. Several Senators, including Environment and Public Works Committee Chairman Chafee and Budget Committee Chairman Domenici, are on record as opposing any change in the budgetary treatment of trust funds and circulated a "Dear Colleague" letter confirming this position. The 104th Congress ended without any Senate action on the off-budget proposal.

Efforts to Change the Budget Treatment of Trust Funds in the 1st Session of the 105th Congress

Chairman Shuster and other supporters of the off-budget concept frequently stated their intention to make an off-budget bill one of the first pieces of legislation introduced in the 105th Congress. They followed through on this promise by introducing H.R. 4, The Truth in Budgeting Act, on January 7, 1997. The bill also received expedited attention in the House Committee on Transportation and Infrastructure and was reported to the House on March 5, 1997. The legislation has attracted wide support in the House with 242 cosponsors listed as of September 24, 1997.

The off-budget debate has always been a major component of the argument about federal transportation program spending. The authority to operate these programs, contained in the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240)(ISTEA), expired at the end of FY1997.[9] These programs are currently operating on an interim funding basis, but this interim funding will expire by the summer of 1998.

As part of the reauthorization debate there are a number of Members seeking major changes in the ISTEA structure. The seemingly most contentious change is a possible reallocation of assistance among states, combined with a significant increase in federal surface transportation program spending. The additional spending, required by these proposals, could come from off-budget legislation, creation of a "revenue constrained fund" (RCF)(discussed in the next section), and/or from tapping all, or part, of the 4.3 cent fuel tax that has been redirected to the highway trust fund.

Reauthorization legislation typically requires a revenue title, which means that the overall operation and funding of the highway trust fund will be part of the reauthorization debate. In fact, the off-budget issue has now become part of reauthorization legislation under consideration in the House. The provisions of H.R. 4 were incorporated in H.R. 2400, the Building Efficient Surface Transportation and Equity Act of 1997 (BESTEA), as Title VII (introduced September 4, 1997). This legislation was marked-up by the Committee on Transportation and Infrastructure on September 24, 1997, but was not reported at that time.

Proponents of the off-budget initiative have retained the same support base that promoted the effort in 104th Congress. The field of opponents is also essentially the same, with the leadership of the House Budget and Appropriations Committees actively opposing the off-budget bill.

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[9]For a discussion of ISTEA issues and legislation see: U.S. Library of Congress. Congressional Research Service. *Highway and Transit Program Reauthorization: ISTEA Revisited?* CRS Report 97-194E. by John W. Fischer and William A. Lipford; and *ISTEA Reauthorization: Highway Related Legislative Proposals in the 105th Congress 2nd Session.* CRS Report 98-221E. by John W. Fischer.

The Revenue Constrained Fund (RCF) Option

Senators Chafee and Bond introduced legislation near the beginning of the 105th Congress that can be viewed as an alternative to the off-budget initiative. The Highway Trust Fund Integrity Act of 1997, S. 404, deals only with the highway account of the highway trust fund. The legislation would create a new budget category called a revenue constrained fund (RCF). The RCF would remain on budget, subject to special budget rules.

The RCF is straightforward in concept. The RCF links revenues to the fund and spending from the fund. Under the RCF spending for highways would equal last year's revenues. If revenues go down, spending goes down. Hence the description of this concept as "constrained".

Supporters of the RCF see it as a way to allow increased spending for highways based on actual trust fund revenues. This position is supported by historical growth in the trust fund revenue stream which has been gradual and sustained. From the perspective of the federal budget, supporters of the RCF view it as being essentially revenue neutral.

The RCF proposal is silent on how to treat existing unexpended balances in the highway trust fund. Supporters of the legislation view the RCF as a clean starting point for the future.

Supporters of the off-budget position have generally welcomed the RCF as a step in what they see as the right direction. They do not, however, view it as going far enough towards freeing the trust funds from the budget process.

The off-budget idea has known proponents in the Senate, but has not attracted the level of support seen in the House. It is also likely that the RCF proposal will compete with the off-budget initiative in the Senate. As a result, it is not possible to predict whether trust fund budget legislation will ultimately fare better in the Senate in the 105th Congress than it did in the 104th.

Efforts to Change the Budget Treatment of Trust Funds in the 2nd Session of the 105th Congress

In early February the Speaker of the House formed a task force charged with working out the Leadership's plan for the FY1999 budget cycle. Reauthorization of surface transportation programs was an important component in this discussion. Chairman Shuster apparently convinced the Leadership of the need to press forward on H.R. 2400 at the funding levels proposed in the 1st Session. As part of the agreement reached by the task force, the Transportation and Infrastructure Committee could move its reauthorization bill to the floor with off-budget provisions. These provisions, however, could only affect the highway trust fund and would affect the future operation of the fund.

On March 24, 1998, the House Committee on Transportation and Infrastructure marked-up H.R. 2400 and reported it. By prior agreement with the House leadership the manager's amendment to the bill modifies the off-budget provision so that it refers to only the highway trust fund. This provision takes the highway trust fund off-budget beginning in FY1999.

On March 26, 1998, the House Committee on Ways and Means reported the revenue title of H.R. 2400. As part of the same Leadership agreement this provision reduces the beginning of year unexpended balances for FY1999 in the highway account and mass transit account to $8.0 million and $5.5 million respectively. In addition, the title provides that interest paid on balances in the trust fund in future years will not accrue to the trust fund.

There are still a number of Members of the House known to be opposed to the off-budget provisions of H.R. 2400. Amendments to undue the leadership agreement were offered when H.R. 2400 was considered on the floor on April 1, 1998. All of these efforts were unsuccessful by wide margins.

The Senate in its consideration of reauthorization of surface transportation programs, S. 1173, did not address the budget treatment issue. This means that off-budget treatment may become an issue during conference on the respective House and Senate surface transportation reauthorization bills.

The FY1999 Budget Agreement

The budget status of the transportation trust funds is likely to become entangled in the debate about the FY1999 congressional budget resolution. The balanced budget agreement reached by the Clinton Administration and congressional leadership in FY1998 provided transportation programs in general, and surface transportation programs in particular, with only modest increases in funding during the life of the agreement. These levels are well below those in H.R. 2400 and S. 1173.

Under existing budget rules additional transportation spending must be offset by decreased spending on other governmental activities in the discretionary part of the budget. The Senate Budget Committee in its FY1999 budget proposal has accommodated the increased spending levels in S.1173, by using offsets proposed in the Clinton Administration budget. The Administration, however, had a different set of spending priorities in mind when it proposed these offsets and is expected to object to the Senate plan in its current form.

The House Budget Committee has not yet proposed an FY1999 budget plan. It is not expected to act until after the Easter district work period. H.R. 2400 accommodates this timetable by including a provision in Title 11 that requires that offsets be found in conference. It is not clear that the Senate will agree to this arrangement.

Conclusions

Regardless of where trust funds reside in terms of the unified budget, they remain federal accounts with a dedicated revenue stream. As such, they must still be accounted for from an actuarial standpoint. The observation that the "devil is in the details" would seem to be applicable in this context.

Congress, of course, can revisit any issue as changing situations may dictate. The current "security" of the social security trust fund occurred only after a decade of consideration and there are still those within Congress who would like to see the budget status of this trust fund revisited. The transportation trust fund's budget status has now been revisited over the course of a decade as well. It remains to be seen whether Congress will decide to move the transportation trust funds out of the unified budget or leave their budget status unchanged.

For Additional Reading

U.S. Congress. House. Committee on Transportation and Infrastructure. *Truth in Budgeting Act.* Report to accompany H.R. 842. Report 104-499, Part I. 104th Congress, 2nd Session. Washington, U.S. Govt. Print. Off., March 27, 1996. 19 p.

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U.S. Congress. House. Committee on the Budget. *The Implications of Taking the Transportation Trust Funds Off-Budget.* Hearings. Serial No. 104-25. 104th Congress, 2nd Session. Washington. U.S. Govt. Print. Off., March 28, 1996. 65 p.

U.S. Congress. House. Joint Committee on Taxation. *Present Law and Background Information on Federal Transportation Excise Taxes and Trust Fund Expenditure Programs.* Report (unnumbered). Prepared for the use of the Committee on Ways and Means. Washington, U.S. Govt. Print. Off. November 14, 1996. 109 p.

U.S. Congress. Senate. Committee on Appropriations. *Transportation Trust Funds, Fiscal Year 1990.* Hearings, 101st Congress, 1st Session. Washington, U.S. Govt. Print. Off., May 11, 1989.

U.S. Congressional Budget Office. *Paying for Highways, Airways, and Waterways: How Can Users Be Charged?* CBO Study. May 1992. 75 p.

U.S. General Accounting Office. *Airport and Airway Trust Fund: Effects of the Trust Fund Taxes' Lapsing on FAA's Budget.* GAO/RCED-96-130. Washington, U.S. Govt. Print. Off., April 1996. 10 p.

U.S. Department of Transportation. Federal Highway Administration. *Financing Federal-Aid Highways.* FHWA-PL-92-016, May 1992.

Appendix

Table 1. Balances of the Highway Account of the Highway Trust Fund, FY1988-FY1996 (in millions of dollars)

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Tax Revenue During the Period										
Total Tax Revenue	12,836	14,359	12,472	14,494	15,664	16,046	**14,660***	**20,420**	22,034	20,689
Cash Outlays During the Period										
Total Annual Outlays	14,038	13,603	14,375	14,687	15,518	16,641	19,011	19,472	20,018	20,871
Net Income Before Interest	-1,201	756	-1,903	-193	146	-595	**-4,351***	948	2,016	-182
Interest on Investments	809	776	981	810	909	818	754	547	658	802
Change in Cash	-392	1,532	-922	617	1,055	223	**-3,597***	1,495	2,674	620
Trust Fund Balances										
Unexpended Balance, Start of Year	9,412	9,019	10,551	9,629	10,246	11,301	11,524	7,927	9,421	11,658
Change in Cash	-392	1,532	-922	617	1,055	223	**-3,598***	1,495	2,674	620
Unexpended Balance, End of Year	9,019	10,551	9,629	10,246	11,301	11,524	**7,926***	9,421	12,095	12,278

* The U.S. Treasury failed to credit the trust fund with $1.6 billion in tax revenues collected in FY1994. These revenues have been credited to the FY1995 beginning balance. This accounting situation distorts the FY1994 numbers.

Source: U.S. Government. Office of Management and Budget. *Budget of the United States Government*, various years.

Table 2. Balances of the Transit Account of the Highway Trust Fund, FY1988-FY1996 (in millions of dollars)

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Tax Revenue During the Period										
Total Tax Revenue	1,277	1,269	1,395	**2,485***	**1,070***	1,949	2,008	2,192	2,617	3,198
Cash Outlays During the Period										
Total Outlays	696	849	879	1,054	1,268	1,916	3,364	3,179	3,336	3,663
Net Income Before Interest	582	420	516	1,431	-198	33	-1,355	-987	-719	-465
Interest on Investments	384	469	581	664	746	710	684	621	665	638
Change in Cash	966	889	1,097	2,095	548	743	-672	-366	-54	173
Trust Fund Balances										
Unexpended Balance, Start of Year	4,202	5,168	6,057	7,154	9,249	9,797	10,617	9,945	9,579	9,525
Change in Cash	966	889	1,097	2,095	548	743	-672	-366	-54	173
Unexpended Balance, End of Year	5,168	6,057	7,154	9,249	9,797	10,474	9,945	9,579	9,525	9,698

* The U.S.Treasury over credited FY1991 tax receipts and applied corrections in FY1992.

Source: U.S. Government. Office of Management and Budget. *Budget of the United States Government*, various years.

Table 3. Balances of the Airport and Airway Trust Fund, FY1988-FY1996 (in millions of dollars)

	1988	1989	1990	1991	1992	1993	1994	1995	1996[c]	1997
Tax Revenue During the Period										
Passenger Ticket Tax	2,815	3,201	3,219	4,341	4,012	2,677	4,528	4,768	2,123	3,389
Waybill Tax	168	181	178	222	249	255	284	361	151	331
Fuel Tax	117	629	141	140	167	121	187	211	3	128
International Departure Tax	95	106	180	217	231	223	218	233	128	194
Total Tax Revenue[a]	3,189	3,665	3,700	4,910	4,644	3,261	5,217	6,363	2,369	4,027
Cash Outlays During the Period										
Federal Aviation Administration:										
Airport Grants-in-aid	825	1,135	1,220	1,541	1,672	1,931	1.620	1,826	1,450	1,489
Facilities & Equipment	1,043	1,088	1,317	1,512	1,885	2,166	2,434	2,639	1,866	2,310
Research, Engineering, & Development	170	128	154	179	214	212	226	232	186	218
FAA Operations	830	478	807	2,032	2,110	2,279	2,199	2,546	2,223	1661
Total Annual Outlays[b]	2,896	2,858	3,528	5,299	5,978	6,654	6,547	7,384	5,806	5,758
Net Income Before Interest	293	807	172	-389	-1,334	-3,393	-1,330	-1,021	-3,437	-1,731
Interest on Investments	893	1,009	1,245	1,297	1,273	1,040	837	757	759	481
Change in Cash	1,185	1,816	1,417	908	-61	-2,353	-493	-264	-2,678	-1,250
Trust Fund Balances										
Unexpended Balance, Start of Year	9,935	11,120	12,936	14,353	15,261	15,200	12,851	12,386	5,167	4,355
Change in Cash	1,185	1,816	1,417	908	-61	-2,353	-465	-264	-2,678	-872
Unexpended Balance, End of Year	11,120	12,936	14,353	15,261	15,200	12,847	12,386	11,365	2,516	3,483

[a] Includes refunds of taxes and offsetting collections.
[b] Includes offsetting collections and additional payments.
[c] All trust fund activities for FY1996 are affected by the lapse in revenue collection authority during the January - August 1996 period.
Source: U.S. Government. Office of Management and Budget. *Budget of the United States Government*, various years.

Surface Transportation Reauthorization: Budget and Policy Issues

by the Democratic Staff of the House Budget Committee
U.S. Rep. John Spratt (D-SC), Ranking Member

March 23, 1998

This document has not been reviewed and approved by the Democratic Caucus of the Budget Committee and may not necessarily reflect the views of all members.

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Setting federal funding levels for transportation has recently been an extremely contentious issue in Congress. During consideration in the House of the fiscal year 1998 budget resolution, an amendment was offered that would have increased transportation funding at the expense of other discretionary programs, thereby breaking the Bipartisan Budget Agreement. The amendment was defeated by only two votes. Additionally, the law authorizing federal surface transportation programs the Intermodal Surface Transportation Efficiency Act of 1991, or ISTEA expired on September 30, 1997. Disagreements among legislators but not necessarily partisan battles were severe enough that reauthorization had to be put off until this year. (Congress passed and the President signed into law an interim funding bill, the Surface Transportation Extension Act of 1997, but that measure does not extend beyond May 1, 1998.) Thus, many of the issues that were brought up during the first session of the 105th Congress are being revisited this year.

This report is designed as a briefing on several aspects of transportation funding. First, what is Congress considering this year? Second, how might an increase in transportation funding affect the budget as a whole? Third, does Congress now provide adequate transportation funding? Fourth, what is the significance of the balances in the highway trust fund? Finally, what are the implications of changing trust fund budgetary treatment or financing? (An appendix discusses the unusual budgetary treatment of trust fund spending.)

I. ISTEA Reauthorization

Current Status Short-Term Authorization

As mentioned above, federal surface transportation programs are currently operating under a short-term authorization. The Surface Transportation Extension Act of 1997 (P.L. 105-130) did not extend ISTEA for six months, as some had proposed. Instead, for highway programs, the Act provides $5.5 billion in contract authority as an advance against the fiscal year 1998 contract authority that will eventually be provided in a reauthorization bill. States may also obligate previously unobligated federal-aid highway apportionments, up to an obligation limitation of $9.8 billion.[1] The law also authorizes $15.5 million for the minimum allocation program.[2] The advance authorization of $5.5 billion and the $15.5 million for the minimum allocation are both apportioned based on states' relative shares of fiscal year 1997 funding. Under the Act, states may not obligate funds after May 1, 1998. Thus, pressure remains for Congress to take action soon.

On March 12, 1998, the Senate passed S. 1173, the Intermodal Surface Transportation Efficiency Act of 1997 (ISTEA II), by a vote of 96 to 4. The House of Representatives has not yet taken any action, but the House Committee on Transportation and Infrastructure has scheduled a markup of H.R. 2400, the Building Efficient Surface Transportation and Equity Act of 1997 (BESTEA) for March 24, 1998, and floor consideration for April 1, 1998. Even if the House passes H.R. 2400 that day, the conference committee will probably have to reconcile significant differences between the House and Senate bills.

The following table shows contract authority levels for the President's proposal, the Senate-passed bill, and the House bill as marked up by committee last fall. For comparison, the table also shows contract authority levels for the Balanced Budget Act of 1997 (BBA) and projected Highway Trust Fund excise tax revenue.[3] Outlay estimates are generally not yet available. The President's proposal and the House and Senate bills are described in the following sections.

Table I: ISTEA Reauthorization Proposals

Contract Authority and Projected Trust Fund Excise Tax Re

by Fiscal Year, Billions of Dollars

	1998	1999	2000	2001	2002	2003	9
NEXTEA (Administration)	**28.3**	**28.2**	**28.1**	**28.1**	**28.1**	**28.8**	1
Highways	23.2	23.1	23.0	23.0	22.9	23.5	1
Transit	5.1	5.1	5.1	5.1	5.1	5.2	
BESTEA (Shuster-Oberstar)	**30.2**	**34.3**	**38.4**	**38.4**	**38.4**	**38.4**	2
Highways	24.9	28.5	32.0	32.0	32.0	32.0	1
Transit	5.4	5.9	6.4	6.4	6.4	6.4	
Revised ISTEA II (Senate)*	**30.3**	**35.3**	**36.1**	**36.8**	**37.5**	**38.4**	2
Highways	24.7	28.5	29.2	29.7	30.2	30.9	1
Transit	5.7	6.8	7.0	7.1	7.3	7.5	
BBA**	**29.8**	**28.4**	**29.1**	**29.7**	**30.4**	**na**	
Highways	24.9	23.4	23.9	24.4	24.9	**na**	
Transit	4.9	5.1	5.2	5.3	5.5	**na**	
HTF Excise Tax Revenue**	**31.4**	**32.0**	**32.5**	**33.0**	**33.6**	**34.1**	1
Highways	27.1	27.6	28.1	28.5	29.0	29.5	1
Transit	4.3	4.4	4.4	4.5	4.6	4.7	

Note: Numbers may not add due to rounding.

* Reflects amendments to S. 1173 that provide additional contract authority of $25.8 billion for highway

** BBA and revenues presented for comparison. Revenues adjusted to correct for the shift of $5.9 billio

Source: Contract authority numbers provided by DOT (prior to passage of S. 1173 and markup of H

to S. 1173 based upon consultation with the Senate Budget Committee. BBA and tax revenue figures

Trust Fund. (For purposes of comparing NEXTEA with the House and Senate bills, which only include highway and transit programs, $4.8 billion in NEXTEA budget authority for rail provisions is omitted from the figures in this report.)4

Senate-Passed S. 1173 (ISTEA II)

As previously stated, the Senate passed S. 1173, the Intermodal Surface Transportation Efficiency Act of 1997 (ISTEA II), by a vote of 96 to 4 on March 12, 1998. The bill as reported by committee embodied a compromise among different regional interests and sought to abide by funding levels set in the BBA. ISTEA II was amended on the Senate floor, however, to include additional contract authority of $25.8 billion for highways and $5.0 billion for mass transit. As passed, the bill provides a total of $214.5 billion in contract authority over the six-year period 19982003 $173.2 billion for highways and $41.3 billion for mass transit. Not only do ISTEA II funding levels exceed levels set in the BBA and in the President's budget, but they also far exceed projections for Highway Trust Fund excise tax revenues that will be collected over the six years, and they even exceed projections for excise tax revenues plus interest.

According to the Senate Committee on Environment and Public Works, ISTEA II provides a guarantee that each state will receive a level of funding equal to at least 91 percent of the state's contribution to the highway account of the Highway Trust Fund. Unlike the House bill, the Senate bill includes no money for demonstration projects. The bill expands program flexibility and includes funding for SIBs and other innovative financing mechanisms.

H.R. 2400 (BESTEA)

The approach used by the House Committee on Transportation and Infrastructure when it marked up H.R. 2400 last September was to increase the amount of funding available for transportation, add a few programs, and update the formulas for apportioning funds to the states.

BESTEA authorizes a total of $218 billion in contract authority over the six-year period 19982003 $181.3 billion for highways and $36.7 billion for mass transit. The bill will include a reported $9 billion in "high priority projects," commonly referred to as demonstration projects, or "demos."5 As with ISTEA II, not only do BESTEA funding levels exceed levels set in the BBA, but they also far exceed projections for Highway Trust Fund excise tax revenues that will be collected over the six years, and they even exceed projections for excise tax revenues plus interest.

The formula changes and overall spending levels in BESTEA are intended to provide states with a guaranteed 95 percent allocation of certain funds. This is not a 95 percent return on contributions into the Highway Trust Fund, however, because funds for some programs are distributed before the apportionment formulas are applied. If a state receives a relatively small share of these other funds, then its overall return may be less than 95 percent.

As previously mentioned, BESTEA includes several new programs. For example, the high-cost interstate system reconstruction and improvement program is designed to fund major projects in the interstate system that states would not otherwise fund using their regular annual obligations because of the high costs of such projects. The high-risk road safety improvement program provides funding to states for roads that are subject to significant numbers of severe motor vehicle crashes that incur fatalities or incapacitating injuries.

BESTEA also includes language providing for immediate off-budget treatment of the transportation trust funds, although some reports indicate this provision may not take effect until 2001. If the trust funds are taken off budget in a manner consistent with the language previously included in H.R. 2400, then the trust funds would not be subject to any budgetary constraints. Because these trust fund outlays are considered discretionary, removing them from the budget would require OMB to reduce the statutory "caps" on other discretionary programs. But it is unclear by how much the discretionary caps would be reduced in response to taking the trust funds off budget. (See Part V, *Moving the Trust Funds Off Budget*, for a more detailed explanation.)

Offsets for Increased Funding

Senate Budget Committee Chairman Domenici's budget resolution, which the Senate Budget Committee ordered reported on March 18, 1998, assumed increased transportation spending and identified the following offsets, which total $19.0 billion in outlays over five years:

- reverse the Veterans Administration General Counsel's recent decision regarding compensation to veterans for smoking-related illnesses, saving $10.5 billion over five years;
- reduce federal Medicaid and Food Stamp payments to states for administrative costs, $3.6 billion;
- reduce spending for the Social Services Block Grant (Title XX), $3.1 billion;
- increase the FHA guaranteed loan ceiling, $1.0 billion;
- terminate Federal Crop Insurance for tobacco producers, cap mandatory Commodity Credit Corporation automated data processing costs, and eliminate the Market Access Program, $0.6 billion;
- increase Ginnie Mae broker premiums, $0.2 billion.

These offsets do not appear to be sufficient to cover the increased outlays in the Senate bill relative to the BBA. The Senate-passed bill may exceed BBA outlay levels by as much as $23.6 billion over five years, but the offsets total only $19.0 billion. In addition, the increased costs authorized in the Senate bill grow from year to year, while the savings from the assumed offsets do not.

In the House, the offset problem will be compounded by the additional $3.5 billion of contract authority in the bill compared with the Senate bill. If the reported $9 billion for demos is in addition to the $218 billion, that would further raise the costs. (In total, these additional contract authority levels could yield as much as $8 billion to $9 billion in additional outlays beyond those in the Senate bill.)

II. How Would an Increase in Transportation Funding Affect the Budget as a Whole?

As explained in the appendix, outlays from the transportation trust funds are considered discretionary. They therefore compete with all other discretionary programs within fixed "caps," which are set by statute through 2002.6 If the current budgetary treatment of transportation programs remains unchanged, an increase in highway spending would necessarily result in a decrease in some or all other discretionary programs e.g., natural resources, energy, space and science, the environment, community development, education, housing, veterans' medical care, some law enforcement activities, the legislative and judicial branches, and (after 1999) defense. Furthermore, the annual appropriations process would be the arena in which the ultimate decisions would be made how much of the authorized transportation increase to allow, and which programs to cut in return.

New legislation could change the budgetary treatment of some or all transportation trust fund amounts from discretionary to mandatory. ISTEA II does not do so, nor does BESTEA as it was drafted last fall. If, however, such a legislative change were enacted, then three outcomes (or some combination) are possible:

- If the transportation increases were not offset by legislation cutting entitlements or increasing revenues, OMB would be required to order "sequestration" of Medicare, farm price supports, and certain other entitlements to offset the increases. This is a consequence of the "pay-as-you-go" (PAYGO) rule for mandatory spending and revenues, which applies through 2002.7

- If the transportation increases were so offset, and the offsets were selected from those proposed in President Clinton's 1999 budget, then those offsets would no longer be available to finance other initiatives contained in that budget; child care, school construction, class-size reductions, and so on, would be partly squeezed out. This type of outcome is implied by the Republican budget resolution approved by the Senate Budget Committee, which lists many of President Clinton's mandatory offsets as "reductions assumed to offset the increased outlays resulting from [ISTEA II]."

- Finally, transportation increases could be offset by other entitlement cuts or revenue increases beyond those proposed in the President's budget.

Alternatively, legislation could be enacted placing transportation programs "off budget." In such a case, neither the caps on discretionary funding nor the pay-as-you-go rule would apply, so budget rules would not require that an increase in transportation spending be offset. Rather, the increase would reduce projected surpluses (and under CBO estimates, probably throw the 2002 budget back into deficit). The President has argued that "every penny of any surplus" should be reserved for Social Security; in this context, reducing projected surpluses by increasing transportation spending "off budget" would conflict with the goal of saving all surpluses for Social Security.

III. Does Congress Provide Adequate Funds for Transportation?

Transportation Needs

In light of the political pressure for increasing transportation funding, one may logically question to what extent transportation has unmet funding needs. Perhaps the most authoritative account of the condition of the nation's highway system is the biennial report that the Department of Transportation is statutorily required to submit to Congress, the most recent of which was delivered in October 1995.[8] The report, *1995 Status of the Nation's Surface Transportation System: Condition and Performance*, includes statistics on highway and transit system conditions (e.g., road surface conditions as measured by the Present Serviceability Rating and the International Roughness Index) as well as financial data on the cost of system maintenance and repair (e.g., the "cost to maintain" and "cost to improve" highways, bridges, and transit).

The aforementioned report displays statistics on pavement conditions by road type (interstate, principal arterial, collectors, etc.) and differentiates between urban and rural areas. Overall highway system performance as measured by these statistics, including all road types for both urban and rural areas, is summarized in the following table:

Table II: Highway Pavement Conditions Summary

Percent of Miles	Pavement Condition	
16	Very Good	"New or almost new pavement...."
19	Good	"In decent condition..."
34	Fair	"Will likely need improvement in the near future...."
17	Mediocre	"Needs improvement in the near future...."
9	Poor	"Needs immediate improvement to restore serviceability."
5	Unpaved	

The following cost statistics suggest a need for increased transportation funding. Before examining the cost statistics, however, it is important to define DOT's terminology. First, both "cost to maintain" and "cost to improve" are reported as the average annual cost over a twenty year period, assuming 2.2 percent compound annual travel growth for highways and 2.4 percent compound annual travel growth for transit.9 Using an annual average over twenty years, especially one incorporating travel growth, does not necessarily present a good measure for comparing any given year (except at the midpoint). That is, using the average annual measure as a benchmark overstates needs in the short run but understates them during the second ten years. Second, the "cost to maintain" measures assume that overall system performance would remain about the same; some deficiencies would be corrected and other portions would worsen. (For highways and transit, "cost to maintain" includes capacity expansion as well as system preservation components.) Third, all numbers are reported in 1993 dollars. Fourth, the "cost to improve" measures for highways, bridges, and transit incorporate various assumptions about what measures constitute "improvement." Finally, the dollar amounts reported for the cost measures are estimates of total capital investment required from *all sources*, not just federal programs.10

That said, the following tables show DOT's findings:

Table III: Projected Investment Requirements, All Sources

1994-2013 Annual Average, Billions of Dollars

	Cost to Maintain	Cost to Improve
Highways	49.7	65.1
Bridges	5.1	8.9
Transit	7.9	12.9
Total	**62.7**	**86.9**

As previously stated, it is difficult to use a twenty-year annual average as a benchmark to determine current performance. Thus, Table IV presents a clearer picture albeit a snapshot for a single year and not necessarily a representation of the current situation of how a single year's outlays compared to needs for the following year.

Table IV: 1994 Investment Required vs. 1993 Capital Outlay			
Billions of Dollars			
	1994 Cost to Maintain	1994 Cost to Improve	1993 Capital Outlay*
Highways	44.8	59.3	28.8
Bridges	5.1	8.9	6.0
Transit	7.3	11.8	5.7
Total	**57.2**	**80.0**	**40.5**
*Capital outlay related to capital investment requirements.			

Much of the data presented in the DOT study is subject to interpretation. Nonetheless, the study indicates that the nation has unmet transportation funding needs. The question for policymakers is how to address these needs when weighed against budget constraints and other unmet national needs.

How Has Transportation Funding Fared Recently?

Transportation has fared relatively well compared with spending for other domestic priorities during the drive to balance the budget. For fiscal years 1998 through 2002, allocations for discretionary outlays for transportation in the fiscal year 1998 budget resolution exceeded those in the President's budget by $8.2 billion over five years. In the 1998 budget resolution, transportation was the only function that received any increase in discretionary outlays over the President's budget. All other functions were below the President's request over the five-year period 1998-2002.

The 1998 appropriations process also provided generous spending for transportation relative to other spending priorities. The 1998 transportation appropriations bill provides $42.2 billion in total budgetary resources11 $5.1 billion (13.7%) greater than the enacted 1997 level. For highway programs alone, the 1998 bill provides $23.3 billion in total budgetary resources $2.3 billion (11.1%) greater than the enacted 1997 level. Press accounts of the bill, however, describe highway spending as almost twenty percent higher than the 1997 level. This figure represents the increase in the obligation limitation for federal-aid highways. For 1998 the obligation ceiling is $21.5 billion, a $3.5 billion increase (19.4%) over the 1997 level, not including 1997 supplemental obligation authority. The levels in the 1998 bill appear to conform to the budget agreement.12

Shuster-Oberstar Amendment to the FY 1998 Budget Resolution

During floor debate on the fiscal year 1998 House budget resolution, Representatives Shuster and Oberstar in the budget resolution. The amendment failed by a vote of 214-216.

IV. What About the Trust Fund Balances?

Current Revenue and Spending Levels

For its 1998 baseline, the Congressional Budget Office estimates tax revenues and outlays for the Highway Trust Fund, including both highway and transit accounts, at $25.6 billion and $26.5 billion for the year, respectively. The following table displays a detailed breakdown of these numbers:

Table V: Highway Trust Fund Summary

Fiscal Year 1998, Millions of Dollars

	Highway Account	Transit Account	Total
Balance, Beginning of Year	12,513	9,827	22,340
Tax Revenue	22,164	3,407	25,571
Interest	848	643	1,491
Total Revenue	23,012	4,050	27,062
Outlays	22,328	4,221	26,549
Total Revenue Less Outlays	685	(171)	513
Balance, End of Year	13,198	9,656	22,853

Note: Numbers may not add due to rounding.

As shown in the table, total trust fund outlays exceed tax revenue for the year by nearly $1but fall short of total revenues by $513 million because of $1.5 billion earned in interest on prior balances, resulting in an end of year balance of $22.9 billion.13 This balance is one of the justifications used by advocates for increasing transportation spending. Indeed, CBO estimates that if Highway Trust Fund outlays grow at the rate of inflation from 1998 baseline levels, then the trust fund balance will reach approximately $64by the end of 2003. Inferring that the current balance stems from years of revenues exceeding outlays, however, does not provide the full picture of the trust fund's spending history.

Past Causes of the Balances

The previous example showing the Highway Trust Fund summary for fiscal year 1998 demonstrates a trend that characterizes the lifetime of the fund. Since the fund's inception in 1956 through fiscal year 1995, total outlays from the fund exceeded excise tax revenues by $6.3 billion for both highway and transit accounts. When interest is included, however, outlays fall short of total fund revenues by $19.0 billion.14 Such a large discrepancy is not due merely to interest accumulating during the spendout of transportation dollars; there have been periods when program funding fell significantly short of tax revenues.

For example, during the period from 1967 through 1979, revenues (including both excise tax receipts and interest income) to the highway account of the Highway Trust Fund exceeded outlays by $12.3 billion. Excise tax receipts alone surpassed outlays by $7.8 billion. Consequently, the balance in the account grew from $243 million at the end of 1966 to $12.6 billion at the end of 1979 a level that was not attained again until 1997. This account build-up was due to deliberate efforts by the Johnson and Nixon Administrations to control government spending on certain non-defense programs.

From 1980 through 1995, however, outlays outpaced tax revenues by $14.2 billion but fell short of total fund revenues by $6.4 billion. (For only the highway account of the Highway Trust Fund, outlays exceeded tax receipts by $18.0 billion and total fund revenues by $3.1 billion.) The account balance fell sharply in 1980 and 1981, but began growing again in 1983, due mainly to increasing balances in the transit account. (Recently, balances have begun to grow more quickly. This is explained in the following section.) Both outlays and revenues rose over the same period, with outlays rising from $7.2 billion in 1979 to $22.7 billion in 1995.

Thus, at least since 1980, persistent account balances are not the result of policies that prevent spending from dedicated revenues. As previously illustrated, Highway Trust Fund highway and transit account outlays are projected to exceed tax revenues by nearly $1 in 1998 but fall short of tax revenues plus interest by about half that amount. Rather, the build-up of account balances from the late 1960s through the 1970s created a surplus in the fund which has continued earning interest at a compound rate to this day, even though spending has usually exceeded tax revenues.

Changes to the Tax Structure

The build-up of persistent account balances has also been exacerbated in recent years by changes to the tax structure. Prior to the Surface Transportation Assistance Act of 1982 (STAA), the excise tax rate on gasoline had been 4 cents per gallon. The STAA raised the tax rate per gallon to 9 cents, 1 cent of which was earmarked for the newly created transit account. (The Superfund Amendments and Reauthorization Act of 1986 then added 0.1 cents per gallon for the leaking underground storage tank (LUST) trust fund, bringing the total tax rate to 9.1 cents per gallon.) The Omnibus Budget Reconciliation Act of 1990 subsequently increased the tax rate by 5 cents per gallon 2.5 cents each for the general fund and the Highway Trust Fund (2 cents for the highway account and 0.5 cents for the transit account). The 2.5 cents for deficit reduction was authorized through fiscal year 1995, while the 2.5 cents for the Highway Trust Fund was a permanent increase.

The Omnibus Budget Reconciliation Act of 1993 (OBRA93) further changed the tax structure, raising the excise tax on gasoline from 14.1 cents per gallon to 18.4 cents per gallon. This permanent 4.3 cent increase was intended for deficit reduction and therefore added to the amount designated for the general fund, raising that portion to 6.8 cents per gallon. The act also extended the 2.5 cent tax rate that had gone to the general fund through fiscal year 1999, but transferred that portion of the excise tax to the Highway Trust Fund effective October 1, 1995 with 2 cents dedicated to the highway account and the remaining 0.5 cents for transit. When the 2.5 cents reverted to the Highway Trust Fund, the trust fund portion of the tax rate grew from 11.5 cents per gallon (10 cents highway, 1.5 cents transit) to 14.0 cents per gallon (12 cents highway, 2 cents transit).

By transferring a portion of the excise tax that had previously been earmarked for deficit reduction to the trust fund, OBRA93 marked an important departure from previous authorizations. The trust fund would begin receiving tax revenue that had not been considered as part of the regular surface transportation authorization in this case, ISTEA. With the precedent established, this would not be the last time that gas taxes earmarked for deficit reduction would later be diverted to the Highway Trust Fund.

The Taxpayer Relief Act of 1997 (P.L. 105-34) included a provision to transfer to the Highway Trust Fund the 4.3 cents per gallon of motor fuels excise tax that previously was dedicated to the general fund for deficit reduction. According to CBO estimates, the shift of the 4.3 cents should increase tax revenue to the Highway Trust Fund by $6 billion to $7 billion annually.

The transfer arose as part of a compromise to provide additional funding for Amtrak. Some senators wanted to dedicate 0.5 cents of the 4.3 cents for Amtrak. Other negotiators, meanwhile, did not want to dedicate any of the 4.3 cents to Amtrak without also directing the rest to the Highway Trust Fund. Later, the conference agreement on the tax bill provided $2.3 billion for Amtrak capital through a retroactive tax refund, which precluded the need for the 0.5 cents from the general fund portion of the motor fuels excise tax. Despite the alternative resolution of the Amtrak funding problem, the tax shift was not dropped. Instead, the entire 4.3 cents was dedicated to the Highway Trust Fund.

The shifts of the 2.5 cents and 4.3 cents have dramatically altered forecasts for trust fund tax receipts and balances. Without these transfers, trust fund receipts would probably grow at a pace roughly equal to inflation over the next several years, and the trust fund balances would remain fairly stable. Instead, the balances will grow or if spending is increased to the levels supported by the most stalwart advocates of transportation spending remain stable.

General Fund Spending on Transportation

The amount of transportation spending that has been funded not from the Highway Trust Fund but from the general fund of the U.S. Treasury is usually overlooked during debate about increasing transportation funding. The General Accounting Office recently released a report15 on what the status of the highway account of the Highway Trust Fund would be if it had financed all highway expenditures (i.e., if highway projects funded from the general fund had instead been funded from the trust fund).

GAO estimates that if the $39.3 billion expended from the general fund for highways from 1957 through 1996 had been expended from the trust fund, and interest had been charged to the fund for negative balances (as it is now credited for positive balances), then the highway account balance at the end of fiscal year 1996 would have been -$152.7 billion. (This compares to the actual highway account balance at the end of 1996 of $11.6 billion.) According to GAO, the additional $39.3 billion in expenditures would have generated $124.9 billion in interest charges.16 This calculation suggests that total transportation funding, including both trust fund and general fund spending, has significantly exceeded fuel tax revenues plus interest.

Economic Theory and Trust Fund Balances

Many economists have a different perspective on the issue of trust fund balances. They generally view trust funds of this type as not meaningful, and instead make the following arguments. First, they consider transportation infrastructure to be beneficial to society as a whole, not just to drivers. This consideration suggests that (a) transportation should be funded from general revenues, not earmarked revenues, and (b) the level of funding should be based on the need for infrastructure relative to other competing public needs.

Second, economists generally argue that the level of gasoline taxes should be that which internalizes, in the price of gas at the pump, the societal costs of pollution. Such an approach facilitates efficient marketplace trade-offs among cleaner and dirtier energy sources. Thus, there is no necessary relationship between the desirable level of gasoline taxes and the desirable level of infrastructure funding.

V. Moving the Trust Funds Off Budget

Many transportation advocates hope to take the transportation trust funds off budget. During the 104th Congress, House Transportation and Infrastructure Committee Chairman Shuster introduced H.R. 842, the "Truth in Budgeting Act," which provided off-budget treatment for the Highway Trust Fund, the Airport and

Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund. The bill passed the House by a vote of 284 to 143 but was never considered by the Senate.

Chairman Shuster introduced essentially the same bill, H.R. 4, during the first session of the 105th Congress. After being referred to the Transportation and Infrastructure Committee and the Budget Committee, the bill was marked up and ordered reported by the Transportation Committee but was not considered by the Budget Committee or the full House. Last fall the language of H.R. 4 was incorporated as a title of H.R. 2400.

From a budgeting perspective, off-budget treatment for the transportation trust funds is undesirable. Taking the trust funds off budget would provide preferential treatment for transportation spending over other programs. While transportation may have unmet funding needs, other domestic priorities such as education, the environment, and health research also have unmet funding needs. One of the principle reasons for a unified federal budget is to allow lawmakers to review the relative needs of various programs from year to year and allocate scarce resources in whatever manner they believe best serves the public; taking the trust funds off budget would allow transportation spending to circumvent this system.

Taking the trust funds off budget not only would favor transportation over other programs, but it could reduce funding available for other programs. Under current law, if the trust funds are taken off budget then OMB must lower the discretionary caps by some corresponding amount. It is likely, however, that the reduction in the discretionary caps will be greater than the obligation limitations that the appropriators otherwise would have set. Thus, other discretionary programs would receive less funding. Alternatively, failure to lower the discretionary caps or to find other mandatory offsets would result in much higher federal spending, which would jeopardize our success in getting rid of the deficit.

Taking the trust funds off budget would also set a precedent for over 150 other trust funds. If additional trust funds were also taken off budget, budgetary pressures on spending for programs without trust funds would be exacerbated.

Appendix: Background on Trust Fund Revenue and Spending

Excise Taxes

The Federal-Aid Highway Act of 1956 greatly expanded and accelerated the highway program, including the Interstate Highway System. Concurrently, the Highway Revenue Act of 1956 created the Highway Trust Fund to provide funding, through grants to states, for the construction and rehabilitation of highways. The trust fund receives revenues from excise taxes and other taxes on highway users.

Today, approximately 90 percent of tax revenues paid into the trust fund comes from excise taxes on motor fuels, such as an 18.4 cents per gallon tax on gasoline. Other funding is derived from sales taxes on tires, trucks, buses, trailers, and truck usage taxes. Additionally, balances in the account generate revenues from interest payments, since those balances are invested in Treasury securities.

Contract Authority

Although most discretionary spending in the federal budget is controlled by budget authority and outlays through the appropriations process, most transportation spending is handled differently. Most highway and transit programs are funded by contract authority, which permits funds to be obligated but not expended. The contract authority is appropriated from the Highway Trust Fund directly by the authorizing committee.17 If this were the whole story (see below for obligation limits and the role of the appropriators), these trust fund programs would be classified as mandatory, subject to the pay-as-you-go rules, and limited by Section 302 allocations to the authorizing committees.

Obligation Limitations

Obligation limitations also referred to as obligation ceilings or ob limits are placed on the use of contract authority (otherwise available to the Department of Transportation) by the annual transportation appropriations bill. For this reason, the actual cost of the program is ultimately controlled by the Appropriations Committee. As a result, the program outlays are classified as discretionary, and therefore must compete within the discretionary caps and are constrained by politics and Congressional rules to fit within the Section 302 allocation to the Appropriations Committees.18

Outlays

While obligations are commitments to pay out money, the actual payments are called outlays. The federal share of transportation projects is typically provided as a reimbursement to state departments of transportation. States pay contractors for completed work and submit vouchers to the U.S. Department of Transportation. The federal transportation outlays are recorded when the U.S. Treasury subsequently transfers funds to the states.

Exempts

Some transportation programs are exempt from obligation limitations. The minimum allocation program, emergency relief, and contract authority demonstration projects (demos) are not covered by annual obligation limits, so they are truly mandatory programs. Thus, these programs are subject to the pay-as-you-go rules.19

End Notes

1 See the appendix for additional information on obligation limitations and other trust fund revenue and spending terms.
2 The minimum allocation guarantees each state a percentage of total apportionments for certain programs that is not less than ninety percent of the percentage of its estimated contributions to the highway account of the Highway Trust Fund that is, ninety percent of a state's *relative share* of contributions. This is not to be confused with the "ninety percent of payments" adjustment, which a qualifying state receives to ensure that its apportionments for the fiscal year and allocations for the previous fiscal year will be at least ninety percent of its contributions to the highway account of the Highway Trust Fund.
3 The 1997 BBA did not include explicit details on transportation funding, such as levels of contract authority or obligation limitations. The BBA contract authority numbers presented in the table are derived from the Transportation Committee's fiscal year 1998 Section 302(a) allocations. The trust fund revenue projections are from CBO.
4 The different reauthorization proposals have varying provisions for highway safety, research, and other programs. For purposes of this report, funding for these programs is included in the numbers for highway funding.
5 It is not yet clear whether the \$9 billion in demos will be included within the total of \$218 billion or are in addition to that amount.
6 For 1998 and 1999, there are separate caps for defense and non-defense programs. For 1998-2000, there are also separate caps for the Violent Crime Reduction Trust Fund.
7 In this context, the word *increase* means an increase relative to existing 1998 funding projected to grow only with inflation.
8 The 1995 report is still the most current edition, and there is some controversy surrounding the 1997 report, which was due in January 1997. DOT has apparently delayed the report at OMB's direction. Furthermore, according to the January 22, 1998, *Daily Report for Executives*, Federal Highway Administration officials have confirmed that the report has been scaled down from approximately 300 pages to only about 60 and omits many of the previously-included tables on costs to maintain or improve conditions of roads and bridges.
9 These figures are based on travel growth estimates that differ significantly from historical growth patterns. For more details on DOT's methodology, please refer to U.S. Department of Transportation, *1995 Status of the Nation's Surface Transportation System: Condition and Performance*, Chapter 5: "Highway, Bridge and Transit Future Investment Requirements."
10 The DOT report does not detail private sector capital investments in transportation. Within the public sector, all levels of government spent over \$39.0 billion on highway and bridge capital improvements in 1993. Of the

$39.0 billion, the federal share consisted of $0.3 billion spent by the federal government and $17.1 billion of federal funds spent by state and local governments. Thus, the federal share was $17.4 billion of the $39.0 billion (44.6%). Of total 1993 highway and bridge spending (including capital, noncapital, and debt retirement) of $88.5 billion, the federal government provided $18.2 billion (20.6%). Similarly, all levels of government provided a total of $15.5 billion for transit in 1993, of which $3.3 billion (21.3%) was the federal share. While federal funding for transit capital assistance remained fairly constant between 1988 and 1993, state and local contributions grew. (However, federal capital assistance for transit grew significantly after 1993.)

11 Total budget resources are comprised of discretionary budget authority and, where applicable, obligation limitations.

12 The $42.2 billion of overall budgetary resources falls below the budget agreement total budget authority of $46.4 billion for function 400. The budget agreement did not include details beyond the function total, such as levels of trust fund obligation limitations.

13 One could question the use of 1998 as an example; the Taxpayer Relief Act of 1997 delayed deposits into the Highway Trust Fund from August and September 1998 until October 5 shifting $5.9 billion in deposits from FY 1998 into FY 1999. If the FY 1998 revenue numbers were adjusted to correct for this abnormality, then outlays would indeed fall short of the $31.4 billion in excise tax revenues (not to mention tax revenues plus interest). However, the example still serves well for illustrative purposes, and there have been many years in the recent past when outlays exceeded excise tax revenues.

14 For only the highway account, outlays exceeded tax revenues by $10.1 billion but fell short of tax revenues plus interest by $9.4 billion. For the transit account, which was not created until 1983, outlays fell short of tax revenues by $3.8 billion and tax revenues plus interest by $9.6 billion. Some mass transit advocates would argue that transit has historically been underfunded. (Transit account outlays increased significantly beginning in 1994, however.)

15 *Highway Trust Fund: Possible Impact if It Had Financed All Highway Expenditures*, GAO/RCED-98-78R, February 6, 1998.

16 This scenario is impossible because the Byrd Amendment would have prevented such excessive commitments, not to mention political forces that probably would have come into play.

17 The direct appropriation by the authorizing committee is allowable notwithstanding House and Senate rules because contract authority is not considered an "appropriation" within the rules.

18 The current system of scoring mandatory contract authority and discretionary outlays is not consistent with how other programs are scored (nor is it logical). Logic suggests that both the budget authority, equal to the obligation limitation, and the outlays should be considered discretionary. (OMB has proposed but not implemented this change.) Alternatively, the obligation limit should be viewed as producing budget authority and outlay *savings* to be credited to the appropriators.

19 When periodically reauthorizing the exempt programs, the authorizing committees cannot set funding levels above baseline unless the additional spending is offset elsewhere by decreased mandatory spending or increased revenues. (The offsets do not necessarily have to come from other transportation programs.)

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