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March 25, 2005; Volume XI, Issue 2

Congress Advances TEA-21 Renewal Prior to Easter Recess

This month, the House of Representatives and two key Senate Committees approved bills renewing the nation's surface transportation law or TEA-21, while embracing the President's requested six-year, $283.9 billion funding level. These actions occurred just before Congress recessed for the two-week Easter work period.

On March 10, the House of Representatives voted 417-9 to send its TEA-21 renewal legislation (H.R. 3) to the Senate. During two days of debate, House Members accepted a handful of amendments before approving a final reauthorization package which closely resembles legislation (H.R. 3550) adopted in the 108th Congress.

After accepting several amendments and debating others, the Senate Environment and Public Works Committee March 16 voted 17-1 to report its version of the highway and research titles of the Senate bill, called SAFETEA. On the following day, Members of the Senate Banking, Housing & Urban Affairs Committee gave unanimous approval to the transit title, although several panel members expressed their strong concerns about lower than expected transit funding ($51.6 billion vs. $53.3 billion) in the bill.

When Congress returns April 4, two other Senate Committees are expected to act promptly on their respective titles of the legislation, which would clear the way for Senate floor action as early as the week of April 18.

The Senate Commerce, Science & Transportation is scheduled to take up the safety title, followed by Senate Finance Committee action on the many revenue provisions in the bill, which will include extending the life of the Highway/Transit Trust Fund and renewing existing federal excise taxes. Members of the Senate Finance Committee are now reviewing additional revenue options to support increased spending above the $283.9 billion level, issues that will likely be debated during Senate floor action on the bill.

Once the full Senate acts, Congressional transportation leaders will return to the same policy and funding choices they faced in the 108th Congress; these include: how to allocate resources between "core programs" and new initiatives, where to set the minimum rate of return of highway dollars to the states, how to balance transit and highway program spending and where to find consensus on varying policy proposals, particularly those that threaten current law protections now afforded the public and their communities under NEPA, the Clean Air Act and Section 4(f).

Last year, Members of a House/Senate conference committee made limited progress in reconciling differences between their respective renewal plans (H.R. 3550/S.1072), as disagreements over total spending dominated the conference negotiations.

House Overwhelmingly Embraces TEA-LU Renewal Plan

The House of Representatives March 10 overwhelmingly approved a TEA-21 renewal plan (H.R. 3), known as the "Transportation Equity Act: A Legacy for Users," ceding to the Administration's request to limit overall funding to $283.8 billion during the renewal period.

As approved, H.R. 3 provides $225.5 billion to highway programs, $52.3 billion to transit programs, with the remaining $6.1 billion for safety programs administered by the National Highway Traffic Safety Administration and Federal Motor Carrier Safety Administration.

The legislation essentially guarantees states what TEA-21 provided in addressing donor/donee concerns. Like TEA-21, H.R. 3 guarantees each state a minimum rate of return of 90.5 percent, calculated against a "scope" of 92.6 percent of total highway spending. During TEA-21, the 90.5 percent guarantee was undermined by a combination of factors, including additional Member earmarks in the appropriations process and the allocation of discretionary funds.

When the House completed its work on the legislation, more than 4,100 project earmarks were authorized, totaling about $12.4 billion. The total amount of funding that is implicated by these projects is unknown, since often the earmarked amounts represent only a small portion of the total project costs, with state and local areas funding the remaining costs using federal funds provided under H.R. 3 as well as state and local revenues. An effort to raise the House spending level to $318 billion, a benchmark set by last year's Senate bill, was defeated on a 190 to 235 vote. However, H.R. 3 does include a "reopener" provision which would force Congress in 2006 to revisit the funding levels in the bill and force debate on additional revenues, a provision most aimed at raising selected states to a 95 percent rate of return. The Bush Administration has expressed its strong opposition to this reopener clause, threatening to veto any legislation that includes this provision.
During the floor debate, House Transportation and Infrastructure Committee Chairman Don Young (R-AK) expressed his hope that Congress would reach a final agreement and send it to the President by May 31. TEA-21, which first expired September 30, 2003, has been operating under a series of short-term extensions (six in total); May 31 is the next expiration date, as provided in last extension law.
To keep the legislation in line with the President's ceiling of $283.9 billion (both spending authority and guaranteed spending), H.R. 3 calls for a $12 billion rescission of unused

contract authority provided under this legislation, with this rescission scheduled to take effect just before the end of this renewal period (Fiscal Year 2009). Importantly, while the bill is often characterized as a six-year extension (Fiscal Years 2004 - 2009), this renewal cycle commenced October 1, 2003, which means the new bill effects less than 4 ½ years of new funding

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Tolling Amendments Debated during House Action

During floor action, the House considered three amendments pertaining to tolling provisions in the bill. The House on a 224-201 vote approved an amendment by Rep. Tom Davis (R-VA) striking a Committee-approved provision requiring tolling agencies to offer reduced tolls on HOV lanes for low-income individuals.

Tolling agencies and other highway interests strongly opposed providing toll discounts for low-income users, even though the underlying provision specifically requires that electronic toll collection systems only be used on these facilities, systems which can be adapted to deliver these benefits electronically. Such discounts are common practice among transit providers and other user-based systems, including gas, electric, water and sewer providers, but not on highway facilities. In defending the Committee’s position, Rep. Jim Oberstar (D-MN), the ranking Democrat on the House Transportation and Infrastructure Committee, emphasized that low-income individuals are already paying a higher percentage of their income on transportation, an issue that STPP has studied over time in its “Driven to Spend” reports.

On the floor, Rep. Michael Burgess (R-Texas) won approval of an amendment to allow states additional flexibility in using toll credits, modifying current law provisions that disallow toll credits when federal money is used in a toll project. This change was supported by transportation reform advocates in Texas who see this adjustment as one that supports additional transit investment in the state.
Finally, the most significant tolling amendment was authored by Rep. Mark Kennedy (R-MN) who sought to expand the use of tolls for the construction of new Interstate highway lanes. Importantly, the Kennedy amendment limited the use of tolls to funding initial construction costs only, shifting all other costs for maintenance, operations and corridor management to the states. It also would have denied states the right to place any tolls on existing Interstates.
A broad coalition of interests, including AASTO, individual state DOTs, regional and local tolling agencies, the American Road and Transportation Builders Association (ARTBA), the Associated General Contractors (AGC), along with STPP, Environmental Defense, American Public Transportation Association and others, opposed the Kennedy amendment, which had the strong backing of the American Trucking Associations and the American Automobile Association. The Kennedy amendment was defeated 155 to 265.

House Provides Operating Relief to Smaller Transit Providers

In other action, Rep. Joseph Pitts (R-PA) won approval of an amendment to allow certain transit providers a longer transition period to comply with current law restrictions on using federal transit funds for operating assistance. With the 2000 Census, about 50 urbanized areas grew beyond the 200,000 population threshold, making them ineligible to use federal transit dollars for operating costs. The amendment allows transit providers serving these areas to transition over a four and one-half year period.

Key STPP Priorities in House Bill

In addition to preserving many of the key policy and program initiatives, including the CMAQ, JARC, Scenic Byways, TCSP and Transportation Enhancements programs, set forth in ISTEA and TEA-21, the House bill embraces new program priorities backed by STPP and its many partner organizations. A new Safe Routes to School initiative won strong backing in H.R. 3, allocating $1 billion to states over the renewal period for these very successful local pedestrian and bicycle safety programs.

The legislation also provides nearly $1 billion over five years for a "Small Starts" program to support trolley and other small capital projects (i.e. between $25-75 million), outside of the rigorous requirements now governing major rail transit projects under FTA's "New Starts" program. The legislation funds new pilot programs to test out nonmotorized travel in selected local areas to demonstrate the broad potential for expanded pedestrian and bicycle use and to expand the use of public transportation in National Parks.

The House bill includes an amendment directing the Federal Highway Administration to provide the public with "user-friendly" information on how federal funds are expended within the state, by modernizing its annual program expenditures report, known as the Section 104(j) report.

On policy issues, the House bill sought to keep current clean air conformity efforts on track, making selected adjustments that while weakening current practices do not fundamentally undermine further progress on air quality, as provisions of the pending Senate bill would do. Importantly, the House bill continues current law protections under Section 4(f) for all non-historic resources (e.g. parks, recreation area, and wildlife and waterfowl refuges); the Senate Committee bill changes the Section 4(f) standard for all resources, threatening non-historic resources under a new "de minimis" standard. Also, the House bill sought to respond to legitimate concerns about project delays with selected changes to existing NEPA reviews, seeking to preserve the fundamental and longstanding protections provided to the public and their communities under this law.

In another area, Rep. Eddie Bernice Johnson (D-TX) sought to ensure that local areas with poor air quality would receive more certainty in the allocation of Congestion Mitigation and Air Quality Improvement (CMAQ) program funds. Her bid to offer a floor amendment requiring states to pass-through CMAQ funds to areas in non-attainment (i.e. suballocate the funds) was rejected by the House Rules Committee, but she is still pressing for action on this issue. In pursuing this amendment, Rep. Johnson reminded her colleagues that her state obligated only one out of every three CMAQ dollars during the last fiscal year, even though local areas in her state, such as the Houston and Dallas-Fort Worth areas, continue to struggle with unhealthy air quality. Unlike the Senate bill which committed nearly all available funds to programs allocated to the states, the House bill initiates a series of new and expanded categorical programs (e.g. truck toll lanes, borders and corridors and projects of regional and national significance) that have the effect of shifting dollars away from the traditional "core programs" (i.e. Bridge, CMAQ, Interstate Maintenance, NHS, and STP and its subcategories). Even with this reduced commitment to core activities, H.R. 3 also includes other new initiatives, such as the Motor Vehicle Congestion Relief Program (Section 1201) and the ITS Deployment Program (Section 1205) that would reduce funding commitments to core programs even further.

Senate Environment and Public Works Committee Approves SAFETEA Bill

On March 16, the Senate Environment and Public Works Committee approved its SAFETEA renewal legislation, based upon a total funding commitment of $283.9 billion.

Voting 17-1, Members of the EPW panel approved legislation renewing the highway and research titles of TEA-21, providing for highway spending of $221.8 billion over the six year period (Fiscal Years 2004-2009).

The Senate bill also guarantees each state a minimum rate of return of 92 percent rate by Fiscal Year 2009, the final year of the reauthorization. The bill's higher minimum guarantee level, as compared to the House bill, is made possible by the Senate's decision to commit most of its available dollars to programs that are apportioned to the states, as opposed to H.R. 3's emphasis on project specific spending determined by Congress.

During Committee action, Senator Hillary Clinton (D-NY) offered an amendment to guarantee every state at least a 15 percent increase in funding during this renewal period was defeated on a 13-5 vote. Sen. Clinton also offered and withdrew amendments to require further consideration of social equity issues in the planning process and to ensure that the definition of "public road" includes bicycle and pedestrian pathways. She pledged to work further with the Committee on these issues prior to floor consideration.

Several Committee Members expressed their hope that additional revenues could be identified to support Senate floor amendments to increase funding in the bill. Committee Chairman Jim Inhofe (R-OK) continues to express his support for the $318 billion spending level that was embraced by the Senate in the 108th Congress.

Aside for changes in the bill's funding levels, the Committeepassed bill largely follows the legislation (S. 1072) adopted by the Senate in the last Congress. Importantly, the Committee's SAFETEA plan reaffirms a strong funding commitment to the core programs established under ISTEA and TEA-21, including CMAQ and Transportation Enhancements. Among the key program provisions, the Senate bill increases funding commitments (i.e. PL funds) to metropolitan planning organizations (MPOs), reserves funding for stormwater retrofit projects on the federal aid system, provides for a Safe Routes to School program and ensures that a "fair share" of existing Safety program dollars are allocated to the safety needs of pedestrians and bicyclists. The bill, however, does include many provisions that weaken current protections under the Clean Air Act, NEPA and Section 4(f).

During discussion of the package, Senator Tom Carper (D-DE) expressed concerns about the bill's proposals on Section 4(f) standard. "I am hearing from the park and recreation community in Delaware that there are concerns about some language in this bill. I know that Sen. Voinovich led a successful effort to improve the historic preservation review process for transportation projects, and I support the language he developed. However, there may have been some unintended effects on non-historic areas that are protected by the same provision of the Department of Transportation Act of 1966 – known as 4(f). And I would like to work with my colleagues to make sure we take a look at this and work with the park and recreation community to address their concerns," Carper said.

Senate Banking Panel Approves Transit Title, Seeks Higher Spending Commitment

During a brief markup session on March 17, Members of the Senate Banking, Housing and Urban Affairs Committee expressed their strong reservations about approving a transit funding commitment of $51.6 billion. Specifically, several Senators asserted that transit funding level should have been $53.3 billion to reflect an agreement that was struck during the 108th Congress.

Senator Paul Sarbanes (D-MD), the Ranking Democratic Member, discussed and withdrew an amendment to raise transit funding to $53.3 billion, with others pledging to support an effort to raise transit's share during Senate floor action.
Because the EPW Committee had acted the day before and programmed these dollars for higher highway spending, any action by the Senate Banking panel to raise transit's share would have violated commitments to Senate Majority Leader Bill Frist (R-TN) that the Senate panels would agree on a renewal plan that adheres to the President's request. In short, the EPW action preempted efforts by the Members of the Banking Committee to seek raise transit funding during its markup.
"I'm outraged that the Environment and Public Works Committee didn't negotiate with you and took $1.7 billion out of a relatively small amount of money for transit nationally," said Sen. Chris Dodd (D-CT) during the markup.

The panel approved a transit title that authorized 26 new fixed guideway projects, continued the Jobs Access and Reverse Commute Program (JARC) as a separate program (House bill makes it s formula to the states), and makes other adjustments that shift more transit funds to the states for non-urbanized areas, among other changes. Like the House bill, the Senate bill provides for "small starts" and authorizes a new program to promote public transit investment in national parks.

Amtrak Funding Among Issues in Budget Resolution

When Congress returns after the Easter break, reaching an agreement on the Fiscal Year 2006 Budget Resolution is among the top items on its agenda.

The President's request to eliminate all operating subsidies to Amtrak in support of the nation's intercity passenger rail system received considerable attention during House and Senate action on their respective budget resolutions for the new federal fiscal year which begins October 1.

During Senate floor action, Senator Robert Byrd (D-WVA) offered an amendment to provide $1.4 billion in Amtrak funding in the new fiscal year, an effort that failed on a 46-52 vote.

During debate on the amendment, Senator Trent Lott (R-MS), who leads the Commerce Subcommittee that authorizes Amtrak funding, told his colleagues just before the vote that he would not allow an Amtrak bankruptcy. "I am committed to find a way to get a reauthorization and get a reliable stream of funds for Amtrak so its future can be certain and so this does not have to depend on annual appropriations," Lott added.
The Administration, which fought hard to persuade Republican Senators to oppose the Byrd amendment, appeared concerned that passage of the amendment would undermine its reform efforts.

STPP joined with many other organizations in support of the Byrd amendment and the broader effort to increase Amtrak funding during the upcoming fiscal year.

Importantly, the House of Representatives approved its version of the budget resolution, assuming continued Amtrak funding at the current level of $1.2 billion. House and Senate budget leaders will meet to resolve differences in the two spending plans, with some speculating that the two chambers might not reach agreement on a budget plan for the new fiscal year.

Canby Carries Coalition Message to National Forums

STPP President Anne Canby has been actively carrying the coalition's message on the need for further progress on transportation reform, particularly at the state and local level.
In early March, Canby addressed state transportation officials at AASHTO's Washington Legislative Conference during remarks at a panel session on "Making Transportation a National Priority."
In her remarks to state transportation officials, Canby talked about the need to relate transportation to people's lives. She repeated her call for a "bigger tent" as one way to build the broader public support for increasing commitments to transportation investments. Canby also urge the transportation leaders to embrace non-traditional allies and seek to connect transportation to issues that the public cares about, such as water quality, air

quality, aging and mobility.

At other sessions this month, Canby addressed the Washington meetings of the National Alliance of Public Transportation Advocates and the International Economic Development Council as well as the Annual Meeting of the American Planning Association in San Francisco.

March was a busy month for a number of other partner organizations, with Washington legislative conferences held by the American Public Transportation Association, Association of Metropolitan Planning Organizations, League of American Bicyclists, National Association of Counties, National Association of Regional Councils and National League of Cities. In keynote remarks at the League of American Bicyclists' National Bike Summit, U.S. Secretary of Transportation Norman Mineta told the more than 400 participants at the session that "bicycle and pedestrian facilities are an integral part of our nation's transportation system for the 21st century."

For Canby's full remarks that were prepared for the AASHTO meeting, go to http://www.transact.org/transfer/trans05/AASHTO_Making_Transportation_a_National_Priority.doc

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