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AASHTO Summary and Analysis of the *Developing a Reliable and Innovative Vision for the Economy (DRIVE)* Act

August 28, 2015

OVERVIEW

On July 30, 2015, led by Majority Leader Mitch McConnell (R-KY) and Environment and Public Works Committee Chairman Jim Inhofe (R-OK) and Ranking Member Barbara Boxer (D-CA), the United States Senate Environment passed the Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act by a vote of 65 to 34.

This bill represents a comprehensive surface transportation proposal that authorizes federal highway, highway safety, and transit programs between federal fiscal year 2016 through 2021. Passenger rail programs are authorized for four years between 2016 through 2019. As such, in addition to modifications to the original DRIVE Act reported out of the EPW Committee in June, the July 30th edition of the Senate-passed DRIVE Act incorporates legislative titles from the Banking, Commerce, and Finance committees that were first released in draft form on July 21.

Overall, the DRIVE authorizes surface transportation funding for six years for highways, highway safety, transit, and passenger rail at $361 billion between FY 2016 and FY 2021, at an average of $64.2 billion per year. Of this amount, $341 billion would receive contract authority derived from the Highway Trust Fund; the remaining $19.8 billion is from the General Fund. Please refer to the funding table on page two for details.

While the authorized funding levels represent a slight increase over current funding levels, the DRIVE Act provides enough revenue to keep the Highway Trust Fund solvent for only the first three years of the bill, from FY 2016 to 2018. After much negotiations, $45.6 billion in "pay-fors," or offsets to General Fund transfers to the Highway Trust Fund to supplement revenues from existing sources, were incorporated into the DRIVE Act.

It is also important to note that the DRIVE Act generally allows for an unimpeded implementation of MAP-21 changes, especially in regards to performance management. The implementation timelines remain unchanged, and there are no new measures.

FUNDING TABLE

In millions of dollars / HTF = Highway Trust Fund / GF = General Fund

Program Category	FY 2015	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		FY 2021		6-Year Total	6-Year Avg
HIGHWAYS															
National Highway Performance Program	21,908	22,813	*4.1%*	23,261	*2.0%*	23,748	*2.1%*	24,383	*2.7%*	24,984	*2.5%*	25,602	*2.5%*	**144,790**	**24,132**
Surface Transportation Program	10,077	10,178	*1.0%*	10,378	*2.0%*	10,595	*2.1%*	10,878	*2.7%*	11,147	*2.5%*	11,422	*2.5%*	**64,599**	**10,766**
Highway Safety Improvement Program	2,192	1,886	*-14.0%*	1,927	*2.2%*	1,972	*2.3%*	2,031	*3.0%*	2,086	*2.7%*	2,143	*2.7%*	**12,045**	**2,008**
Railway-Highway Crossings Program	220	220	*0.0%*	220	*0.0%*	220	*0.0%*	220	*0.0%*	220	*0.0%*	220	*0.0%*	**1,320**	**220**
Congestion Mitigation and Air Quality Improvement Program	2,267	2,313	*2.0%*	2,359	*2.0%*	2,408	*2.1%*	2,472	*2.7%*	2,533	*2.5%*	2,596	*2.5%*	**14,682**	**2,447**
Metropolitan Planning Program	314	328	*4.7%*	338	*3.0%*	350	*3.5%*	361	*3.3%*	371	*2.6%*	380	*2.6%*	**2,129**	**355**
National Freight Program	n/a	992	*n/a*	1,438	*45.0%*	1,983	*37.9%*	2,281	*15.0%*	2,380	*4.3%*	2,479	*4.2%*	**11,551**	**1,925**
Transportation Alternatives Program	820	850	*3.7%*	850	*0.0%*	850	*0.0%*	850	*0.0%*	850	*0.0%*	850	*0.0%*	**5,100**	**850**
Total, Apportioned Programs (HTF)	**37,798**	**39,579**	***4.7%***	**40,771**	***3.0%***	**42,127**	***3.3%***	**43,476**	***3.2%***	**44,571**	***2.5%***	**45,692**	***2.5%***	**256,216**	**42,703**
Federal Lands and Tribal Transportation Programs	1,030	1,170	*13.6%*	1,190	*1.7%*	1,210	*1.7%*	1,230	*1.7%*	1,250	*1.6%*	1,270	*1.6%*	**7,320**	**1,220**
Research Programs	400	389	*-2.8%*	389	*0.0%*	389	*0.0%*	389	*0.0%*	389	*0.0%*	389	*0.0%*	**2,334**	**389**
Miscellaneous Programs	257	432	*68.1%*	420	*-2.8%*	420	*0.0%*	420	*0.0%*	420	*0.0%*	420	*0.0%*	**2,532**	**422**
Transportation Infrastructure Financing and Innovation Act	1,000	300	*-70.0%*	300	*0.0%*	300	*0.0%*	300	*0.0%*	300	*0.0%*	300	*0.0%*	**1,800**	**300**
Assistance for Major Projects	n/a	250	*n/a*	300	*20.0%*	350	*16.7%*	400	*14.3%*	400	*0.0%*	400	*0.0%*	**2,100**	**350**
FHWA Administrative	440	456	*3.6%*	465	*2.0%*	474	*1.9%*	483	*1.9%*	492	*1.9%*	501	*1.8%*	**2,871**	**479**
Total, Other Programs (HTF)	**3,127**	**2,997**	***-4.2%***	**3,064**	***2.2%***	**3,143**	***2.6%***	**3,222**	***2.5%***	**3,251**	***0.9%***	**3,280**	***0.9%***	**18,957**	**3,160**
Total, Federal-aid Highway Program (HTF)	**40,925**	**42,576**	***4.0%***	**43,835**	***3.0%***	**45,270**	***3.3%***	**46,698**	***3.2%***	**47,822**	***2.4%***	**48,972**	***2.4%***	**275,173**	**45,862**
Obligation Limitation (Full Year)	**40,256**	**41,626**	***3.4%***	**42,896**	***3.1%***	**44,331**	***3.3%***	**45,759**	***3.2%***	**46,883**	***2.5%***	**48,033**	***2.5%***	**269,528**	**44,921**
AASHTO Base Funding Scenario: Sustain Current Investment in Real Terms	**40,925**	**42,113**	***2.9%***	**43,034**	***2.2%***	**43,961**	***2.2%***	**45,001**	***2.4%***	**46,042**	***2.3%***	**47,183**	***2.5%***	**267,333**	**44,556**
TRANSIT															
Planning Programs	129	132	*2.5%*	135	*2.2%*	138	*2.3%*	141	*2.4%*	145	*2.5%*	149	*2.6%*	**840**	**140**
Urbanized Area Formula Grants	4,459	4,539	*1.8%*	4,639	*2.2%*	4,795	*3.4%*	4,976	*3.8%*	5,101	*2.5%*	5,230	*2.5%*	**29,280**	**4,880**
Elderly and Disabled	258	264	*2.0%*	269	*2.2%*	275	*2.3%*	288	*4.7%*	296	*2.5%*	303	*2.5%*	**1,695**	**283**
Rural Formula Grants	608	620	*2.0%*	634	*2.2%*	648	*2.3%*	678	*4.7%*	695	*2.5%*	713	*2.5%*	**3,988**	**665**
State of Good Repair	2,166	2,428	*12.1%*	2,480	*2.1%*	2,534	*2.2%*	2,593	*2.3%*	2,655	*2.4%*	2,720	*2.4%*	**15,410**	**2,568**
Bus and Bus Facility Formula	428	431	*0.7%*	440	*2.2%*	495	*12.5%*	586	*18.3%*	605	*3.3%*	626	*3.3%*	**3,183**	**531**
Bus and Bus Facility Discretionary	n/a	180	*n/a*	185	*2.8%*	190	*2.7%*	190	*0.0%*	190	*0.0%*	190	*0.0%*	**1,125**	**188**
Growing States and High Density States	526	533	*1.4%*	545	*2.2%*	557	*2.3%*	587	*5.3%*	602	*2.5%*	617	*2.5%*	**3,441**	**574**
Other Programs	22	62	*183.1%*	62	*0.0%*	62	*0.0%*	62	*0.0%*	62	*0.0%*	62	*0.0%*	**372**	**62**
Total, Apportioned Programs (HTF)	**8,595**	**9,189**	***6.9%***	**9,389**	***2.2%***	**9,695**	***3.3%***	**10,101**	***4.2%***	**10,352**	***2.5%***	**10,609**	***2.5%***	**59,335**	**9,889**
Total, Other Programs (GF)	**192**	**147**	***-23.4%***	**150**	***1.8%***	**152**	***1.7%***	**155**	***1.9%***	**158**	***2.0%***	**161**	***2.0%***	**924**	**154**
Capital Investment Grants (GF)	**1,907**	**2,302**	***20.7%***	**2,353**	***2.2%***	**2,406**	***2.3%***	**2,464**	***2.4%***	**2,526**	***2.5%***	**2,590**	***2.5%***	**14,641**	**2,440**
Total, Federal Transit Program (HTF and GF)	**10,694**	**11,638**	***8.8%***	**11,891**	***2.2%***	**12,253**	***3.0%***	**12,720**	***3.8%***	**13,036**	***2.5%***	**13,361**	***2.5%***	**74,899**	**12,483**
AASHTO Base Funding Scenario: Sustain Current Investment in Real Terms	**10,694**	**12,007**	***12.3%***	**12,210**	***1.7%***	**12,414**	***1.7%***	**12,657**	***2.0%***	**12,901**	***1.9%***	**12,996**	***0.7%***	**75,185**	**12,531**
HIGHWAY SAFETY															
Federal Motor Carrier Safety Administration (HTF)	**572**	**577**	***0.9%***	**598**	***3.6%***	**610**	***2.1%***	**623**	***2.1%***	**636**	***2.1%***	**650**	***2.1%***	**3,695**	**616**
National Highway Traffic Safety Administration (HTF)	**680**	**716**	***5.3%***	**731**	***2.1%***	**747**	***2.1%***	**762**	***2.1%***	**778**	***2.1%***	**795**	***2.1%***	**4,529**	**755**
Total, Highway Safety Program (HTF)	**1,252**	**1,294**	***3.3%***	**1,329**	***2.8%***	**1,357**	***2.1%***	**1,386**	***2.1%***	**1,415**	***2.1%***	**1,444**	***2.1%***	**8,224**	**1,371**
PASSENGER RAIL															
Grants to Amtrak (GF)	**1,390**	**1,450**	***4.3%***	**1,550**	***6.9%***	**1,700**	***9.7%***	**1,900**	***11.8%***					**6,600**	**1,650**
Rail Infrastructure Investment (GF)	**0**	**350**	***n/a***	**430**	***22.9%***	**600**	***39.5%***	**900**	***50.0%***					**2,280**	**570**
Other Programs (GF)	**24**	**26**	***9.6%***	**27**	***2.3%***	**28**	***2.2%***	**28**	***2.2%***					**109**	**27**
Total, Passenger Rail Program (GF)	**1,414**	**1,826**	***29.2%***	**2,007**	***9.9%***	**2,328**	***16.0%***	**2,828**	***21.5%***					**8,989**	**2,247**
Program Category	**FY 2015**	**FY 2016**		**FY 2017**		**FY 2018**		**FY 2019**		**FY 2020**		**FY 2021**		**6-Year Total**	**6-Year Avg**

HIGHLIGHTS OF THE DRIVE ACT

Highway and Highway Safety

- Provides for a $273 billion Federal-aid Highway Program at a six-year average of $45.9 billion per year. The FY 2016 funding level of $42.6 billion is a four percent increase from FY 2015; the subsequent increases range between 2.4 and 3.3 percent each year. 93 percent of the Federal-aid Highway Program dollars are provided over six years via formula apportionments.
- Six-year highway safety funding for the Federal Motor Carrier Safety Administration from the Highway Trust Fund amounts to $3.7 billion, or an average of $615 million per year; for the National Highway Traffic Safety Administration, HTF funding amounts to $4.5 billion or $755 million per year.
- Establishes a new formula-based national freight program, funded at an average of $1.9 billion per year; this program creates a national freight strategic plan and a national highway freight network comprised of the primary highway freight system (PHFS), critical rural freight corridors, critical urban freight corridors, and portions of the Interstate System not designated on PHFS. States are also required to establish State Freight Advisory Committees and State Freight Plans within two years of enactment of the bill. States that do not meet these requirements will be prohibited from obligating their freight program funds.
- Changes the Surface Transportation Program (STP) suballocation split from the current 50 percent state and 50 percent local (based on population) to 45 percent and 55 percent, respectively. In addition, a 15-percent set-aside of all STP dollars are reserved (estimated at $1.5 billion for FY 2016) for off-NHS system bridges comprised of both Federal-aid System bridges not on the NHS and bridges entirely off the Federal-aid System. 50 percent of this set-aside must be spent on bridges entirely off the Federal-aid System.
- Changes the Transportation Alternatives Program suballocation split from the current 50 percent state and 50 percent local (based on population) to 0 percent and 100 percent, respectively.
- Establishes the new Assistance for Major Projects program at $250 million in FY 2016, increasing to $400 million by FY 2021; this discretionary grant program for large surface transportation projects would be administered by the Federal Highway Administration and must meet cost threshold and geographic distribution requirements.
- Continues the project delivery and environmental streamlining improvements made in MAP-21 by:
    - Adjusting for inflation the dollar thresholds for projects that qualify for Categorical Exclusions
    - Allowing for greater reliance on documents prepared during the planning process
    - Improving collaboration between the lead agency and the participating agencies
    - Allowing U.S. DOT agencies to adopt environmental documents produced by another U.S. DOT agency if the projects are substantially the same
    - However, the bill requires “early concurrence or issue resolution” during the scoping process on purpose and need and the range of alternatives to analyze in the environmental review process, which would have an adverse impact on project delivery compared to current law which calls only for “coordination.”
- Reduces the funding level for the Transportation Infrastructure Finance and Innovation Act (TIFIA) program from $1 billion a year to $300 million a year and expands loan eligibility to allow capitalization of State Infrastructure Banks through a “loan-to-lenders” approach. The MAP-21 provision which calls for redistribution of excess TIFIA funds is eliminated.

- To help fund major highway improvement projects, including multi-state efforts, $2.1 billion in grant funding is provided over six years on a discretionary basis through the Assistance for Major Projects program. Eligible projects generally must cost at least $350 million or 25 percent of a state's annual federal highway apportionment. In addition, a least 20 percent of funds are dedicated to rural areas, and no state may receive more than 20 percent of the annual total.
- Continues to fund highway research programs from the Highway Trust Fund at approximately the same funding levels.
- Directs development of a more robust data platform for performance management, along with an incentive grant program for innovation; requires greater transparency of the Highway Trust Fund.
- Removes current law eligibility which allows use of Highway Safety Improvement Program funds for non-infrastructure safety programs, such as education and enforcement activities.
- Amends the definition of alternative fuel vehicle to exclude hybrids for the purposes of access to High Occupancy Vehicle lanes by clarifying that a vehicle must solely operate on alcohol fuel, natural gas, LPG, hydrogen, biofuels, or electricity.
- Provide USDOT with a broad authority to close any publicly-owned bridge in a state within 48 hours, restrict public travel on the bridge to loads that the bridge can carry safely within 30 days, or withhold approval for Federal-aid projects if the affected State is deemed to not be in compliance.

Transit

- Authorizes $59.5 billion for public transportation programs from the Highway Trust Fund over six years, with FY 2016 funding at $9.2 billion increased by 6.9 percent from FY 2015. In addition, $15.6 billion from General Funds are authorized, with the majority of this funding dedicated to the Capital Investment Grants (New Starts) program.
- Bus and Bus Facility formula program increases from $431 million in FY 2016 to $626 million in FY 2021; in addition, the discretionary grant portion of this program is revived at $180 million in FY 2016.
- For the Seniors and Individuals with Disabilities Program (Section 5310), new coordination requirements have been created.

Passenger Rail

- Based on the passenger rail bill entitled "Railroad Reform, Enhancement, and Efficiency Act" passed by the Commerce Committee in June, the bill provides for a four-year General Fund authorization to Amtrak starting at $1.5 billion in FY 2016, increasing to $1.9 billion by FY 2019.
- For states, $2 million per year are provided to cover expenses associated with the State-Supported Route Committee and $5 million per year are provided for Northeast Corridor Commission.

PROGRAM AND PROJECT DELIVERY

The project delivery provisions in the DRIVE Act contain many important streamlining measures. The Act allows operating administrations of the US Department of Transportation (USDOT) to adopt the National Environmental Policy Act (NEPA) environmental documents and assessments developed by other operating administrations. In addition, the Act expands the multimodal categorical exclusion established in MAP-21 to provide the authority for any DOT operating administration to use a categorical exclusion of another operating administration. The Act also directs USDOT to apply the environmental streamlining measures in 23 USC 139 to rail projects when conducting NEPA analysis to the greatest extent possible.

Highlights of streamlining measures include the following:

- Requires annual indexing of the financial thresholds for the categorical exclusion for projects with limited federal assistance, in accordance with the consumer price index. This would ensure that the value of the reform stays constant and does not degrade over time.
- Narrows the participating agency comments that state DOTs must consider and address during the NEPA process to comments within the special expertise or jurisdiction of the agency. Also, requires participating agencies to use the NEPA process to address environmental issues of concern to prevent new issues from arising at the permitting phase of the project.
- Requires USDOT, within 45 days of receiving a project initiation application, to provide the project sponsor a written response describing the determination to initiate the environmental review process, to decline the application or to request additional information. The project sponsor may request a specific operating administration to serve as the lead agency for a project. Also allows USDOT, under certain circumstances, to eliminate alternatives from detailed NEPA review if the alternative has already been considered in the metropolitan transportation planning or other state or local environmental process.
- Requires federal resource agencies to give "substantial weight" to the recommendations in programmatic mitigation plans when carrying out NEPA responsibilities or other federal environmental laws.
- Requires USDOT to provide, upon request by a State, technical assistance related to the State assuming the federal responsibilities for categorical exclusions. This section would also require USDOT to provide States with a notice of corrective action needed and extended time to comply with the notice prior to terminating the categorical exclusion assignment or the full NEPA assignment.
- Requires USDOT to examine ways to modernize, simplify and improve the implementation of NEPA.
- Exempts bridges from Section 4(f) analysis if they are exempt under Section 106 of the National Historic Preservation Act.
- Allows the take of nesting swallows under the Migratory Bird Treaty Act for projects on bridges with a condition rating of 3 or less.
- Requires USDOT to develop, upon the request of a State DOT, a programmatic categorical exclusion (PCE) agreement. Such agreements may include the CEs listed in FHWA regulation as well as additional CEs that meet federal requirements. USDOT is required to develop a "method" to verify that certain CEs listed in FHWA regulations are evaluated and documented in a consistent manner. Also, the CEs included in the agreements must be in effect on the date of enactment of this legislation—future CEs would not be included in the agreements.
    - Although this language is an improvement from the current restrictions imposed by FHWA, it is more limiting than the MAP-21 language on this topic. CEs developed after the date of enactment of this legislation should be eligible for inclusion in PCE agreements.
- Allows recipients and sub recipients of federal funding to incur preliminary engineering costs for eligible projects before receiving project authorization on at at-risk basis.
- Amends Title 23 and Title 49 to allow for the consideration of avoidance, minimization, mitigation or enhancement measures in determining potential impacts on historic properties under the de minimis impacts provision. Also states that improvements to or maintenance, rehabilitation or operation of railroad or rail transit lines (excepting stations) that are or were used to transport goods or passengers shall not be a use of an historic site.
- Allows USDOT to assist funding recipients in acquiring rail right-of-way and adjacent real property interests before or during the completion of the NEPA process, if the acquisition is otherwise authorized under federal law.

- Allows USDOT to propose an exemption from the historic preservation requirement to assess and address potential impacts on the vast majority of railroad rights-of way, similar to the categorical exemption granted to interstate highways in 2005.

The DRIVE Act also contains the following provisions that would have a negative effect on project delivery times:

- Directs USDOT, in coordination with a steering committee consisting of various federal agencies, to develop a coordinated and concurrent environmental review and permitting process for transportation projects initiating an EIS. The process must require "early concurrence or issue resolution" during the scoping process on purpose and need and the range of alternatives to analyze in the environmental review.
    - Current law requires only coordination for purpose and need and range of alternatives. As such, the lead agency must obtain the input of appropriate resource agencies, but does not need to obtain their concurrence. Also, it would be difficult for federal resource agencies to give concurrence at this early stage in project development without knowing the impact on the resources they are charged to protect.
- Requires lead agencies to establish project schedules for the completion of the environmental review processes for environmental impact statements and environmental assessments after *consultation with and the concurrence of each participating agency for the project*. MAP-21 allowed but did not require this schedule.
    - This language requires the concurrence of participating agencies for the development of and changes to project schedules. Trying to achieve concurrence even on the initial schedule would be challenging and greatly slow project delivery. Also, environmental issues are only one of the many reasons that project schedules change.
- Improves the process for carrying planning level decisions forward into the NEPA process and expands the decisions that may be carried forward. However, requires the *concurrence of participating agencies* to adopt and use a planning product in the NEPA process.
    - As the lead federal agency has the ability to make NEPA determinations, USDOT should be able to make determinations about what products should be carried forward from planning into NEPA. The concurrence proposed in this section goes far beyond what NEPA requires.
- Repeals from general NEPA law (42 United States Code) and adds to Title 49 and Title 23 two MAP-21streamlining measures: 1) allowing a final Environmental Impact Statement (EIS) to consist of the draft EIS with errata pages if comments on the draft were "minor" and 2) directing USDOT to issue a combined final EIS and record of decision (ROD) "to the maximum extent practicable."
    - These measures are currently authorized in NEPA law, however there has been a movement to repeal this language from NEPA law and place the measures only into the transportation law. Including these streamlining measures in Title 23 and Title 49 will ensure that transportation agencies can use these measures, however federal agencies outside of Title 23 and Title 49 would no longer be able to use these streamlining measures (i.e. The US Army Corps of Engineers).

The DRIVE Act also contains sections intended to streamline project delivery, but could place additional burdens on State DOTs. These provisions include:

- Requiring establishment of the Infrastructure Permitting Improvement Center, housed at USDOT, to coordinate implementation of priority reform actions for Federal agency permitting, support modernization efforts and interagency pilots, provide technical assistance and training to federal staff, identify, develop and track metrics for timeliness and project outcomes, and administer the use of online transparency tools.
- Requiring USDOT, in coordination with agencies of jurisdiction, to develop an environmental checklist to help identify resources potentially impacted by a proposed project and the agencies of jurisdiction that should serve as cooperating agencies under NEPA.
- Directing USDOT to convene annual meetings to support coordination on project priorities, workforce planning, to ensure agency staff is utilizing the flexibility in existing regulations, policy and guidance and identifying additional efficiencies, to focus on how to work with local transportation agencies to improve planning, siting and application quality, and engage stakeholders early in the permitting process.
- Requiring USDOT to establish an online reporting system to make publicly available information related to progress and status of environmental reviews and permitting on projects requiring either an environmental impact statement or an environmental assessment. This reporting system would provide for reporting not only from DOT on the NEPA action but also from resource and regulatory agencies.
- Requires USDOT, in coordination with the Department of Interior (DOI) and the Advisory Council on Historic Preservation (ACHP), to develop procedures to better align NEPA, Section 4(f) of the Department of Transportation Act and section 106 of the National Historic Preservation Act processes. If USDOT determines through the NEPA process that there is no prudent and feasible alternative to using the historic property and the State Historic Preservation Office (SHPO), ACHP and DOI concur, 4(f) requirements are satisfied.
- Requires establishment of the Federal Infrastructure Permitting Improvement Steering Council to oversee the environmental review of infrastructure projects over $200,000,000. The council shall consist of an Executive Director appointed by the President and federal deputy secretary agency representatives. Establishes a new environmental review process similar to the Title 23 environmental review process and requires the maintenance of a “Permitting Dashboard” to track the status of environmental reviews. Projects subject to the environmental review process in Title 23 are not subject to these requirements.

Other provisions of note include the following:

- Requires USDOT to designate national electric vehicle charging and natural gas fueling corridors and locations.
- Requires designs for new construction, reconstruction, resurfacing, restoration, or rehabilitation of a highway on the National Highway System to take into account:
    - Constructed and natural environment of the area
    - Environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity
    - Access for other modes of transportation.

  Current law allows for these factors to be considered but does not require them to be considered. Also, in developing design criteria, elements to be considered by the Secretary have been expanded to include the AASHTO *Highway Safety Manual* and the *Urban Street Design Guide* produced by the National Association of City Transportation Officials. This section allows local jurisdictions to use a roadway design guide different from the design guide used by the state as long as the guide is approved by FHWA.

- Requires FHWA to continue the Every Day Counts initiative; working with states and local transportation agencies and industry stakeholders to accelerate innovation deployment, accelerate project delivery, improve environmental sustainability, enhance roadway safety and reduce congestion.

FREIGHT

The DRIVE Act creates a new Title 49 national freight policy that includes designation of a national multimodal freight network, mandates State Freight Plans and State Freight Advisory Committees.

The DRIVE Act also creates a Title 23 national freight program as part of the core Federal-aid Highway Program structure. The national freight program is authorized at $11.5 billion over six years, and a State's share of national freight program will be reflective of a State's overall highway program apportionment. In addition, new General Fund-supported Assistance for Freight Projects Program is authorized at $200 million annually.

National Freight Network

- USDOT must identify a National Freight Network that consists of all connectors, corridors, and facilities in all freight transportation modes that are the most critical to the future movement of freight. This includes a National Highway Freight Network (see below).
- Within 1 year of enactment and every 5 years following, USDOT must identify within the NFN a Primary Freight System (PFS) in consultation with States and other freight stakeholders.
- States may propose additional facilities and routes to add to the PFS. They must also consider requests to add to the PFS from their MPOs, SFAC's and freight transportation owners and operators.
- States may identify multimodal Critical Rural Freight Corridors.

State Freight Advisory Committees

- SFACs must include a representative cross-section of public and private sector freight stakeholders including representative of ports, shippers, carriers, freight-related associations, the freight industry workforce, State DOT, Local governments.
- SFACs are intended to advise the State on freight-related priorities, issues, projects and funding needs and other related items.

State Freight Plans

- SFPs must include an assessment of trends, polices, performance measures, corridors, ITS, roadway maintenance impact, inventory of freight bottlenecks, and freight investment plan.
- SFPs may be standalone or part of long-range transportation plans.
- SFPs must cover a 5 year forecast period, and be updated no less than every 5 years.

Formula Freight Program

- Renames the national freight network (NFN) to the National Highway Freight Network (NHFN).
- Makes significant changes to the components of the NHFN, including:
    - Increasing the mileage cap on the Primary Highway Freight System (PHFS) to 30,000 miles, plus all NHS Intermodal Connectors

    - Critical urban freight corridors (CUFCs), including authorities for larger Metropolitan Planning Organizations (MPOs) to designate CUFCs
    - Removing the network's connectivity requirements
    - Authorizes States (via mandated State Freight Advisory Committees) to request additional mileage increases on the PHFN up to 10 percent of total miles

<u>Use of Apportioned Funds</u>

- Apportioned funds may only be used to improve the movement of freight on the National Highway Freight Network (NHFN).
- States must create State Freight Advisory Committees and State Freight Plans to use apportioned funds (see above)
- Provides limitations on how a State may obligate its freight apportioned funds according to a State's share of the Primary Highway Freight System (PHFS) element of the National Highway Freight Network (NHFN).
- If a State's proportion is greater than or equal to 3 percent, the State may obligate its funds to projects only on PHFN, CRFC's and CUFC's (not Interstates that do not otherwise fall into one of these 3 designations).
- If a States' proportion is less than 3 percent, the State may obligate its apportioned freight funds to any component of the NHFN (which would include all Interstates).

<u>Project Eligibility</u>

- Limits States to use of 10% of apportioned funds on certain non-highway projects.
- Eligible projects include:
    - Project development activities
    - Construction, reconstruction rehab, and land acquisition
    - ITS, including freight ITS
    - Environmental mitigation related to freight impact
    - Rail-highway grade separation
    - Geometric design improvements
    - Truck only lanes
    - Runaway and climbing truck lanes
    - Shoulder widening
    - Truck Parking Facilities
    - Real time information systems
    - Electronic screening and credentialing
    - Traffic signals
    - Work Zone management
    - Ramp metering
    - ITS and other technologies for intermodal facilities and border crossings
    - Additional road capacity for highway freight bottlenecks
    - Any project that improves flow of freight to NHFN
    - Diesel retrofits
    - Data collection and analysis
    - Performance Target development

Performance Targets

If a State does not meet its performance targets for Freight on the Interstate System within 2 years of establishing the targets, it must submit to USDOT every 2 years a freight performance improvement plan with certain reporting requirements.

USDOT Study of Multimodal Projects

Within 2 years, USDOT must report to Congress a study of freight projects identified in State Freight Plans, and an evaluation of multimodal projects in those SFP's or otherwise identified by States subject to the limitation of apportioned freight funding for projects.

Assistance for Freight Projects

- Authorizes $200 million annually from the General Fund for projects designed to improve the national or regional performance of the freight transportation network including the ability to generate national economic benefits, reduce long-term congestion, and increase the speed, reliability, and accessibility of freight movement.
- Grant amount would be greater than $10 million but less than $100 million, with 25 percent of grants dedicated to rural areas, which would be subject to smaller cost thresholds.

Other Significant Freight-related Additions to MAP-21

- Defines Intelligent Freight Transportation Systems.
- Creates the Assistance for Major Projects program, which includes eligibility for freight projects as well as multi-state, multi-jurisdictional project sponsorships and applications.
- Creates a port performance program to gather data on the throughput performance of the nation's Top 25 ports by tonnage, TEU volume, and dry bulk. Measures to be collected include total truck time at ports.
- Consolidated rail infrastructure and safety improvements. Gives DOT authority to make grants to state and local governments, railroads and other entities to assist in financing the costs of improving safety, efficiency or reliability of passenger or freight transportation systems. (Section 421)
- Motor Carrier safety assistance program. (Section 31102)
- Commercial Vehicle Intelligent Systems Network grant program, $25 million for FY 2016.

PERFORMANCE MANAGEMENT

The DRIVE Act makes no significant changes to the performance management policy requirements included in MAP-21. This includes no new national-level performance measures beyond what is currently being developed through the federal rule-making process (except in the new port performance program described in the above section). The DRIVE Act does include language to remove the term structurally deficient and replace it with bridges in poor condition. This will make consistent the definition of bridges used between the minimum bridge condition requirements and the national-level bridge performance measure requirements.

The DRIVE Act includes new provisions to enable the USDOT to better support the State DOTs, MPOs, and FHWA in the collection and management of data for performance management. See description under the Planning section.

PLANNING

The DRIVE Act makes no significant changes to the performance-based planning and programming policy requirements included in MAP-21. The only changes were the following:

- Include the phrase "*improve the resilience and reliability of the transportation system.*" as another aspect of the scope of the planning process.
- Include "*…intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities, and commuter van pool providers*" as additional content in the statewide transportation plan and the transportation improvement program.

The DRIVE Act includes new provisions to enable the USDOT to better support the State DOTs, MPOs, and FHWA in the collection and management of data for performance-based planning and programming. This includes data analysis activities related to:

- Vehicle Probe Data (e.g., the National Performance Management Research Data Set)
- Household Travel Behavior Data (e.g., National Household Travel Survey)
- Travel Demand Model Data (e.g., 4-step model to improve data collection technique and analysis tools)
- Improved Travel Demand Models
- Performance Management Prediction Tools (e.g., new tools to predict future transportation performance)

These data-related activities are funded at $10m per year over the six year duration of the DRIVE Act.

For the Transportation Alternatives Program (TAP), funding level is fixed at $850 million per year with no annual increases, and incorporates the following modifications from MAP-21:

- Changes the suballocation balance from the current 50 percent state and 50 percent local (based on population) to 0 percent and 100 percent, respectively.
- The flexibility to transfer TAP funds to other programs is removed since only the state portion of TAP dollars in MAP-21 were eligible for transfer.
- Non-profit organizations are added to the list of eligible entities for TAP funding.
- Requires USDOT to develop guidance to expedite small, low-impact projects receiving TAP funds.

FUNDING AND FINANCE

In general, existing financing tools supported under the federal highway program are continued under the DRIVE Act.

<u>TIFIA</u>

- Reduces budget authority from $1 billion per year under MAP-21 to $300 million per year. The MAP-21 provision which resulted in a recent redistribution of $640 million in unobligated TIFIA dollars to the Surface Transportation Program has been eliminated.
- Expands eligibility to include infrastructure projects that support transit-oriented development and projects for the acquisition of plant and wildlife habitat included in a conservation plan that has been approved pursuant to the Endangered Species Act, or has been determined to mitigate the environmental impacts of transportation infrastructure projects that would otherwise be eligible for assistance under the TIFIA Program.

- Expands eligibility to allow capitalization of State Infrastructure Banks (SIB) through a “loan-to-lenders” approach to leverage funding for rural infrastructure projects.
    - Establishes the option to develop a Rural Projects Fund under a State Infrastructure Bank (SIB). Funds from TIFIA credit assistance can be deposited into the Rural Projects Fund and used to provide loans for rural infrastructure projects. Costs for rural projects under the Rural Projects Fund must be between $10 million and $100 million.
    - Loans for the rural infrastructure projects must not exceed 80 percent of the project cost. The interest rate of a loan will be at ½ of the Treasury Rate at the time of the loan agreement.
- Sets eligible project costs for local infrastructure projects at $10 million or more.
- Increases the cap on administration costs for the TIFIA program from 0.5 percent of funding available within a fiscal year to 1.5 percent of available funding within a fiscal year.
- Sets a limit for TIFIA funding used towards small projects with project costs of less than $75 million.

<u>RRIF</u>

- The Railroad Infrastructure Financing Improvement Act (RRIF) program is amended to allow pre-construction costs and planning and design expenses for reimbursement.
- Allows economic development and related activities and infrastructure that meet certain criteria to be financed.
- Secretary must provide written notice on whether application is complete or incomplete not more than 30 days after being received; incomplete applications can be resubmitted. Not later than 60 days after written notice is sent that application is complete, Secretary must provide written notice whether the application is approved or not.
- Credit risk premiums can be accepted on behalf of applicant from a non-Federal source, including a State or local government or agency or public benefit corporation or public authority.

<u>General Tolling</u>

- Expands application of tolling by allowing states to toll new Interstate lane construction so long as the number of toll free non-HOV lanes isn’t reduced.
- Eliminates the limitation that the federal share payment for a toll road, bridge, or tunnel project must be less than 80 percent.
- Expands requirements for the conversion of a HOV lane to a HOT lane. Agencies must allow private motorcoaches that serve the public to have access to a HOT lane under the same rates and conditions as a public transportation bus.

<u>Interstate System Reconstruction and Rehabilitation Pilot Program</u>

The DRIVE Act amends the 1998 “Interstate System Reconstruction and Rehabilitation Pilot Program” established in TEA-21 as follows:

- Requires the Secretary of Transportation to meet deadlines for approving applications, and, if requested, to provide technical assistance to help applicants through the application process.
- Requires projects approved before the enactment of the DRIVE ACT to issue a solicitation for contract within one year of the enactment and enter into a contract within two years of the enactment. New projects must meet similar timeframes.
- Does not allow funds apportioned for the National Highway Performance Program to be used for tolling projects under the pilot program unless the funds are used for maintenance purposes.

Transfer and Sale of Toll Credits

- Requires the establishment of a nationwide toll credit monitoring and tracking system that functions as a real-time database and includes the inventory and use of toll credits among states.
- Requires the establishment and implementation of a toll credit marketplace pilot program that allows states to sell and transfer toll credits; ten states may participate in the pilot program.
- Requires states to submit a report to the Secretary within 30 days after the purchase or sale of a toll credit; the report must include information such as the value of the toll credits purchased and the anticipated use of the toll credit.

Future of the Interstate Highway System

- Authorizes a $5 million study on actions needed to upgrade and repair the Interstate Highway System to meet growing and shifting demands over the next 50 years.
- Tasks the Transportation Research Board (TRB) to lead and complete the study within 3 years of the enactment of the DRIVE Act.
- Requires that TRB build off of methodologies examined and recommended in the December 2013 report titled ''National Cooperative Highway Research Program Project."
- Specifies that the report include specific recommendations regarding the features, standards, capacity needs, application of technologies, and intergovernmental roles to upgrade the Interstate System, including any revisions to law.
- Requires an advisory panel to oversee the development of the report; the panel will be comprised of current and future owners, operators, and users of the Interstate System and private sector stakeholders.

Researching Surface Transportation System Funding Alternatives

- Authorizes the Secretary of Transportation to promote research of user-based alternative revenue mechanisms that preserve a user fee structure to ensure the solvency of the Highway Trust Fund.
- Requires the Secretary to provide grants to States or other appropriate entities to conduct research to support this effort.
- Requires the Secretary of Transportation in consultation with the Secretary of the Treasury to establish a Surface Transportation Revenue Alternatives Advisory Council to inform the selection and evaluation of user-based alternative revenue mechanisms; Council Members will include representatives from US DOT, the Department of the Treasury, State Departments of Transportation, users of the surface transportation system, and technology and public privacy experts.
- Tasks the Council with defining the functionality of two or more user-based alternative revenue mechanisms, identifying technological, administrative, institutional, privacy, and other issues associated with the mechanisms, collecting information through public outreach, and providing recommendations on a process and criteria used for selecting research activities identified by the Council.
- Authorizes funding at $15 million in FY 2016 and $20 million annually for fiscal years 2017-2021.

Revenues to Off-set General Fund Transfers to the Highway Trust Fund

- In order to provide sufficient Highway Trust Fund revenues to support the first three years of the DRIVE Act, $34.6 billion of General Fund dollars are transferred to the Highway Account and $11 billion are transferred to the Mass Transit Account.

- The following list of “offsets” are used to cover the $45.6 billion in total General Fund transfers:
  - Appropriation from Leaking Underground Storage Tank Trust Fund: $300,000,000 (three installments ending Oct. 1, 2017)
  - Consistent basis reporting between estate and person acquiring property from decedent: $1.542 billion over 10 years
  - Revocation or denial of passport in case of certain unpaid taxes: $398 million over 10 years
  - Clarification of 6-year statute of limitations in case of overstatement of basis: $1.206 billion over 10 years
  - Additional information on returns relating to mortgage interest: $1.806 billion over 10 years
  - Return due date modifications: $285 million over 10 years
  - Reform of rules relating to qualified tax collection contracts: $2.481 billion over 10 years
  - Special compliance personnel program
  - Transfers of excess pension assets to retiree health accounts: $172 million over 10 years
  - Extension of deposits of security service fees in the general fund: $3.5 billion
  - Adjustment for inflation of fees for certain customs services: $5.697 billion
  - Dividends and surplus funds of Reserve banks: $17.106 billion
  - Strategic Petroleum Reserve drawdown and sale: $9.050 billion
  - Extension of enterprise guarantee fee: $1.9 billion

TRANSIT

- Authorizes $59.5 billion for public transportation programs from the Highway Trust Fund over six years, with FY 2016 funding at $9.2 billion increased by 6.9 percent from FY 2015. In addition, $15.6 billion from General Funds are authorized, with the majority of this funding dedicated to the Capital Investment Grants (New Starts) program.
- Bus and Bus Facility formula program increases from $431 million in FY 2016 to $626 million in FY 2021; in addition, the discretionary grant portion of this program is revived at $180 million in FY 2016.
- For the Enhanced Mobility for Seniors and Individuals with Disabilities, new coordination requirements have been created; funding increases by 17 percent between FY 2016 and 2021.
- Increases the fixed guideway portion of the State of Good Repair program by $262 million, or 12 percent, in FY 2016 over current funding levels. Over the six years, funding for this program increases from $2.4 billion in FY 2016 to $2.7 billion by 2021.
- Funding for Rural Area formula program increases from $553 million in FY 2016 to $644 million by 2021, compared to current funding level of $546 million.
- Urbanized Area Formula grants program increases from $4.5 billion in FY 2016 (slightly higher than current funding) to $5.2 billion by 2021.
- Transit rolling stock would be required to increase its Buy America content threshold from 60 to 70 percent by 2020.
- Expands TIFIA eligibility to include infrastructure projects that support transit-oriented developments.
- The Transit Cooperative Research Program funding of $5 million for each of the six years would receive Mass Transit Account funding instead of General Funds.
- The Public Transportation Safety program is modified to consider recommendations from the National Transportation Safety Board, best practices, and minimum safety standards developed by the public transportation industry.

PASSENGER RAIL

- For a period of four years between FY 2016 and 2019, the bill authorizes grants to Amtrak starting at $1.5 billion in the first year, rising to $1.9 billion by 2019. Of this amount, $2 million per year are provided to cover expenses for the State-Supported Route Committee and $5 million per year are provided for the Northeast Corridor Commission. (Section 101)
- Authorizes appropriations for DOT grants at $350 million in FY 2016 to $900 million in FY 2019. (Section 102)
- Authorizes $5 million per year of FRA Railroad R&D appropriations for cooperative rail research programs. (Section 105)
- Amtrak Reform: Grant process to establish Accounts for Northeast Corridor, State-supported routes, long-distance routes and its other national network activities. (Section 201)
- State Supported Route Committee: Established committee to consist of Amtrak, DOT/FRA, states and other public entities that sponsor Amtrak routes. (Section 203)
- Amtrak Board of Directors: Sets new geographic balance requirements for the 7 at-large directors (2 from the NEC area, 2 from non-NEC long-distance route areas, 2 from non-NEC state-supported route areas and 1 from any area). (Section 213)
- Competitive operating grants: Three-year operating assistance grants from DOT toward rail projects – route restoration, includes private funding and funding from public agencies, regions underserved by regional public transportation, foster economic development especially in rural area and areas with disadvantaged populations and enhance coverage of national network. (Section 301)
- Federal-State partnership for state of good repair: Competitive grants to fund capital projects; does not require Federal share to exceed 50 percent. (Section 302)
- Gulf Coast rail service working group to evaluate restoring intercity rail passenger service to the Gulf Coast region (between New Orleans, LA and Orlando, FL). (Section 305)
- Highway-rail grade crossing safety: Requires DOT to develop a state-specific model grade crossing action plan and then require each state to implement a plan. Section 130 money eligible to be used to update state plans. (Section 401)
- Consolidated rail infrastructure and safety improvements. Gives DOT authority to make grants to state and local governments, railroads and other entities to assist in financing the costs of improving safety, efficiency or reliability of passenger or freight transportation systems. (Section 421)