



MEMORANDUM

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DATE: November 11, 2015

SUBJECT: Comparison of Key Provisions in the House and Senate Transportation Bills

On November 5, the House overwhelmingly approved a six-year highway and transit reauthorization bill – the *Surface Transportation Reauthorization and Reform (STRR) Act of 2015* – setting the stage for negotiations to begin with the Senate. Appointed dealmakers from both chambers will now convene a conference committee charged with reconciling the differences between the STRR Act and a competing Senate-passed bill – the *Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act*.

The committee will have limited time complete its work, as the latest short-term extension of MAP-21 is slated to expire on November 20. Should negotiators need additional time, it appears that lawmakers would be willing to approve another stopgap measure. Even if another extension is needed, congressional leaders have expressed confidence that they will be able to approve a final transportation bill before recessing for the Thanksgiving holiday.

As approved by their respective chambers, the House and Senate legislation would authorize transportation programs for six years; however, both bills only identify three years worth of program funding. It should be noted that a new provision was included in the STRR Act that could add as much as \$40 billion in additional revenue. This funding, if paired with the revenue provisions proposed by the Senate, could be enough to provide six years of funding at the House-prescribed levels, or five years of funding at the higher Senate levels.

Aside from the funding levels and offsets, there are a number of other details that must be resolved by the conference committee.

To follow is a brief summary of several CSAC transportation reauthorization priorities, as well as a side-by-side chart comparing other key provisions.

Bridges

The STRR Act includes a provision that that would provide States with flexibility to spend National Highway Performance Program (NHPP) funds on non-NHS bridges that are located *on* the Federal-aid highway system. Currently, only local off-system bridges (non-NHS bridges that are *not* on a Federal-aid highway) are eligible to receive dedicated federal funds. While States would not be required to make such expenditures, the added flexibility is designed to encourage funding parity for local bridge projects.

With regard to the Senate bill, the DRIVE Act would require States to spend 15 percent of Surface Transportation Program (STP) funds on bridges that are *not* located on the NHS. The legislation also would require that at least half of the new non-NHS bridge set-aside be spent on local off-system bridges. In California, the percentage of locally owned off-system bridges is nearly equal to the percentage of locally-owned on-system bridges.

Under the DRIVE Act, California's non-NHS bridge set-aside would total approximately \$132 million in fiscal year 2016. Of that amount, at least \$66 million would need to be spent on local off-system bridges. By comparison, under current law, roughly \$75 million is set-aside for California's local off-system bridges.

CEQA-NEPA Reciprocity

The STRR Act includes a pilot program designed to eliminate duplication of Federal and State environmental reviews. Such an environmental "reciprocity" program has been a long-standing transportation reauthorization priority for CSAC. Specifically, the bill would require the Department of Transportation (DOT) to establish a program whereby up to five States would be allowed to conduct environmental reviews and make approvals for projects under State environmental laws and regulations instead of Federal laws and regulations. Moreover, the pilot program would allow an approved-State to exercise program authority on behalf of up to 25 local governments for locally administered projects. In California, where local governments serve as lead agencies under the *California Environmental Quality Act*, local participation in the proposed reciprocity program is essential.

The DRIVE Act does not include a comparable provision.

Surface Transportation Project Delivery Program

The House bill would expand participation under the Surface Transportation Project Delivery Program (NEPA assignment program). Specifically, the STRR Act would allow States to exercise program authority on behalf of local governments for locally administered projects or to provide guidance and training on consolidating and minimizing the documentation and analyses necessary for local agencies to comply with NEPA and comparable requirements of State law.

Congress first authorized the Surface Transportation Project Delivery Program as a pilot initiative in 2005. The program allowed Caltrans to assume Federal environmental review responsibilities under NEPA and other Federal environmental laws and has resulted in a

simplified and expedited environmental process for transportation projects on State-owned facilities. The provisions of the STRR Act could help California's local governments realize the same program benefits in the interest of expediting local projects.

The DRIVE Act does not include a comparable provision.

High-Risk Rural Roads

The STRR Act proposes modifications to the special rule for High Risk Rural Roads under the Highway Safety Improvement Program (HSIP) by requiring a state to place a greater emphasis on the need to improve rural road safety, if the state has a fatality rate from rural road crashes that is higher than the national average.

Meanwhile, the DRIVE Act changes the special rule for high risk rural roads to require states to invest safety funds on rural road safety improvements if their rural road fatality rate fails to decrease over a two-year period of time AND their rural road fatality rates exceed the national average. This change intends to better target areas with the highest incident rates and compliments the goal of moving the nation's transportation system 'towards zero deaths.'

Comparison of Major Highway Provisions in House and Senate Transportation Reauthorization Legislation

	HOUSE	SENATE
Short Title	Surface Transportation Reauthorization and Reform (STRR) Act	Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act
Authorization	6 Years of Policy 3 Years of Funding	6 Years of Policy 3 Years of Funding
Funding	The STRR Act authorizes \$325 billion	The DRIVE Act authorizes \$342 billion.
Program Structure	The STRR Act continues the core program structure put in place by MAP-21. It would rename the Surface Transportation Program (STP) as the Surface Transportation Block Grant Program. It also would create a new program for Nationally Significant Freight and Highway Projects.	The DRIVE Act continues the core program structure put in place by MAP-21. It also would establish a new National Freight Program as a core program.
NHPP	Funding for NHPP would increase from \$22.3 billion in FY 2016 to \$24.6 billion in FY 2021 (currently \$21.9 billion). Of particular interest to California's counties, the bill would expand the list of eligible expenses to include bridges that are not on the National Highway System.	Funding for NHPP would increase from \$22.8 billion in FY 2016 to \$25.6 billion in FY 2021 (currently \$21.9 billion).
CMAQ	CMAQ funding would gradually increase from \$2.25 billion	CMAQ funding would gradually increase from \$2.31 billion

	in FY 2016 to \$2.45 billion in FY 2021 (currently \$2.27 billion).	in FY 2016 to \$2.6 billion in FY 2021 (currently \$2.27 billion).
STP	<p>The STRR Act would replace the STP with a slightly broader Surface Transportation Block Grant Program.</p> <p>Funding would increase from about \$10.3 billion in FY 2016 to \$11.5 billion in FY 2021 (currently \$10.1 billion).</p> <p>Sub-Allocation: The bill also would gradually increase the percentage of funds that are sub-allocated to local governments increasing from 50 percent in FY 2016 to 55 percent by FY 2021 (existing split is 50/50).</p>	<p>Funding for STP would gradually increase from \$10.2 billion in FY 2016 to \$11.4 billion in FY 2021 (currently \$10.1 billion).</p> <p>Sub-Allocation: The DRIVE Act designates that 55 percent of funds are to be sub-allocated to local governments, while the remaining 45 percent of STP funds would go to the state (existing split is 50/50).</p>
HSIP	Funding for HSIP would increase from \$2.22 billion in FY 2016 to \$2.45 billion in FY 2021 (currently \$2.19 billion).	Funding for HSIP would increase from \$1.89 billion in FY 2016 to \$2.14 billion in FY 2021 (currently \$2.19 billion).
Transportation Alternatives	The STRR Act would provide nearly \$820 million annually - the same level of funding currently provided under MAP-21 - for the transportation alternatives program.	The DRIVE Act would provide \$850 million annually - an increase of approximately \$30 million - for the transportation alternatives program. Under the bill, 100 percent of TA funding would be allocated to local entities, whereas current law requires 50 percent to be split between locals and the State.
Freight	The STRR Act would authorize \$4.46 billion over six years for a new competitive grant program - the Nationally Significant Freight and Highway Projects Program - for projects that generate national/regional economic, mobility, or safety benefits. It would help fund larger projects that improve movement of both freight and people, increase competitiveness, reduce bottlenecks, and improve intermodal connectivity.	<p>The DRIVE Act would provide \$11.5 billion over six years for a formula-based freight program that is designed to improve goods movement on key freight corridors. Funding would be directed toward certain eligible highway freight projects on the National Freight Network (NFN), which was initially created and designated under MAP-21.</p> <p>It also would authorize \$200 million annually for projects</p>

		<p>that improve national/regional performance of the freight transportation network. Grants would range from \$10 million to \$100 million, with 25 percent of the funds reserved for rural areas.</p> <p>In addition, the bill would allow state and local governments to designate critical rural and urban freight corridors that match regional goods movement on roads beyond the Primary Freight Highway Network.</p>
<p>Bridges</p>	<p>The STRR Act maintains the current set-aside for local off-system bridges. In addition, the bill would make State and locally owned on-system bridges - those bridges that are on the Federal Aid System but not on the National Highway System (NHS) - <i>eligible</i> for NHPP funding.</p>	<p>The bill would require States to spend a certain percentage of their STP allocations on bridges that are not located on the NHS. Although MAP-21 created a funding "set-aside" for local bridges that are neither located on the NHS nor on the Federal-aid highway system (referred to as "off-system" bridges), the Act did <i>not</i> require States to spend any money on local bridges that are off the NHS but on a Federal-Aid Highway.</p> <p>Under the DRIVE Act, <i>all</i> non-NHS bridge projects would be eligible to receive funding from the set-aside, but states would be required to invest at least half of that on off-system bridges.</p> <p>This would result in the expenditure of roughly \$1.5 billion in federal funding for non-NHS bridges in fiscal year 2016. That number would increase to approximately \$1.7 billion in fiscal year 2021. By comparison, States are currently required to spend nearly \$777 million annually on non-NHS/off-Federal-Aid Highway system bridges.</p>
<p>High-Risk Rural Roads</p>	<p>The STRR Act would require states to demonstrate in their state strategic highway safety plan strategies to address fatalities and improve safety on rural roads, if their rural</p>	<p>The DRIVE Act changes the special rule for high risk rural roads to require states to invest safety funds on rural road safety improvements if their rural road fatality rate fails to</p>

	road fatality rate is higher than the national average.	decrease over a two-year period of time AND if their rural road fatality rates exceed the national average.
Assistance for Major Projects (AMP)	N/A	The DRIVE Act would establish a new competitive grant program – similar to the popular TIGER grant program – to help fund critical high-cost transportation projects. Eligible projects include those that can generate national or regional economic benefits, reduce congestion, improve roadways that are vital to the nation's energy security, as well as projects that improve the movement of freight, transportation safety, rural connectivity, and metropolitan accessibility. The bill authorizes \$250 million for the program in FY 2016, increasing to \$400 million by FY 2021.
TIFIA Program	The STRR Act would authorize \$200 million annually for the TIFIA program - down from \$1 billion in FY 2015.	The DRIVE Act would authorize a total of \$300 million per year for TIFIA - down from \$1 billion in FY 2015.
Acceleration of Project Delivery	<p>Satisfaction of Requirements for Certain Historic Sites The bill simplifies historical preservation and mitigation requirements. Pursuant to the legislation, DOT may determine that no practical alternative exists when a project might impact a historical resource. When such a determination is made, there would no longer be a need for any further alternatives analysis.</p> <p>Treatment of Certain Bridges The STRR Act would streamline the environmental review process for bridge repair by exempting common post-1945 concrete or steel bridges/culverts from individual review.</p>	<p>Categorical Exclusion for Projects of Limited Federal Assistance The Senate bill would expand CEs for projects involving limited federal assistance</p> <p>Programmatic Agreement Template The DRIVE Act would require the secretary of DOT to develop a programmatic agreement (PA) "template" for environmental and other required project reviews, including Categorical Exclusions (CEs). Pursuant to the bill, once a PA is adopted for a transportation project, all participating agencies would be directed to adhere to the recommendations of the agreement. The legislation also would direct DOT to allow for classes of CEs to be</p>

Efficient Environmental Reviews for Project Decisionmaking

The STRR Act would grant "substantial deference" to the decisions of the lead agency when considering the range of alternatives on a transportation project. A single NEPA document is to be used to satisfy all Federal environmental review and permit requirements.

DOT would be required to develop an environmental checklist for transportation projects to improve interagency collaboration between the lead agency and participating agencies.

Improving Transparency in Environmental Reviews

The STRR Act requires the secretary to establish an online platform and, in coordination with other federal agencies, issue reporting standards to make publicly available the status of reviews, approvals, and permits required for compliance with NEPA or other federal laws requiring an EIS or an Environmental Assessment (EA).

The legislation also requires States that have assumed responsibility for making CE determinations and/or participate in the Section 327 Surface Transportation Project Delivery Program to provide status information in accordance with the aforementioned standards.

Integration of Planning and Environmental Review

Section 1307 would allow information gathered during the transportation planning process to satisfy NEPA requirements. In addition, alternatives that are analyzed and rejected during the planning process would not need to be reanalyzed during NEPA review.

implemented through a PA, and allows the use of PAs to process CEs as a group.

Agency Coordination

The legislation would *require* the federal lead agency on a transportation project to consider and respond to comments received from participating agencies on matters within the special expertise or jurisdiction of the participating agencies.

Initiation of Environmental Review Process

Requires DOT, within 45 days after receiving a project application, to provide a project sponsor with a written response describing the determination of the secretary to either: initiate the environmental review process, including a timeline and an expected date for the publication in the *Federal Register* of the relevant notice of intent; decline the application, including an explanation of the reasons for the decision; or, request additional information from the sponsor, including providing the sponsor with an accounting of what is necessary to initiate the environmental review process.

Additionally, under the bill, any project sponsor would be allowed to submit a request to the secretary to designate a specific DOT operating administration or secretarial office to serve as the federal lead agency for a project. DOT would need to respond to the project sponsor within 45 days of the request.

Section 11104 also would require the lead agency to reduce duplication, to the maximum extent practicable, between the evaluation of alternatives under NEPA and the evaluation of alternatives in the metropolitan transportation planning process or in the environmental review process carried out under State law. In particular,

CEs for Projects of Limited Federal Assistance

The STRR Act would expand CEs for projects involving limited federal assistance.

Application of CEs for Multimodal Projects

Section 1311 would allow lead agencies on multi-modal projects to apply/qualify for CE status with the concurrence of the participating agency.

Program for Eliminating Duplication of Environ. Reviews

The Secretary of Transportation would be authorized to establish a pilot program whereby States would be permitted to conduct environmental reviews and make approvals for projects under State environmental laws and regulations instead of Federal laws and regulations. The Secretary must first determine that the State law is substantially equivalent to Federal law.

No more than 5 states would be able to participate in the pilot. However, it should be noted that this provision would allow a State to exercise authority on behalf of up to 25 local governments for locally administered projects.

Such an environmental "reciprocity" program has been a long-standing priority for CSAC.

Surface Transportation Project Delivery Program

The House bill would expand participation under the Surface Transportation Project Delivery Program (NEPA assignment program). Specifically, the STRR Act would allow States to exercise program authority on behalf of local governments for locally administered projects or to provide guidance and training on consolidating and minimizing the documentation and analyses necessary for local agencies to comply with NEPA and comparable requirements of State law.

the lead agency would not be required to undertake detailed consideration of a project alternative proposed in an environmental impact statement (EIS) if, as determined by the lead agency, the alternative was considered in a metropolitan planning process or a State environmental review process by a metropolitan planning organization (MPO) or a State or local transportation agency.

Furthermore, the bill would require the lead agency to determine that certain other actions or criteria were met, including determining that the applicable metropolitan planning process or State environmental review process included an opportunity for public review and comment, and that the federal lead agency has determined that the alternative to be eliminated from consideration is not necessary for any permit or approval under any other federal law.

Improving Collaboration for Accelerated Decision Making

Under the DRIVE Act, a lead agency would be *required* to consult with and receive the concurrence of each participating agency, as well as the State and/or project sponsor, regarding the establishment of a plan for coordinating public and agency participation in the environmental review process. Coordination plans include, among other things, a schedule for completion of the environmental review process for the project.

Section 11105 also would accelerate the timeframe for federal agency approval of a transportation project.

Accelerated Decisionmaking in Environmental Reviews

The bill would codify in Title 23 existing statutory language that allows a lead agency to modify a final EIS through the use of errata sheets if comments received on a draft EIS are minor and the lead agency's responses to those comments are limited to factual corrections or

Accelerated Decisionmaking in Environmental Reviews

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Aligning Federal Environmental Reviews

The legislation would direct DOT, in coordinating with other relevant federal agencies, to develop guidelines for conducting coordinated and concurrent environmental reviews.

explanations of why the comments do not warrant further response. This section, first authorized by MAP-21, also requires a lead agency, to the maximum extent practicable, to expeditiously develop a single document that consists of a final EIS and a record of decision, unless the final EIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns.

Improving Transparency in Environmental Reviews

The Senate bill requires the secretary to establish an online platform and, in coordination with other federal agencies, issue reporting standards to make publicly available the status of reviews, approvals, and permits required for compliance with NEPA or other federal laws requiring an EIS or an EA.

The legislation also requires States that have assumed responsibility for making CE determinations and/or participate in the Section 327 Surface Transportation Project Delivery Program to provide status information in accordance with the aforementioned standards.

Integration of Planning and Environmental Review

The DRIVE Act would allow a federal lead agency to adopt and use a "planning product" (i.e. any decision, analysis, study, or other documented information that is the result of an evaluation or decisionmaking process carried out by an MPO or State during metropolitan or statewide transportation planning) in proceedings relating to any class of action in the environmental review process.

Use of Programmatic Mitigation Plans

Requires a federal agency responsible for environmental reviews, permits, or approvals for a transportation project to consider using the recommendations in a programmatic

mitigation plan when carrying out responsibilities under NEPA or any other federal environmental law.

CE for Multimodal Projects

The DRIVE Act would allow lead agencies on multi-modal projects to apply/qualify for CE status with the concurrence of the participating agency.

Modernization of the Environmental Review Process

Not later than 180 days after the date of enactment, Section 11114 would require the secretary of DOT to examine ways to modernize, simplify, and improve the implementation of NEPA.

In reviewing ways to improve NEPA, the secretary would be required to consider a number of factors, including: the use of technology in the process, such as searchable databases, geographic information system mapping tools, and integration of those tools with fiscal management systems to provide more detailed data; other innovative technologies; ways to prioritize use of programmatic environmental impact statements; methods to encourage cooperating agencies to present analyses in a concise format; and, any other improvements that can be made to modernize process implementation.

Satisfaction of Requirements for Certain Historic Sites

The bill simplifies historical preservation and mitigation requirements. Pursuant to the legislation, DOT may determine that no practical alternative exists when a project might impact a historical resource. When such a determination is made, there would no longer be a need for any further alternatives analysis.

Bridge Exemption Under Certain Provisions

The DRIVE Act would streamline the environmental review

		<p>process for bridge repair by exempting common post-1945 concrete or steel bridges/culverts from individual review.</p>
<p>Miscellaneous Programs</p>	<p style="text-align: center;">Bundling of Bridge Projects</p> <p>The STRR Act would allow state and local governments to bundle multiple comparable bridge projects into a single project.</p> <p style="text-align: center;">Transportation Funding Alternatives</p> <p>The bill directs the Secretary of Transportation to make grants to states to demonstrate alternative user-based revenue mechanisms that could maintain the long-term solvency of the Highway Trust Fund. The goal is to test at least two alternative user-based revenue mechanisms and to provide recommendations for adoption and implementation at the federal level.</p>	<p style="text-align: center;">Bundling of Bridge Projects</p> <p>The DRIVE Act would allow state and local governments to bundle multiple comparable bridge projects into a single project.</p> <p style="text-align: center;">Transportation Performance and Innovation Grants</p> <p>The legislation would authorize \$150 million per year for a new competitive grant program, called Achievement in Transportation for Performance and Innovation, to support best practices in transportation performance management and strategies that achieve innovation and efficiency. States, local governments, and tribal governments would be eligible to apply for the grants, with individual awards capped at \$15 million.</p> <p style="text-align: center;">Transportation Funding Alternatives</p> <p>The DRIVE Act would authorize the Secretary of Transportation to make grants to states to demonstrate alternative user-based revenue mechanisms that could maintain the long-term solvency of the Highway Trust Fund. The goal is to test at least two alternative user-based revenue mechanisms and to provide recommendations for adoption and implementation at the federal level.</p>