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SURFACE TRANSPORTATION EXTENSION ACT OF 2009

JULY 22, 2009.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 1498]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, which considered an original bill (S. 1498) to provide an extension of highway programs authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, having considered the same, reports favorably thereon and recommends that the bill do pass.

PURPOSES OF THE LEGISLATION

The Surface Transportation Extension Act of 2009 provides an extension of highway programs authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users through March of 2011.

GENERAL STATEMENT AND BACKGROUND

The Surface Transportation Extension Act of 2009 will provide an extension of highway programs authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This legislation will extend, for an additional 18 months at 2009 funding levels, those programs that fall under titles I, V, and VI of SAFETEA-LU.

This bill is drafted in the form of a continuing resolution, so that all programs, activities and eligibilities are continued unless otherwise specified in the bill. The bill does not make policy changes. Based on this extension, the Federal Highway Administration will

be able to release funding for Federal fiscal year 2010 and half of fiscal year 2011.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Summary

Section 1 designates the short title as the “Surface Transportation Extension Act of 2009”.

Section 2. Federal-Aid highways

Section 2(a) In general

Summary

Section 2(a) extends until March 31, 2011 the requirements, authorities, conditions, eligibilities, limitations, and other provisions authorized under titles I, V, and VI of SAFETEA-LU, the SAFETEA-LU Technical Corrections Act of 2008, and title 23 of U.S. Code, which would otherwise expire on or cease to apply after September 30, 2009.

Discussion

This provision is intended to extend all the provisions of SAFETEA-LU or any amendment made by that act, unless otherwise provided for in this bill, through March 31, 2011. This language is intended to make clear that the process that is used to deliver programs, including all of the existing requirements associated with them, will continue. For example, all of the existing planning and contracting provisions, and the requirements under 1101(b) of SAFETEA-LU would apply during the extension period.

Section 2(b) Authorization of appropriations

Summary

Section 2(b)(1) and (b)(2) authorizes appropriations out of the Highway Trust Fund (other than the Mass Transit Account) for fiscal year 2010 at a sum equal to the total amount authorized for programs, projects, and activities for fiscal year 2009 under titles I, V, and VI of SAFETEA-LU and title 23 of U.S. Code, and for the period beginning on October 1, 2010 and ending on March 31, 2011 a sum equal to 1/2 of the total amount authorized for programs, projects and activities for fiscal year 2009 under titles I, V, and VI of SAFETEA-LU and title 23 of U.S. Code.

Discussion

These subsections are intended to continue 2009 funding levels, as authorized in SAFETEA-LU, for fiscal year 2010 and the first six months of fiscal year 2011. This provision sets the total funding levels for programs in these titles, including administrative expenses in section 3.

*Section 2(c)(1) and (c)(2) Use of funds**Summary*

Section 2 subsections (c)(1) and (c)(2) clarify that funds authorized in section 2(b) for fiscal year 2010 and the period beginning on October 1, 2010 and ending on March 31, 2011 shall be distributed, administered, limited and made available in the same manner and at the same level as funds authorized to be appropriated for fiscal year 2009 to carry out programs, projects, activities, eligibilities, and requirements under SAFETEA-LU, the SAFETEA-LU Technical Corrections Act of 2009, and title 23 of U.S. Code.

Discussion

These subsections clarify the use of funds made available under section 2(b) to ensure those funds are distributed, administered, limited and made available for obligation in the same manner and at the same levels as funds made available in fiscal year 2009 to carry out SAFETEA-LU. For the period beginning on October 1, 2010 and ending on March 31, 2011, funds are to be distributed, administered, limited and made available for obligation in the same manner and at the same level as $\frac{1}{2}$ of the total amount authorized to be appropriated in fiscal year 2009. These subsections specifically address the flow of funding made available in 2(b), addressing the distribution across the States.

Unless noted elsewhere in this act, all programs, projects, activities, eligibilities and requirements of SAFETEA-LU are to be continued through March 31, 2011.

*Section 2(c)(3) Calculation**Summary*

Section 2 subsection (c)(3) clarifies that amounts authorized to be appropriated under 2(b) shall be calculated without regard to any rescission or cancellation of funds or contract authority for fiscal year 2009.

Discussion

This provision clarifies that funding levels in this bill are to be calculated using fiscal year 2009 funding levels prior to any rescissions. In calculating the distribution of funding by program, the agency should continue the relationships among the core formula programs in calculating and distributing funding into the individual program accounts within each State's share of the total funds.

*Section 2(c)(4) Contract authority**Summary*

Section 2 subsection (c)(4) provides contract authority for funds authorized to be appropriated under section 2.

Discussion

This subsection provides contract authority for the funds authorized to be appropriated under section 2. This subsection also exempts from any obligation limitations \$639,000,000 in annualized contract authority provided in section 105 of title 23, U.S. Code,

and \$100,000,000 in permanent and indefinite contract authority for the Emergency Relief program under section 125 of title 23, U.S. Code.

Section 2(c)(5) Limitation on obligations

Summary

Section 2 subsection (c)(5) clarifies that funds authorized to be appropriated under subsection (b) and (c) are subject to the limitation on obligations for fiscal year 2009 under section 1102 of SAFETEA-LU. For fiscal year 2011, the obligation limitation would be equal to half of the limitation on obligations for fiscal year 2009 under section 1102 of SAFETEA-LU.

Discussion

This subsection makes clear that the funds provided in this act (except those otherwise exempted) are subject to the obligation limitations set out in section 1102 of SAFETEA-LU.

Section 2(d) Extension and flexibility for certain allocated programs

Section 2(d)(1) Fiscal year 2010

Summary

Section 2 subsection (d)(1) ensures that for fiscal year 2010 a State receives the same portion of the share of funds under section (b) as determined by the amount the State received in fiscal year 2009 to carry out sections 1301, 1302, 1307, 1702, and 1934 of SAFETEA-LU and section 144(f) of title 23, U.S. Code. And that those funds are made available to the State for programs apportioned under sections 104(b) and 144 of title 23 of U.S. Code in the same proportion for each such program that the amount apportioned to the state for that program for fiscal year 2009 bears to the amount apportioned to the state for fiscal year 2009 for all programs apportioned under such sections of Code, and administered in the same manner and with the same period of availability as such funding is administered under such sections.

Discussion

This subsection ensures each state receives the same portion of funds in fiscal year 2010 as they did in fiscal year 2009 to carry out sections 1301, 1302, 1307, 1702, and 1934 of SAFETEA-LU and section 144(f) of title 23, U.S. Code. Further, this subsection requires states to use those funds on and administer them in the same manner as any program apportioned under 104(b) and 144 of title 23, U.S. Code.

Section 2(d)(2) Fiscal year 2011

Summary

Section 2 subsection (d)(2) ensures that for the period beginning on October 1, 2010 and ending on March 31, 2011, a State shall receive the portion of the share of the funds under section (b) as determined by $\frac{1}{2}$ of the amount the State received in fiscal year 2009 to carry out sections 1301, 1302, 1307, 1702, and 1934 of SAFETEA-LU and 144(f) of title 23, U.S. Code. And that those funds are made available to the State for programs apportioned

under sections 104(b) and 144 of title 23 of U.S. Code, and in the same proportion for each such program that the amount apportioned to the State for that program for fiscal year 2009 bears to the amount apportioned to the State for fiscal year 2009 for all programs apportioned under such sections of Code, and administered in the same manner and with the same period of availability as such funding is administered under such sections.

Discussion

This subsection ensures that for the period between October 1, 2010 and March 31, 2011, each State receives $\frac{1}{2}$ of the same portion of funds in fiscal year 2010 as they did in fiscal year 2009 to carry out sections 1301, 1302, 1307, 1702, and 1934 of SAFETEA-LU and section 144(f) of title 23, U.S. Code. Further, this subsection requires states to use those funds on and administer them in the same manner as any program apportioned under sections 104(b) and 144 of title 23, U.S. Code.

Section 2(d)(3) Additional funds

Summary

Section 2 subsection (d)(3) ensures that no additional funds shall be provided for any project or activity under subsection (c) that the Secretary of Transportation determines was sufficiently funded before or during fiscal year 2009 to achieve the authorized purpose. Subsection (d) further clarifies that any funds made available as a result of the Secretary of Transportation's determination shall be reserved by the Secretary and redistributed to each State in accordance with paragraph (1) or (2) of subsection (c), or paragraph (1) or (2) of subsection (d) as appropriate to carry out other highway projects and activities extended by subsection (c). Those funds will be redistributed in the portion that the total amount of funds made available in 2009 for projects and activities described in subparagraph (A) in the State bears to the total amount of funds made available for fiscal year 2009 for those projects and activities in all States.

Discussion

This section makes clear that projects or activities that are completed or have achieved their authorized purposes do not need to be continued under this section. Additional funding provided in this bill for projects or activities that are determined by the Secretary to have already been sufficiently funded would then be made available to the State for programs apportioned under sections 104(b) and 144 of title 23, U.S. Code. The Secretary should distinguish between those projects and activities that were in place prior to SAFETEA-LU and thus are of a continuing nature as opposed to those that were authorized for the SAFETEA-LU period alone.

Section 2(e) Extension of authorizations under Title V of SAFETEA-LU

Summary

Comparable to the treatment of grant programs in Section 2(c) above, Section 2(e) extends the SAFETEA-LU research programs in paragraphs (1) through (5) at the fiscal year 2009 levels for fis-

cal year 2010 and half of fiscal year 2011 in the style of a continuing resolution. The Title V programs include Surface Transportation Research, Development and Deployment Program (STRDD), Training and Education, Bureau of Transportation Statistics, University Transportation Research, and Intelligent Transportation Systems (ITS) Research.

Treatment of SAFETEA-LU designations. A number of the designated projects, particularly under STRDD, were established only as one-time activities; the bill clarifies that such activities should not be duplicated during the extension. The Secretary is charged with identifying those projects or activities that have satisfied the SAFETEA-LU authorized purpose and assuring that an amount equal to that funding is allocated during the extension period to STRDD. Further, it is the intention of this legislation that the full funding available to STRDD be devoted to the major program areas in the same relative amounts as were actually used during the SAFETEA-LU period.

Discussion

Extension Research Priorities. The FHWA Administrator is encouraged, as part of the agency's overall program delivery functions, to elevate the importance placed on data collection, data analysis, and tool development as they are critical to informing the actions taken by grantees under FHWA core programs. Each of the major research program areas continued under this bill can have an important part to play in supporting these efforts, including monitoring system condition and performance, analysis of such system performance data, modeling of the relevant relationships with outcomes of transportation investments including operations, and other tools that are necessary to adopt a performance-based asset management approach. These should be emphasized during the 18-month extension period as a means to prepare for the next generation of investment and operations. Implementation of research studies, conducted in-house and supplemented with these resources, should reflect the following priorities within each of the major program areas:

(1) Safety: conduct studies that will improve safety through better information on crash locations and causes in support of Strategic Highway Safety Plans

(2) Infrastructure: conduct studies that expedite the improvement, development, and deployment of asset management tools that will help identify and evaluate investment and operational options that in turn improve system preservation and new capacity decisions

(3) Operations: conduct studies that will develop and improve analytic tools to advance the deployment of investment and operational strategies for more efficient freight networks and reduced congestion

(4) Planning: conduct studies and analyses to support regional, metropolitan and freight planning; identify links between data requirements necessary to establish performance baselines in (1), (2) and (3) above and planning requirements as appropriate; incorporate modeling of mode choice and non-motorized travel into existing tools; develop outcome-based analytic tools to monitor impacts

of investments and operational decisions on system performance to provide feedback into the planning process

(5) Policy: building upon prior studies and tests including by the Transportation Research Board, Section 1909 and Section 11142 Commissions, NCHRP 20–24 (69) Implementable Strategies for Shifting to Direct Usage-Based Charges for Transportation Funding, and field tests conducted in Oregon, Puget Sound, and by the University of Iowa, conduct studies that evaluate the feasibility, approaches and methods of assessing fees on highway users that result in sustainable funding mechanisms; design the initial phase of pilot studies for subsequent consideration

(6) Corporate: conduct the overall research program such that the above program areas are effective and mutually supportive including consideration of integrating the various data systems for efficiency of data collection, reporting, and analysis

FHWA is encouraged to work closely with data providers across the agency, elsewhere in the Department, with State DOTs, and with MPOs. The Secretary is encouraged to continue to communicate routinely with the appropriate Congressional committees as to its findings and provide a report to Congress 12 months after enactment of the Act.

Section 3. Administrative expenses

Summary

Section 3 authorizes funds to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the administrative expenses of the Federal-aid highway program. For fiscal year 2010 a total of \$422,425,000 is authorized, and for the period beginning on October 1, 2010 and ending on March 31, 2011 a total of \$217,023,500 is authorized. This section also provides contract authority for the funds authorized under this section.

Discussion

The funds authorized in Section 3 are not in addition to the total amounts authorized but are to be provided out of the funds made available in Section 2 of the legislation.

LEGISLATIVE HISTORY

On July 15, 2009 the Senate Committee on Environment and Public Works considered an original bill to provide an extension of highway programs authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. Senators Boxer and Inhofe offered a technical amendment to ensure that the research program under SAFETEA–LU would be continued and that the projects and activities that were completed under SAFETEA–LU were not replicated in the extension but funding for those projects would be redirected to the Title V research program. This amendment was adopted by voice vote. Senators Boxer and Inhofe offered a second technical amendment that corrected the funding levels for Department of Transportation administrative expenses, which was adopted by voice vote.

Senator Voinovich offered an amendment to reduce the period of the extension of the Federal-aid highway programs to one year, ending on September 20, 2010. He offered a second degree amend-

ment to his amendment which corrected the date by changing it from September 20, 2010 to September 30, 2010. The second degree amendment was adopted by voice vote. The Voinovich amendment as amended failed by roll call vote with 11 nays and 8 yeas.

Senator Bond offered an amendment to repeal Section 10212 of SAFETEA-LU therefore canceling the rescission of unobligated funds scheduled to occur on September 30, 2009, which failed by roll call vote with 14 nays and 5 yeas. The Surface Transportation Extension Act of 2009 as amended was reported favorably to the Senate with 18 yeas and 1 nay.

HEARINGS

On June 25, 2009 the Senate Committee on Environment and Public Works held a hearing entitled the "Impacts of Expected Highway Trust Fund Insolvency" at which members discussed the need for an infusion of revenue into the highway trust fund and an 18 month extension of SAFETEA-LU.

ROLL CALL VOTES

The Committee on Environment and Public Works met to consider the Surface Transportation Extension Act of 2009 on July 15, 2009. Senator Voinovich offered an amendment to reduce the period of the extension of the Federal-aid highway programs to one year, ending on September 20, 2010. The Voinovich amendment as amended failed by roll call vote with 11 nays and 8 yeas.

Senator Bond offered an amendment to repeal Section 10212 of SAFETEA-LU therefore canceling the rescission of unobligated funds scheduled to occur on September 30, 2009, which failed by roll call vote with 14 nays and 5 yeas. Following amendments, a quorum of the Committee being present, the Surface Transportation Extension Act of 2009 as amended was reported favorably to the Senate with 18 yeas and 1 nay.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b)(2) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that no regulatory impact is expected by the passage of the bill. The bill will not affect the personal privacy of individuals. As noted below, the Congressional Budget Office has concluded that the bill will not establish any private-sector mandates.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the Committee finds, consistent with the determination of the Congressional Budget Office, that the Surface Transportation Extension Act of 2009 would impose no Federal intergovernmental unfunded mandates on State, local or tribal governments. The Committee further agrees with the Congressional Budget Office that the bill does not impose private sector mandates.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget

Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE

S. 1498—The Surface Transportation Extension Act of 2009

Summary: The Surface Transportation Extension Act of 2009 would extend through March 30, 2011, Federal-Aid Highway programs authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU; Public Law 109-59). The bill would set the amount of contract authority (the authority to incur obligations in advance of appropriations and a mandatory form of budget authority) at \$43.2 billion for 2010 and at \$21.6 billion for the period from October 1, 2010, to March 30, 2011.

Consistent with the rules in the Balanced Budget and Emergency Deficit Control Act for constructing the baseline, CBO assumes that funding provided by the bill for the first six months of fiscal year 2011 would continue at the same rate through the rest of that year and in each of the following years. Hence, CBO estimates that enacting the bill would result in baseline contract authority totaling \$432 billion over the 2010–2019 period. That funding level represents an increase of \$119 billion (\$11.9 billion per year) above the amounts of contract authority for highway programs currently projected in CBO's baseline for the 2010–2019 period.

CBO expects that most spending from the highway program will continue to be controlled by limits on annual obligations set in appropriations acts. Consequently, the changes in contract authority would not increase mandatory outlays. CBO estimates that, subject to the enactment of annual obligation limitations for the 18-month period of program extension, implementing the bill would increase discretionary spending by \$60.6 billion over the 2010–2019 period. CBO estimates that enacting the bill would not affect revenues.

This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of the legislation is summarized in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in billions of dollars—											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010–2014	2010–2019
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority ..	11.9	11.9	11.9	11.9	11.9	11.9	11.9	11.9	11.9	11.9	59.5	119.0
Estimated Outlays	0	0	0	0	0	0	0	0	0	0	0	0
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Obligation Limitation	41.2	20.6	0	0	0	0	0	0	0	0	0	0
Estimated Outlays ¹	11.0	22.3	15.0	5.5	2.8	1.7	1.2	0.8	0.2	0	56.6	60.6 ¹

¹ Estimated discretionary outlays reflect use of funds under the 2010 and part-year 2011 obligation limitations that the bill specifies. (Outlays stemming from additional contract authority shown in the table would be authorized in future legislation that covers the period after the 18-month program extension.)

Basis of estimate:

Changes in direct spending

The Surface Transportation Extension Act of 2009 would extend through March 30, 2011, Federal-Aid Highway programs authorized by SAFETEA-LU, the current authorization for transportation programs. For highway programs, the bill would set the amount of contract authority (the authority to incur obligation in advance of appropriations and a mandatory form of budget authority) at \$43.2 billion for 2010 and at \$21.6 billion for the period from October 1, 2010, to March 30, 2011.

The bill would provide contract authority for highway programs at the same level authorized in SAFETEA-LU for 2009, notwithstanding any rescissions or cancellations of contract authority in either SAFETEA-LU or any other act. SAFETEA-LU provided \$43.0 billion in contract authority for 2009. However, SAFETEA-LU and the 2009 Omnibus Appropriations Act (Public Law 111-8) contained rescissions of the 2009 program's contract authority that totaled \$11.9 billion. The Omnibus Appropriations Act also provided \$143 million in additional contract authority for highway programs. The Balanced Budget and Emergency Deficit Control Act specifies that the baseline projection for the cost of an expiring mandatory program with current-year outlays in excess of \$50 million be assumed to continue at the program level in place when it is scheduled to expire. As a result, CBO incorporated those rescissions and additions to contract authority in its baseline for highway programs over the 2010-2019 period.

Further, each year, SAFETEA-LU allows states to elect to have the Federal Transit Administration (FTA) administer up to \$1 billion of highway contract authority that is available to be spent on transit projects. Because the amounts transferred to FTA would be available for transit programs with or without the formal transfer of funds between the highway and transit programs, CBO did not consider those transfers for the purposes of calculating the increase in contract authority for the highway program resulting from this legislation. Combined with the rescissions and additions contained in SAFETEA-LU and the Omnibus Appropriations Act (Public Law 111-8), the contract authority available for highway programs is \$31.3 billion in 2009, and CBO projects that same amount in subsequent years. As a result, CBO estimates that the bill would add \$11.9 billion (the difference between \$43.2 billion and \$31.3 billion) of contract authority annually to the baseline over the 2010-2019 period.

CBO expects that most spending from the highway program will be controlled by limits on annual obligations set in appropriations acts. Consequently, the changes in contract authority would not increase mandatory outlays. SAFETEA-LU exempts certain portions of the Federal-Aid Highway program from the obligation limitations set in appropriations acts, resulting in mandatory outlays. Under the bill and under current law, a total of \$739 million each year from the Equity Bonus and the Emergency Relief programs is exempt from any limitation on obligations in 2010 and in each of the following years. That sum is equal to the baseline level of exempt contract authority for those programs. As a result, the bill

would not increase outlays from direct spending relative to the baseline.

Changes in spending subject to appropriation

CBO expects that the contract authority provided in the bill would be controlled by limitations on obligations contained in annual appropriation acts. CBO's estimate of discretionary spending under this legislation reflects the proposed obligation limitation that would be provided under the bill and does not include projections of that authority. The bill would extend the obligation limitations contained in SAFETEA-LU—\$41.2 billion for 2010 and \$20.6 billion for the first six months of 2011. Traditionally, along with the contract authority discussed above, states have elected to use \$1 billion of those amounts annually for transit programs administered by FTA. This transfer of authority to enter into contracts and to obligate funds affects how quickly spending occurs because spending for transit programs traditionally occurs more slowly than spending for highway programs.

Consistent with historical spending patterns of highway and transit programs and subject to the enactment of the 2010 and part-year 2011 obligation limitations, CBO estimates that implementing the bill would cost \$11.0 billion in 2010 and \$60.6 billion over the 2010–2019 period.

Intergovernmental and private-sector mandates: This bill contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Sarah Puro; Impact on state, local, and tribal governments: Ryan Miller; Impact on the private sector: Jacob Kuipers.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.