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# Funding for highways is ready to roll

A condensed guide to how the new transportation bill will affect local governments

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American City and County

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After nearly three years and nine short-term extensions of the federal highway and public transportation programs, Congress agreed on a two-year surface transportation reauthorization bill in June. On July 6, President Obama signed the Moving Ahead for Progress in the 21st Century (MAP-21) bill into a law, which stabilizes federal surface transportation investment through FY 2014 and makes a number of policy reforms that will affect all parts of the transportation community. While many of those policies involve changes to the program structure of the 2005 reauthorization measure, SAFETEA-LU, MAP-21's reduced level of federal funding for highway improvements in FY 2013 and FY 2014 will affect local governments.

Federal funding for highways peaked at $41.1 billion in FY 2010 and FY 2011. In FY 2012, Congress reduced funding to $39.1 billion. MAP-21 increases that slightly to $39.7 billion in FY 2013 and $40.3 billion in FY 2014, reflecting projected inflation.

In states where a share of federal funds is sub-allocated to local governments by formula, cities and counties automatically will receive less in 2013 and 2014 unless the state fills the gap with its own funds. Other states may try to make up for the reduced federal funding by reducing discretionary aid to local jurisdictions. That process began in some states in FY 2012 but is likely to intensify in 2013 and 2014 as the gap between state highway needs and resources grows ever larger, resulting in many having to finance a larger share of their highway improvements.

Programmatic changes in MAP-21 also could significantly affect local governments. For example, MAP-21 has a much simpler program structure than SAFETEA-LU. While SAFETEA-LU contained dozens of programs, each authorizing the expenditure of federal funds for a specific kind of highway improvement, MAP-21 aggregates them into four programs that give states much more flexibility in how they use their federal highway funds.

Specific SAFETEA-LU programs affecting local governments are now largely gone, including the High Risk Rural Road Program, the Safe Routes to Schools Program, the Recreational Trails and Scenic Byways Programs, and the Transportation Enhancements Program. MAP-21 transforms those into eligible activities within the existing Highway Safety Improvement Program and a new Transportation Alternatives category. While MAP-21 requires states to spend at least 2 percent of their federal highway funds on Transportation Alternatives, the total is about $300 million less per year than the total for those programs under SAFETEA-LU.

## The same or more funds

Nonetheless, MAP-21 includes some provisions that could maintain or even increase federal help to local governments:

MAP-21 preserves sub-state allocation of Surface Transportation Program (STP) funds. Half the funding each state receives under the STP is to be allocated within the state based on population, with funds being divided between urban areas with more than 200,000 population, other areas between 5,000 and 200,000 population, and rural areas with populations of less than 5,000. Every part of the state is thus guaranteed to receive at least some federal highway funds. The other half of STP funding may be used anywhere in the state.

MAP-21 preserves a mandatory set-aside for off-system bridges, also as part of the STP program. Each state is required to spend as much on off-system bridges each year as was required in FY 2009 under the 15 percent off-system set aside in the SAFETEA-LU Bridge Program.

A new provision of the STP makes improvements to minor collector roads eligible for federal funding if the improvement will enhance the level of service on a related National Highway System (NHS) route and is more cost-effective than an improvement to the NHS route. In addition, up to 15 percent of STP funds sub-allocated to areas of a state with a population of less than 5,000 also may be used for improvements to minor collector roads. Otherwise, they and local roads remain ineligible for federal funds.

As part of new "National Freight Policy" provisions, MAP-21 encourages states to invest in highway improvements that improve the flow of freight by increasing the federal share of project costs to 90 percent or more. The important element for local governments is that each state has to define a freight network that, in addition to Interstate highways and NHS highways that are critical to freight movement, may also include local rural roads with significant truck traffic.

The new law also creates a comprehensive performance process under which the U.S. Secretary of Transportation develops national goals and performance measures to track progress toward those goals. States are then charged with setting performance targets and reporting to the secretary on their efforts to achieve those targets.

## More local and state control

MAP-21 includes a number of new opportunities for state and local governments to reduce delay in project delivery. One of the most significant changes to existing law is an expansion of the use of categorical exclusions (CEs) during the environmental review process. A CE is used when projects create minimal impacts on the environment. The difference between a CE and the more extensive environmental assessments (EA) or environmental impact statements (EIS) is multiple years added on to the amount of time it takes to complete a project review.

MAP-21 now automatically classifies many routine projects as CEs. Those include rehabilitation and repair projects, projects within an existing right-of-way, projects with minimal federal resources and projects undertaken as a result of an emergency situation. Expanding the use of CEs to these additional areas gives local governments more certainty as to when a CE can be used and also allows them to undertake routine projects without unnecessary levels of review.

The law also expands opportunities for state and local governments to take control over various elements of the review and approval process. States now have the option of stepping into the federal role during the environmental review process. Previously, this option was only available to five states, but MAP-21 extends it to any state wanting to participate. Delegation of the federal role in the environmental review process could help reduce delay, as states would not have to wait in line for federal approvals and schedules.

States can assume control of either the entire environmental review process or only over the CE process. MAP-21 also allows the use of STP funds to cover legal expenses from delegating environmental responsibilities. Under SAFETEA-LU, the additional legal obligations deterred some states from taking advantage of delegation opportunities. It will remain to be seen if MAP-21's provisions encourage more states to do so.

MAP-21 provides options for reducing the amount of duplicative work in the review and approval process. Specifically, it allows for the option of using materials in the transportation planning process during the National Environmental Policy Act (NEPA) review. This would reduce delay by allowing, where appropriate, the use of material already created instead of reinventing the wheel. MAP-21 also encourages using programmatic agreements, spelling out requirements in the beginning of the review and approval process, rather than over a longer period of time. By outlining requirements early in the process, programmatic agreements provide a chance to give transportation planners increased certainty throughout the overall review process.

MAP-21 also both establishes new deadlines in the review process and tightens existing deadlines; e.g., shortening the amount of time allowed for lawsuits against projects from 180 days to 150 days. It establishes new deadlines for permitting decisions from federal agencies. If those deadlines are not met, the agencies are financially penalized. Finally, if a project is involved in an EIS for more than two years, a request may be made to have the United States Department of Transportation set a schedule ensuring the project will be completed in no more than four additional years. All of these reforms should significantly reduce the amount of time involved in the review and approval process.

The reforms in MAP-21 will make federal surface transportation investment more efficient, transparent and accountable. In so doing, the new law should help restore public confidence in the federal stewardship of transportation resources. The enactment of MAP-21, however, is not an opportunity to put these programs on auto pilot. The Highway Trust Fund again will be facing a solvency crisis at the end of FY 2014 — if not before. As such, it is imperative that the entire transportation community redouble its efforts to convince Congress to enact a long-term revenue solution to ensure the sustainability of the federal highway and public transportation programs and complement MAP-21's many policy reforms.

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