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## LEGISLATIVE Alert

AMERICAN PUBLIC TRANSPORTATION ASSOCIATION



June 29, 2012

### House and Senate Vote to Pass Surface Transportation Conference Report

This afternoon, both the House and Senate voted to pass the Conference Report to the Moving Ahead for Progress in the 21st Century (MAP-21/H.R.4348) legislation, the surface transportation authorization bill. The House passed the conference report by a vote of **373 to 52** and shortly thereafter, the Senate passed the conference report by a vote of **74 to 19**.

The final legislative details have been available since early yesterday morning. Leaders from both houses have asserted that the agreement represents a carefully-developed, bipartisan compromise, involving give-and-take between the Senate's bill, Moving Ahead for Progress in the 21st Century (MAP-21), the House's extension of current law, and language in the House Transportation and Infrastructure (T&I) Committee's bill that was not considered on the House floor.

The House of Representatives also voted to pass a one-week extension of current surface transportation law in order to provide a "cushion" to facilitate proper enrollment of the bill (a formal, but necessary legislative process) and a Presidential signing ceremony, if desired.

Based on our initial review of the conference agreement, the following is a summary of the key policy and programmatic elements of the conference agreement that are of the interest to APTA and its members:

#### Overall Funding Levels

The final conference agreement provides for a limited increase for Federal Transit Programs, providing a total of \$10.578 billion in authorized funding in FY 2013 and \$10.695 billion in FY 2014. Funding authorized from the Mass Transit Account of the Highway Trust Fund amounts to \$8.478 billion in FY 2013 and \$8.595 billion in FY 2014, with \$2.1 billion authorized from the General Fund in each fiscal year. The bill also separately extends the authorizations for FY 2012 based on current law.

[Click here for a table of all programmatic funding levels.](#)

#### Formula Grant Programs

Urbanized Area Grants (Sec. 5307, 5336) continue to be the largest program for federal investment in public transportation. The conference report allocates \$4.398 billion in FY 2013 and \$4.459 billion in FY 2014 for urbanized area programs. This compares to an estimated \$4.552 billion in FY 2012. The Job Access and Reverse Commute (JARC) program activities will now be funded under the Sec. 5307 formula program.

The bill authorizes \$422 million in FY 2013 and \$427.8 million in FY 2014 for a Bus and Bus Facilities Formula program. The funding level, while significantly below current law (\$984 million in FY 2012), was a major change from what the Senate bill had originally proposed, with essentially no funding as the bill was reported from committee and only \$75 million authorized as a takedown from the Capital Investment Grants account when S. 1813 was passed by the Senate. The new program is a formula grant program (as opposed to a discretionary grant program in current law) and does not restrict agencies that operate rail services from eligibility, as proposed in the House T&I Committee bill, H.R. 7. A minimum allocation is made available to all states, with the remaining funds distributed based on population and service factors.

The conference agreement retains the Sec. 5340 formula grant programs for High Density States and Growing States. The program is authorized at a level of \$518.7 million in FY 2013 and \$525.9 million in FY 2014, an increase of more than 13 percent.

Consistent with the APTA recommendations for program consolidation, the Elderly and Disabled (Sec. 5310) and New Freedom (Sec. 5317) Programs are combined into a single program that will fund activities designed to

enhance the mobility of seniors and individuals with disabilities (the new program remains under Sec. 5310). The consolidated program will increase the level of resources available for elderly and disabled transportation programs.

The conference report also authorizes increased funding for Rural Area Grants (Sec. 5311), to fund public transportation activities in rural areas. The Sec. 5311 Rural Formula program is funded at \$599.5 million in FY 2013 and \$607.8 million in FY 2014 as compared to an estimated \$547.3 million in FY 2012. The bill also provides for rural job access and reverse commute activities to now be funded under this section.

The bill repeals the Clean Fuels Formula Program as well as the Transit In the Parks Program.

#### Operating Assistance/"100 Bus" Rule

As recommended by APTA, the conference report adopts proposed "100 bus rule" language. This provision allows transit systems in urbanized areas with populations greater than 200,000 to utilize portions of their 5307 funding for operating assistance if their system operates 100 or fewer buses in peak service. The conference report does not include language that would have allowed transit systems to utilize a portion of their 5307 funding for operating assistance during periods of high unemployment.

#### State of Good Repair Grant Program

The bill creates a new "State of Good Repair" grant program that would replace the current Fixed Guideway Modernization program. The new program would distribute \$2.1 billion in each of fiscal years 2013 and 2014 to fixed guideway systems that use and occupy a separate right of way for exclusive public transportation use, rail systems, fixed catenary systems, passenger ferries and bus rapid transit systems. Funding could be used for a variety of activities and recipients would be required to develop asset management systems that include capital asset inventories and condition assessments, decision support tools, and investment priorities. The bill would apportion 50percent of the total based on factors used in the rail tier of the urban formula program in effect for FY 2011, under which 60percent is distributed on revenue vehicle miles and 40percent on fixed guideway route miles. It would apportion the other 50percent of funds under a formula that distributes 60percent of funds based on vehicle revenue miles and 40percent on fixed guideway directional route miles. In all cases, only those segments in revenue service for at least 7 years would be eligible for funding.

The measure also authorizes \$60.9 million in FY 2013 and \$61.7 million in FY 2014 for a High Intensity Motorbus State of Good Repair program. Funds would be distributed 60percent on the basis of vehicle revenue miles and 40percent on the basis of directional route miles. This program would provide funding for public transportation that is provided on a facility with access for other high-occupancy vehicles (HOV lanes), and would be limited to segments where high-intensity motorbus services have been in revenue service for at least 7 years.

#### Fixed Guideway Capital Investment Grants and Program Streamlining

The conference report authorizes \$1.907 billion for each of Fiscal Years 2013 and 2014 for Fixed Guideway Capital Investment Grants. This level is below the \$1.955 billion authorized in FY 2012. The Conferees agreed to adopt much of S.1813's Capital Investment Grants provisions, with modifications. The conference report's Fixed Guideway Capital Investment Grants provision reforms and streamlines the project approval process, eliminating duplicative steps in project development and providing for quicker review by the Federal Transit Administration. Both the House and Senate New Starts provisions included expanded use of warrants to expedite the project rating, evaluation, and approval processes. The conference report adopts the Senate's language expanding the use of warrants for projects with a New Starts share not exceeding \$100 million or 50 percent of total project costs.

The bill modifies eligibility standards to include new fixed guideway capital projects, small starts, and core capacity improvements, as well as programs of interrelated projects. The conference report requires that core capacity projects achieve at least a 10 percent increase in capacity along a corridor. The Conferees make corridor-based bus rapid transit (BRT) projects that do not operate in right-of-ways dedicated exclusively to public transportation eligible for small starts funding, and they limit eligibility for BRT new starts funding to systems where a majority of the project operates in a dedicated right-of-way during peak periods.

#### Public Transportation Safety Program

Included in the report is a negotiated compromise between Senate and House transit safety proposals. The provision grants authority to the Secretary to create a national safety plan for all modes of public transportation, to set minimum safety performance standards for all rolling stock not otherwise regulated and to establish a national safety certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems and employees of public transportation agencies directly responsible for safety oversight. Under this provision, all recipients of federal transit funding are required to establish, and have certified, a comprehensive safety plan based on set criteria. Those states with rail fixed guideway systems are required to have an approved state safety oversight program that establishes a state safety oversight agency which assumes oversight related responsibilities

A formula grant funding program for up to 80 percent in federal match dollars to develop and carry out state safety oversight programs has been authorized. The state safety oversight agencies are required, among other things, to review, approve, oversee and enforce implementation of transit agency safety plans, to conduct triennial safety audits and to provide annual safety status reports to the Federal Transit Administration (FTA) and others. While transit agency safety oversight will be carried out by the state safety oversight entities, the Secretary will oversee implementation by those state safety oversight entities and has the authority to audit their activities. In the event that a recipient is found to be noncompliant with safety requirements, the Secretary may withhold Federal funding or require up to 100 percent of Federal funds be used for corrective safety actions. In the event that a state safety oversight agency is found to be noncompliant, the Secretary is granted a range of options, including but not limited to issuing directives, requiring more frequent oversight and/or withholding Federal funds.

Additionally, a waiver provision for agencies not exceeding a set amount of miles or unlinked passenger trips as well as a provision allowing multi-state systems to establish a joint oversight entity was also authorized.

#### Asset Management

The bill also requires the establishment of a system to monitor and manage public transportation assets to improve safety and increase reliability and performance. Transit agencies will be required to establish and use an asset management system to develop capital asset inventories and condition assessments, and report on the condition of their system as a whole, with descriptions of the change in condition since the last report. The Secretary of Transportation is also required to define the term 'state of good repair,' including objective standards for measuring the condition of capital assets.

#### Metropolitan and Statewide Planning

The Conference Report contains key provisions intended to enhance transportation planning at the local, regional and state level. The report requires Metropolitan Planning Organizations (MPOs) to establish performance targets that address issues such as safety and state of good repair. This will include a system performance report. Additionally, the final language mandates that the structure of all MPOs, designated as Transportation Management Areas, must include officials of public agencies (including transit agencies) that administer or operate major modes of transportation in the metropolitan area. Lastly, the report establishes a pilot program to fund planning efforts for Transit-Oriented Development (TOD) projects. The pilot is funded at \$10 million in FY 2013 and 2014. Funding will assist with costs of comprehensive planning for new fixed guideway capital projects or core capacity improvement projects funded with federal dollars.

#### Research and Other Transit Provisions

Research, Development and Demonstration (\$70 million) -- The bill modifies the existing research program by creating a clearly delineated pipeline with criteria for continued progress, with a goal of taking an idea from the research phase through to demonstration and deployment in the field. The program specifically provides funding for demonstration and deployment of products and services that may benefit public transportation. It also creates a section of the deployment program dedicated to low or no emission public transportation vehicles, making grants available for the acquisition of low or no emission vehicles and related equipment, the construction of facilities for such vehicles, and the rehabilitation of existing facilities to accommodate the use of low or no emission vehicles.

The bill provides a small increase to the Transit Cooperative Research Program (TCRP), funding it at \$7 million annually out of the General Fund. The program had been cut by 35 percent in the FY 2012 Transportation Appropriations bill, but the authorizing committees sought to add some funding back.

*Technical Assistance and Standards Development* (\$7 million annually) – The bill creates a new section on Technical Assistance and Standards Development, provides grants for activities that help public transportation systems more effectively and efficiently provide public transportation service and helps grant recipients administer funds received under this chapter. This section also authorizes the FTA to continue making grants for the development of voluntary standards by the public transportation industry related to procurement, safety and other subjects and authorizes the Secretary to fund technical assistance centers to assist grant recipients following a competitive process.

*Public Transportation Emergency Relief Program* – Additionally, a new Emergency Relief Program patterned after the similar Federal Highway program is authorized under the bill, with an open ended General Fund authorization for "such sums as necessary." The new program is designed to assist States and public transportation systems in paying for protecting, repairing, or replacing equipment and facilities that are in danger of suffering serious damage or have suffered serious damage as a result of an emergency.

*Training* – The bill authorizes \$5 million annually from the General Fund for Human Resources and Training (Workforce Development). The Innovative Public Transportation Workforce Development Program will be a program to promote and assist the development of innovative workforce development and human resource

activities within the public transportation industry. Also, the National Transit Institute (NTI) is authorized at \$5 million from the Mass Transit Account.

*Bus Testing Facility* – The bill maintains an authorization for a single Bus Testing Facility (the Senate bill had proposed up to three additional testing facilities) but does call for the Secretary of Transportation to promulgate regulations to establish a Bus Test Pass/Fail standard. The Secretary is required to work with the bus testing facility, bus manufacturers, and transit agencies to develop the bus model scoring system under this paragraph.

*Bus Axle Weight* – Based on similar provisions in both S.1813 and H.R.7 to extend the current, temporary single-axle weight exemption for transit and over-the-road buses, the Conferees adopted the House provision that makes permanent both the single-axle weight exemption and the State enforcement ban of single-axle weight limits of less than 24,000 pounds, on the interstate highway.

*Buy America* – While neither the House nor Senate bills included changes to the domestic content requirements for rolling stock, both bills strengthened the documentation and transparency requirements of current Buy America provisions for highway, transit, and rail projects and prohibited project segmentation to avoid Buy America requirements. With regard to transit projects, the Conferees adopted most of the Senate’s Buy America provision, but did not include the anti-segmentation language.

*Transit Benefits* –The final conference agreement does not retain language that would have extended for only the 2012 calendar year parity with the parking benefit for the transit commuter tax benefit, as had been provided in the Senate Finance Title. Despite the staunch advocacy of Senator Charles Schumer (D-NY) and a number of other advocates in the House and Senate, the provision extending parity for transit benefits at the level of parking benefits was not retained.

Rail Title – Positive Train Control and STB Licensing

Although rail titles were contained in both the House and Senate authorization proposals, an agreement could not be negotiated and the rail title was deleted from the final conference agreement. The Senate Sec. 35601 provision requiring all passenger railroads to maintain at least \$200 million in liability insurance and to become certified by the Surface Transportation Board was eliminated. And despite language in both the House and Senate proposals to provide flexibility to commuter railroads in the process of implementing Positive Train Control (PTC), all PTC related provisions were struck from the final conference report. Also eliminated as a result of the rail title being dropped was the National Rail System Preservation, Expansion, and Development Act of 2012, which included provisions related to Amtrak.

Highway Title Transit-related Provisions

The bill authorizes several programs under the Highway Title and includes policy provisions that impact the availability of funding for transit and transit-related projects. The bill provides \$10.2 billion in FY 2013 and \$10.3 billion in FY 2014 for the Surface Transportation Program (STP) and maintains language that allows transit projects to be funded with STP dollars. Further, \$2.26 billion is allocated FY 2013 and \$2.28 billion in FY 2014 for the Congestion Mitigation and Air Quality (CMAQ) program. A provision mandating a percentage of CMAQ funding be used for diesel exhaust retrofits is not included in the conference report. Lastly, the bill consolidates the Transportation Enhancements, Safe Route to Schools, and Recreational Trails programs into a new “Transportation Alternatives (TA)” program, however, overall funding for these activities is reduced by roughly \$300 million annually. Under the new TA program, 50 percent of funding will be allocated to MPOs and 50percent to states, however, states may chose not to utilize funding for TA activities and devote funding to other transportation initiatives (including road and bridge projects). Funding reductions and the ability for States to opt-out of TA-activities deeply concerns transportation mobility advocates.

America Fast Forward/Transportation Infrastructure Finance and Innovation (TIFIA)

Both of the initial House and Senate authorization proposals significantly expanded TIFIA, the popular Federal surface transportation credit assistance program, increasing funding from \$120 million in FY 2012 to \$1 billion annually. The Conferees largely adopted the Senate’s TIFIA provision, with some modifications establishing application procedures to impose deadlines for actions by the U.S. Department of Transportation (DOT) and requiring an annual application process report by DOT. The conference report authorizes funding for the TIFIA program at \$750 million in FY 2013 and \$1 billion in FY 2014. For FY 2013, this represents a \$250 million reduction from the level included in both the House and Senate bills.

**ACTION ALERT**

APTA urges all members to contact your congressional delegation and thank them for their votes to pass the conference report.

### **House of Representatives Completes Action on FY 2013 Transportation Appropriations Bill; Provisions Will Require Changes to Conform to Newly Passed Authorization Bill**

Earlier today, the House voted to pass the FY 2013 Transportation, Housing and Urban Development and Related Agencies (THUD) Appropriations Act and its amendments, approving the final version on the House floor by a vote of [261-163](#). The majority of the amendments offered on the floor during the course of debate focused on the Housing and Urban Development sections of the bill, although a few transit related amendments offered.

Among the public transportation related amendments considered was an amendment offered by Representative Steve Chabot (R-OH) prohibiting the use of funds to design, construct, or operate a fixed guideway system in Cincinnati, OH. Representative Chabot's amendment passed by voice vote. An amendment was also offered by Representative Tom McClintock (R-CA) that would prohibit the use of funds for the Third Street Light Rail Phase 2 Central Subway project in San Francisco, CA. Representative McClintock's amendment passed by a vote of [235-186](#). Finally, while the House bill contained no funding for high-speed rail, in California or elsewhere, an amendment was offered by Representative Jeff Denham (R-CA) prohibiting the use of funds in the bill for high-speed rail in the State of California or for the California High-Speed Rail Authority, and passed by a vote of [239-185](#).

Earlier in the week, amendments to cut funds from the FTA, FRA and WMATA all failed, although an amendment to cut funding for the Surface Transportation Board (STB) was agreed to by voice vote. Also, during consideration of the bill, a point of order was sustained against a provision that would have allowed for up to \$100 million in FTA formula grant funds for fuel and power costs.

The companion Senate bill has been approved by the Senate Appropriations Committee, but has not been considered by the full Senate, which must occur before the two versions can be reconciled in an Appropriations conference committee. Despite the action by the House this week on FY 2013 Transportation Appropriations, changes in structure and funding levels will be required once the newly passed surface transportation authorization conference report has been signed into law.



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1666 K St., NW. Washington, DC 20006  
(202) 496-4800 | [www.apta.com](http://www.apta.com)