

MAP-21: An Analysis

On Friday, July 6, President Obama signed into law HR 4348 (<http://www.govtrack.us/congress/bills/112/hr4348>) Moving Ahead for Progress in the 21st Century (MAP-21). The President's signature brings to a close a tumultuous 1,000 days that saw the previous law — SAFETEA-LU — extended time and again. During this period, the very future of community and public transportation industry was debated and contested in a highly charged partisan political environment. Indeed, at many points in the past 1,000 days, prospects for new reauthorizing legislation seemed dim.

What emerged as the clock ticked down on SAFETEA-LU's ninth extension, which ended June 30, is a surprisingly bi-partisan agreement that garnered resounding votes of 373-52 (<http://www.govtrack.us/congress/votes/112-2012/h451>) in the U.S. House of Representatives and 74-19 (<http://www.govtrack.us/congress/votes/112-2012/s172>) in the U.S. Senate. Against what seemed to be insurmountable odds, MAP-21 emerges with two years of funding with increases in overall transit investment for both FY 2013 and 2014. Not only does this legislation carry the industry past the November elections, it takes us through to September 30, 2014, creating an early opportunity to address unmet needs.

Formula funds for urban transit, rural transit and transportation for seniors and people with disabilities all increase in MAP-21. The Job Access and Reverse Commute and New Freedom programs are consolidated into these formula funds. Capital funds for bus and bus facilities, an issue CTAA and its members have raised as vital, find their way into the new law, but with slight reductions from SAFETEA-LU levels. There is a new focus on safety and asset management in the law and CTAA is pleased to see the Transportation Emergency Relief Program emerge. Privatization and performance measurement are emphasized throughout MAP-21. As predicted, the law avoids discretionary programs, favoring formula-based concepts.

As with any piece of legislation encompassing hundreds of pages, the details are vital and we offer up our first, initial analysis of the public transportation section of MAP-21 in the following pages. At the outset, we urge our members, readers and advocates to not lose sight of the commitment shown to community and public transportation in this bi-partisan agreement. The tremendous efforts many undertook to educate their members of Congress, to communicate the value and impact of community and public transportation and to build vital partnerships in your communities paid dividends. There are good outcomes here that remind us that the hard work of the last several years was critical and important.

The Trust Fund

- Since SAFETEA-LU first expired, the primary impediment to its successor legislation has been finding the revenue needed to augment gas tax collections accruing in the Transportation Trust Fund. Simply put, the trust fund no longer collects enough money to fund the highway and transit programs at necessary levels. The initial reauthorization concepts that emanated from the House in the Spring of 2011 offered a roughly 30

percent cut across the highway and transit programs, reflecting the Trust Fund's shortfall. A year later, some House members attempted to fully fund the highway program with all the Trust Fund revenues — rather than maintaining the historic 80/20 highway/transit split. Both of these concepts failed to gain much political traction. This bi-partisan agreement effectively bails out the Trust Fund for the next 27 months and helps to protect the surface transportation programs from the coming budget battles. Though it is fair to say that MAP-21 does not provide a long-term, sustainable solution to adequately fund the nation's surface transportation programs, two years in the current economic and political climate is a worthwhile outcome.

The Formula Programs

Section 5307 Urban Transit Formula Assistance

- MAP-21 continues the Section 5307 program as we have come to know it. The biggest difference it brings to the Section 5307 program is the addition of a tier of funding based on areas' share of low-income population. Overall Section 5307 funding rises by 7 percent by FY 2014. All Section 5307 grantees will have to comply with new provisions for transit asset management and transit safety and security. *Transit enhancements* have been renamed *associated transit improvements*, but must continue to receive at least 1 percent of Section 5307 spending in larger-urbanized areas.

Section 5307 Urban Transit Operating Assistance

- MAP-21 continues flexibility for operating assistance for small-urban transit agencies operating in cities of less than 200,000 — and includes, for the first time, operating flexibility for those in communities above 200,000 in population given the following:
 - Urban systems that operate 75 or fewer buses in peak service hours, regardless of their population, may flex up to 75 percent of their formula funds to operating.
 - Urban systems that operate a minimum of 76 buses and a maximum of 100 buses in peak service hours may flex an amount not to exceed 50 percent of their formula funds to operating.

Section 5310 Sub-Allocation, Apportionments and Coordination Requirements

- MAP 21 continues to allow recipients of Section 5310 funds to sub-allocate to private nonprofits or state/local government authorities, provided that the state/local authority coordinates service and has certified that no private nonprofit is readily available. The law codified the Senate proposal that 60 percent of 5310 funding go to designated recipients in urban areas greater than 200,000 in population, 20 percent to states for urban

areas between 50,000 and 200,000 population and 20 percent to states for rural areas. Operating assistance is now available in the Section 5310 program. The Section 5310 program recipients must certify that the projects selected are included in a locally developed, coordinated public transit-human services transportation plan. The plan must be developed and approved through a process that includes seniors and people with disabilities and is coordinated to the maximum extent possible with transportation services assisted by other federal departments and agencies.

The New Freedom Program

- The former Section 5317 New Freedom program is combined into the larger Section 5310 program. By 2014, the Section 5310 program will grow by more than 90 percent compared to FY 2012 funding levels. In the *General Authority* for Section 5310, it now states that the Secretary may make grants under this section to recipients for public transportation projects that exceed the requirements of the ADA.

Section 5311 Rural Transit Formula Grants

- Total federal investment in Section 5311 rural transit program will grow by 30 percent from FY 2012 to FY 2014. New changes in the allocations will include factors based on their relative shares of rural transit revenue vehicle-miles and of non-urban low-income populations. There are other programmatic tweaks that will affect the Section 5311 program under MAP-21; the most noticeable of these may be the expectations that rural transit assets are included in the nationwide transit asset management system, and that rural transit systems will have to participate in the FTA transit safety and security program. The Section 5311(f) intercity bus program remains intact.

Section 5311 (c)(1) Public Transportation on an Indian Reservation

- The Section 5311 (c)(1) Public Transportation on Indian Reservations program is doubled in MAP 21 to \$30 million annually, with \$5 million being distributed on a competitive basis by the Secretary and \$25 million apportioned on a formula to federal recognized tribes.

Appalachian Development Public Transportation Assistance Program

- There is a new program within the Section 5311 program — The Appalachian Development Public Transportation Assistance Program — that is funded at \$20 million annually in the new law. Designed for eligible recipients as outlined here (<http://us-code.vlex.com/vid/sec-definitions-19240685>), the program authorizes the Secretary to carry out a public transportation assistance program in the Appalachian region for any purposes eligible under Section 5311 guidelines and in accordance with section 9.5(b) of

the Appalachian Regional Commission code
(<http://www.arc.gov/publications/ARCCode.asp#chap9>)

Job Access and Reverse Commute

- For several years, the Administration and Congress have suggested combining the former Section 5316 Job Access and Reverse Commute program into the urban (5307) and rural (5311) formula funding programs. MAP-21 does exactly that. In each of these formula programs, under *General Authority*, job access and reverse commute projects are eligible projects. Simply put, those transit agencies with JARC programs they wish to continue have the ability to use their formula funds (either Section 5307 or 5311) to do so.

The Capital Programs

Section 5309 Fixed Guideway Capital Investment Grants

- The former Section 5309 program — which funded rail modernization, new starts rail and bus and bus facilities — is now solely new starts rail with a limited bus rapid transit component. Proposed projects of less than \$75 million in federal assistance and with less than \$250 million in net capital costs are classified as a small start project. The new language under Section 5309 includes significant changes, new reporting requirements, selection criteria and much more. Of note, this program is funded entirely from General Funds and not the Trust Fund.

Section 5337 State of Good Repair Grants

- The Section 5337 State of Good Repair grant program included in MAP-21 is a fixed-guideway rail modernization program that was once part of the former Section 5309 program. The program authorizes 97.15 percent of its \$2.1 billion dollars in FY 2013 and FY 2014 to be split equally using a formula based on an area share and a vehicle revenue miles/directional route miles share. The remaining 2.85 percent will go to a high-intensity motorbus state of good repair program.

Section 5339 Bus and Bus Facilities Formula Grants

- To augment the additional capital funding available for buses through the increases in Sections 5307 and 5311, MAP-21 allots \$422 million to be available via the following methodology: \$65.5 million shall be allocated to all states and territories, with each state

receiving \$1.25 million. The remainder of the program's funds will be distributed to states and urban areas using the same formulas as Section 5307.

Notable MAP-21 Programs and Language

Metropolitan Planning Organizations

- The provision in S. 1813 to raise the designation for MPOs from 50,000 to 200,000 in population — requiring that communities in the 50,000 to 200,000 population range receive approval from the Secretary that they possess the technical capacity to complete the planning requirements — has vanished in the final MAP-21. So, too, has the concept of *tiered* MPOs disappeared in the final law. Statewide and metropolitan transportation planning will have an added responsibility to set and plan for performance targets in federally supported highway and transit projects.

Section 5315 Private Sector Participation

- The finalized MAP-21 includes an entire section on private-sector participation to better coordinate public and private-sector provided public transportation services; promote more effective use of private-sector expertise, financing, and operational capacity to deliver projects; and to promote better understanding of public-private partnerships affecting public transportation.

Section 5324 Public Transportation Emergency Relief Program

- MAP-21 includes a long-overdue concept to ensure the operations of vital community and public transit services in the case of natural emergencies. The new Section 5324 program offers both capital and operating assistance, at the Secretary of Transportation's discretion and only in cases where either a Governor or the President has declared an emergency. These grants would be available for evacuation services, rescue operations, temporary public transportation service and reestablishing, expanding or relocating public transportation route service before, during or after an emergency. This operating assistance would be available for either a 1-year or 2-year period. The capital assistance will be available to protect, repair, reconstruct or replace equipment and facilities. The program also includes detailed guidance on the coordination of its funds with FEMA, Homeland Security and other emergency response programs. Lastly, it includes an 80 percent federal share, but with the ability for the Secretary to waive, in whole or in part, the federal share.

Section 5326 Transit Asset Management

- MAP-21 directs the Secretary to establish and implement a national transit asset management system, which shall include a definition of the term *State of Good Repair*; that recipients and subrecipients of federal financial assistance develop a transit asset management plan; and that designated recipients report on the condition of their system(s). All transit assets, both urban and rural, are to be included in this new asset management system.

Section 5329 Public Transportation Safety Program

- MAP-21 includes a major emphasis on safety. As had long been discussed and expected, the Secretary of Transportation is directed to develop a National Public Transportation Safety Plan. A year after the Secretary issues a final rule on this plan, each state or designated recipient must establish a comprehensive public transportation agency safety plan to include: a requirement that the board or equivalent entity approve the safety plan; methods for identifying and evaluating risks; strategies to minimize exposure; a timeline for conducting an annual safety plan review; performance targets; and the assignment of an adequately trained safety officer who has completed a safety training program. For Section 5311 subrecipients, a state safety plan may be drafted. Two months after MAP-21 is enacted, the Secretary shall issue a rule designating which 5307 recipients may have their state safety plans drafted or certified by the state. A new section then outlines a rail system safety plan to be crafted through a State Safety Oversight Program, which, in truth, encompasses the bulk of these new requirements.

Section 5340 Growing States and High Density States

- The only change to Section 5340 — under which additional funds are allocated to Section 5307 and 5311 based on high-density states and projected 15-year population growth — is that Section 5340 funding is increased to \$518.7 million in FY 2013 and \$525.9 million in FY 2014.

• The Section 5308 Clean Fuels Program and the Section 5320 Alternative Transportation in the Parks Program are repealed in MAP-21.

- **MAP-21 includes a separate revenue title that keeps the dollar value of the pre-tax qualified transportation fringe benefit frozen at a \$125 monthly level.**

